RELIEF LEGISLATION

IN THE

PUNJAB

1939.

Printed at the Feroz Printing Works,
119, Circular Road, Lahore,
By M. Abdul Hameed Khan, Manager.

RELIEF LEGISLATION

IN THE

PUNJAB

By

KHUDA BAKHSH, B.A., LL.B., P.C.S.,
Revenue Assistant, Lahore.

ABDUL HAQUE, B.A., LL.B., P.C.S. (Judicial),
Officer on Special Duty for Framing Rules
Under The Relief Acts.

Being

An Exhaustive and Critical Commentary

On

Redemption of Mortgages Act, Usurious Loans Act, Regulation of Accounts Act, Relief Indebtedness Act, Debtor Protection Act, Registration of Money-Lenders Act, and Restitution of Mortgaged Lands Act.

With a Foreword

By

The Hon'ble Rao Bahadur, Chaudhari Sir, Chhotu Ram

FIRST EDITION

1939

Dedicated to

The Hon'ble Major Sirdar Sir, Sikandar Hayat Khan,

Premier Punjab

Foreword

"Relief Legislation in the Punjab" is a publication which will be welcome to all educated persons who take an interest in the welfare of the poor and exploited sections of the community. The publication comes at the right moment and will prove particularly useful to the members of the Bench and the Bar who have to interpret, in the day-to-day discharge of their functions, the statutory provisions of various Acts passed by the Legislature with the object of affording relief to those whose poverty and ignorance are such effective bars to fair dealing between themselves and their economic exploiters.

"Relief Legislation in the Punjab" covers as many as seven pieces of legislation—Redemption of Mortgages Act (1913), Usurious Loans Act (1918), Regulation of Accounts Act (1930), Relief of Indebtedness Act, (1934), Debtors' Protection Act (1936), Registration of Money-lenders' Act (1938) and Restitution of Mortgaged Lands Act (1938)—and constitutes an excellent handbook which will, I am sure, meet a genuine need so widely felt in our province.

I cannot claim that I have made a critical study of the publication. With my numerous pre-occupations in other directions that was out of the question. But I have gone, with some care, through portions of the commentary relating to each individual legislation comprised in it and have no hesitation in congratulating the authors on the labour and thought which they have spent on their work. Ambiguities and short-comings of language as well as certain lacunae calculated to detract from an effective fulfilment of the purpose which the legislature had in view have been carefully pointed out while copious references to case-law have been incorporated in the publication for the benefit of the judiciary and the legal profession.

CHHOTU RAM
Minister of Development, Punjab.

June 7, 1939.

Preface

The purpose and plan of this book are sufficiently obvious. The agrarian law of the Punjab, like the English constitution, has grown piecemeal, and, naturally enough, lies scattered in several enactments. There was, thus, need for collecting, within the compass of a single volume, all the relief acts, and presenting them in a form convenient and handy for the general public, lawyers, and judges.

In commenting on laws enacted prior to the year 1938, we have been guided by experience gained through their actual working, but in regard to the rest of the legislation, which has yet to stand the test of time, we have been constrained largely to draw upon our own imagination and intuition. In some respects, our conclusions may, possibly, be open to question, while, in others, our apprehensions may be belied by time, but, throughout, we have endeavoured to be honest in purpose and pure in motive. Though in places we have doubted whether some of the provisions of the laws recently enacted would secure intended results, yet it is our fervent prayer that the good intentions of the legislature may be spared frustration.

We confidently hope that the public in general, and the members of the bench and the bar in particular, will extend to us the courtesy of pointing out whatever defects they may come across in this publication, for, it is only by mutual co-operation that defects can be removed and improvements effected. Our task has been accomplished under limitations imposed by the irresistible pressure of official duties, and the multitudinous calls one has to answer in a busy metropolitan town like Lahore. We crave the indulgence of our readers for sins—of omission and commission—that we may have unwittingly perpetrated.

In conclusion we have to express our sincere gratitude to the Hon'ble Rao Bahadur Chaudhri Sir,

Chhotu Ram, Minister of Development, Punjab, who, in spite of numerous calls on his time and energy, has been kind enough to accede to our request, and write a foreword for this book. He was Godfather to most of the laws covered by this volume, and none is, therefore, better fitted to bless our humble enterprise than himself. Our special thanks are due to the Hon'ble Major Sardar Sir Sikandar Hayat Khan, Premier, Punjab, for permitting us to dedicate this work to him. It is common knowledge that, but for his unstinted support and courageous lead, several of the enactments would not have found their way to the statute book. We are also thankful to Malik Rahim Bakhsh for helping us with the proofs, for, being busy with our official duties, neither of us could spare enough time for the job. We are indebted to the Feroz Printing Press for the care with which they have arranged the printing of this book in a short space of time.

KHUDA BAKHSH
ABDUL HAQUE

June 15, 1939.

The
Redemption of Mortgages Act,
1913.

Table of Contents

THE

Redemption of Mortgages Act, 1913.

An Act to provide a summary procedure for the redemption of certain mortgages of land in the Punjab.

WHEREAS it is expedient to provide a summary procedure for the redemption of certain mortgages of land in the Punjab : Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Redemption of Mortgages (Punjab) Act, 1913. Title.

(2) It extends to the Punjab. Extent.

(3) It shall apply only to mortgages of land— Limitation of scope of Act to certain mortgages.

(a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village or of a sub-division of the village appertaining thereto and mortgaged therewith, does not exceed in area(1) [50 acres]; or

(b) in which, whatever the area, the principal money secured under the mortgage does not exceed(2) [5,000] rupees;

---

(1) Substituted for the figure "30" by section 33 of the Punjab Relief of Indebtedness Act (VII of 1934) which came into force on 19th April 1935 (vide Notification No. 15639 Home Judicial) dated 18th April, 1935.

(2) Substituted for the figure "1000" by Section 33, Punjab Act VII of 1934.

India Act XIII of 1900.

Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.

Legislative Changes.—The Act as originally promulgated was confined in its application to mortgages of land in which either the area mortgaged (exclusive of the common land share appurtenant thereto) did not exceed 30 acres, or the mortgage debt was not more than Rs. 1,000|-. But by means of section 33 of the Punjab Relief of Indebtedness Act, (Act No. VII of 1934) which came into force on 19th April, 1935, the operation of the Act was extended to mortgages in which the area did not exceed 50 acres or the mortgage debt was not above Rs. 5,000|-.

Object of the Act and its Scope.—The Act deals with the redemption of certain mortgages of land. Prior to its enactment, a redemption of mortgage of land could be secured under Order 34 rules 7 and 8 of the Code of Civil Procedure, and the suit contemplated by these provisions had to be lodged in a Civil court. Adjudication of Civil rights is primarily the privilege and duty of Civil courts, and in the interest of public good, legislatures should be, and generally are, jealous of warding off incursions into this field on the part of the executive. But where public interest so demands, a departure from this rule may in fit cases be permissible. Experience showed that in the case of petty and simple cases regarding the redemption of land the lengthy and cumbersome procedure prescribed under the Code of Civil Procedure, which had to be followed by the Civil courts, led to huge waste of money and energy, which was not in any way commensurate with the benefits received from such litigation. But there being no other agency available, the public had to resort to this wasteful and protracted litigation even in petty and non-contentious cases. Government therefore decided to provide a simple and less expensive method of securing redemption in petty cases of simple nature. In upholding the principle underlying the Bill the Government of India said, "After careful consideration of the provisions of the draft Bill they are ready to accept the general outlines of the draft, and that the need of a summary means of coming to a decision in cases between small peasant mortgagors and their creditors is very generally acknowledged and there appears to be no more satisfactory method of meeting the want than that put forward in the Bill."

When the present Act was on the legislative anvil a lot of opposition was directed towards such of its provisions as invested Collectors with the power of allowing redemption, and it was contended that Civil courts, which were the proper tribunals for the adjudication of civil rights between different members of the public, were being wrongly deprived of these powers and executive officers were being invested with the same. The Hon'ble Mr. Kensington while dealing with this point said, "I am entirely in favour of cutting off altogether the proposed powers of the Revenue officer of dealing in any way with contentious points, and in the interest of all parties concerned I trust that the futility of expecting Revenue Officer to be able to deal efficiently with difficult question of this sort to the satisfaction of the parties will be recognised to the extent of recasting the bill."

This view was however not shared by a majority of the members of the council, who rightly thought that the curtailment of unnecessary litigation was one of the duties and objects of the legislature, and where a summary and less expensive remedy could be substituted in place of a lengthy and expensive one without seriously affecting the rights of any member of the public there could be no objection to the curtailment of the jurisdiction of Civil courts. A reference to the different provisions of the Act will show that the legislature did not desire Collectors to assume jurisdiction in contentious cases, and experience has shown that they have scrupulously been avoiding these pit falls. Further more in giving the party dissatisfied by the order of the Collector the right of challenging its correctness by a regular suit in Civil court (section 12 of the Act) the legislature has amply safeguarded against any undue encroachment on the functions of Civil courts.

In spite of this the Bill raised a storm in the provincial politics and very ingenious arguments were invented to thwart its progress. The Bill found in the late Sir Mian Muhammad Shafi an able advocate and we reproduce below some important extracts from his brilliant speech with a view to making the readers appreciate the contentious provisions in their true perspective.

"The main arguments advanced against the enactment of the proposed law are—(a) that it constitutes an unjustifiable encroachment upon the jurisdiction of the Civil Courts; (b) that in view of the complicated nature of the questions involved in redemption suits, the handing over of these disputes to Revenue Officers for summary decision is open to serious objection; and (c) that the proposed enactment will necessarily result in further injury to the money-lending classes who are already suffering considerable hardship in consequence of certain principles of the Punjab Customary Law as well as of recent legislation.

"Now, as regards the alleged encroachment on the jurisdiction of the Civil Courts, it must be obvious to all Hon'ble Members that if there were any reasonable fear of such an undesirable result being brought about, I would be the first Member of this Council to move the rejection of the Bill. But if what is meant by this objection is that, as a result of the enactment now before the Council, there will be a substantial decrease in the number of redemption suits which, under existing conditions, are instituted in and decided by the Civil Courts who will thus be deprived of the pleasure of adjudicating upon the interesting issues involved in such cases. I have no hesitation in admitting that this result will certainly be produced by the operation of the law which we are about to place upon the statute book of this province. These, however, are suits which, but for the tenacity with which the mortgagee sticks to the land in his possession, ought never to come before the Courts at all and, in consequence, their disappearance from the battle-field of the Civil Courts will not constitute an unbearable disaster either to the Courts themselves or to the population at large.

Curtailment of *unnecessary* and frivolous litigation, is an object *which the* Legislature should invariably have *in* view, and the substitution of a summary remedy for prolonged and ruinous *litigation*, absolutely uncalled for, can, in no sense, be *regarded* as an encroachment upon the jurisdiction of the Civil Courts. Cases of real bona-fide contest between the *parties to* a mortgage transaction will still find their way into the ordinary courts of law and, in consequence, no one need be apprehensive that these tribunals will, by the enactment of this measure, be deprived of the legitimate exercise of their powers in deciding questions which arise in really contentious suits for redemption.

"Turning now to the second objection raised against the Bill, *i.e., that the complicated nature of the question involved* in these cases makes it undesirable to confer summary jurisdiction upon the Revenue Courts in respect thereof, a careful examination of the position thus taken up by the opponents of the Bill will make its fallacious character abundantly clear. The questions involved in redemption suits may, generally speaking, be divided into two groups,—(a) those relating to the right and title of the *persons seeking* redemption, and (b) those concerning the *settlement* of accounts between the parties to these proceedings.

"*Now, in the first place, section 9 of the Bill empowers* the Collector to refer the parties to their ordinary remedy at law in cases involving decision of really complicated questions. But what, after all, is the real nature of the so-called complicated questions, which ordinarily present themselves for decision in disputes with which the proposed enactment is concerned? Suits for redemption between the original mortgagor and mortgagee seldom involve a determination of the plaintiff's right to redeem, for it is a well known rule of law that the mortgagee cannot *deny the title* of his mortgagor. It is only where the claimant for redemption is a person other than the original mortgagor that it, sometimes becomes necessary to decide questions of this description. Generally speaking, *these may involve* adjudication upon the locus standi of the claimant or may raise a bar to *redemption on the ground* of limitation.

"As regards the claimant's locus standi to redeem what the opponents of the Bill really lose sight of is the fact that the Bill does not seek to confer upon the Revenue authorities summary jurisdiction which they are not already possessed of under the existing law. The plaintiff, in such cases, will almost invariably be found to be either one who claims to be the representative of the mortgagor on the ground of inheritance or who seeks to redeem as transferee of the equity of redemption. In either of these two cases, the claimant's right, whether as heir of or transferee from the original mortgagor, has already been summarily determined by the Revenue authorities under the provisions of the Land Revenue Act relating to mutations. Section 34 of Act XVII of 1887 makes it incumbent upon a person acquiring by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a landowner. . . or tenant having a right of occupancy to report his acquisition of the right to the Patwari of the estate. And after the proceedings specified in sub-section (3) of that section have been gone through a Revenue Officer is, under sub-section (4), empowered to inquire into the correctness of the entries made and to pass such Orders as he thinks fit. And under section 36 of that Act, the Revenue Officer is, in disputed cases where he is unable to satisfy himself as to which of the parties thereto is in possession, empowered to ascertain by summary inquiry who is the person best entitled to the property and to direct that that person be put in possession thereof. A careful study of these provisions makes it perfectly clear that, in this respect, the jurisdiction sought to be conferred upon the Revenue authorities by the present Bill is practically already vested in them under the Land Revenue Act and, at all events, is in no way wider in its nature than that which they, at present, enjoy under the existing Revenue law.

"And the plea of bar by limitation stands on no better footing. In the first place, to those who have practised at the Bar as long as I have done, it is a well known fact that suits in which limitation is pleaded by the mortgagee as a bar to redemption are extremely rare. In the whole of the Punjab Record from the year 1866 to 1911, covering a period of 45 years, there are only 19 judgments in which the question of bar by limitation in redemption suits came before the Chief Court for decision, 14 out of these judgments dealing with the question of sufficiency of acknowledgment within the meaning of section 19 of the Indian Limitation Act. And experience shows that with the lapse of time the number of such cases has been growing less and less. Since the beginning of the year 1901 only 2 redemption cases have been published in the Punjab Record involving questions of limitation. The reasons for this state of things are obvious. With increased material prosperity in the country due to conditions brought into existence by the British rule, the growing knowledge of their rights by the agricultural classes and the rising value of agricultural land owing to extended irrigation landowners will no longer permit their right of redemption to lapse by neglecting to redeem within the long period of 60 years allowed by statute.

"Moreover there is another aspect of this question which ought to be borne in mind. Questions of limitation involved in these suits are not always so very complicated as not to be capable of being correctly decided in a summary proceeding. The determination of the original date of mortgage is, generally a simple question of fact and, that having once been ascertained the rest is, in the majority of cases, a simple matter of arithmatical calculation.

"For these reasons it seems to me to be abundanty clear that the position taken up by the opponents of the Bill on the ground of the alleged complicated nature of the legal questions involved in redemption suits is absolutely untenable particularly when the Bill does not seek to deprive the Collector and the parties of the benefit of legal advice and help.

"Your Honour, in the vast majority of the redemption suits the principle points in issue between the parties will be found to be one of settlement of accounts. Now this, in the majority of contentious cases, is not so complicated as to be difficult of decision in a summary inquiry by the Collector which term includes also an Assistant Collector of the 1st grade. On the contrary it is the Revenue Officer who is in the best of positions to determine the question correctly. The reasons for this statement are not far to seek. In all usufructuary mortgages under the terms of which the *mortgagee in possession does not receive the whole of the* income in lieu of the entire amount of interest due upon the principal mortgage money, he is bound by law to keep a correct account of the income and expenditure, and it is his duty to take as much care of the mortgaged lands as a prudent owner would, if the lands were in his own possession. But experience shows that the so-called accounts kept by many a mortgagee consist of a maximum of expenditure and a minimum of income so as to swell the balance in order to make redemption impossible, or, at any rate, highly expensive. And, in these cases, Courts have to institute independent inquiries as to the income which the lands are capable of *yielding. Who is in a better position to make a correct* estimate of this than a Revenue Officer? Does not the Chief Court even now when remanding cases, to original Courts for the determination of this matter often direct them to appoint an experienced Revenue Officer to make this inquiry on the spot? Obviously, then, the Revenue Officer is the proper person to deal with this all important question, and the very fact that the Civil Courts often refer this matter to him for inquiry shows that while these matters may be too complicated for themselves they are not so for the officers whom this Bill seeks to invest with summary jurisdiction. And the same process of reasoning applies 'mutatis mutandis,' to cases *in which the mortgagee in possession claims under the* conditions embodied in the mortgage-deed compensation for improvements alleged to have been made by him in the land during the period of his possession.

"The next contention advanced by the opponents of the Bill is, in my humble judgment, equally unsound. The apprehension entertained in certain quarters as to the injurious effects of this enactment upon the professional money-lender is, to my mind, the result of a nervousness for which there is, in reality, no ground whatsoever, and is based upon an assumption entirely unjustified by facts. The restrictions imposed by the Customary Law of this province and by the Punjab Alienation of Land Act have no relevancy whatsoever to the real issue involved in this part of the discussion. All that the mortgagee is entitled to is the recovery of his debt, secured upon the land in his possession, and upon the payment thereof he is legally bound to restore the land to the mortgagor. So long as he obtains his pound of flesh it is immaterial to him whether the agency which uses the knife is a Civil or a Revenue Court. And if, as a result of the summary inquiry by the Collector, he fails to get what is really due to him, the doors of the Civil Court will still be open to him to question the validity of the order passed by the Revenue authorities.

"But what I desire, in particular, to impress upon the Council in this connection is the entirely one-sided nature of this untenable position. The advocates of this view lose sight of the injuries which the unfortunate mortgagors have to suffer under the existing conditions. After the exercise of strict economy extending over a number of years or by borrowing money upon somewhat easier terms the mortgagor manages to collect funds sufficient to redeem his lands. The conditions embodied in the mortgage-deed allow redemption only in the month of Jeth. By resort to various subterfuges, of which he is a past master, the astute money-lender avoids the final settlement of accounts during that month. His books happen to be in court in connection with a pending litigation; he himself is away at the headquarters of the District attending to a case or has gone on a pilgrimage to Hardwar! And if the mortgagor issues a registered notice the postal peon returns it with the usual report that the addressee is away from home! The mortgagor is thus compelled to institute a suit for redemption. He must pay full court-fee on the principal mortgage-money; the suit takes its weary course through a number of courts, original and appellate, and several years must elapse before the unfortunate zamindar obtains his decree for redemption. Then comes what has often been truly characterized as the beginning of the iltigant's real trouble, i.e., the execution of decree. • And very often the decree thus obtained is of no use to the poor agriculturist. For, the money scrapped together by the mortgagor has been spent in this protracted litigation, and the decree being conditional on payment of the sum found due by the court he is not in a position to execute it. The result is a second suit for redemption after the lapse of a further term of years. Meanwhile, the mortgagee continues in possession and is thus successful in defeating the ends of justice by keeping the mortgagor out of his estate. All this will, in the majority of cases, become impossible if the proposed enactment receives legislative sanction, *and this is the real reason of the opposition to the* Bill by those of our Indian friends who have the interests of the money-lender at heart.

"That the enactment of the proposed law will curtail Civil litigation does not admit of any doubt. The exercise, by the Collector, of the summary jurisdiction vested in him under the provisions of this law, will 'ipso facto,' shut out all frivolous litigation of the type I have just described from the Civil Courts of this province, and from this point of view the proposed enactment will prove of the highest benefit in reducing agricultural indebtedness. . . . The larger landowner will, in on way, be affected by its provisions and his dealings with the money-lender will continue as before. It is the smaller agriculturist of this province who forms the backbone of the country. This enactment while involving no real hardship to anybody, will release him from a tyranny under which he has been groaning ever since the intricacies of our legal system have enabled certain classes to hold him tight in their clutches and will bless the first Council under the Reform Scheme for having afforded him a much needed relief.

"Your Honour, I have considered it necessary to meet at some length, the criticism advanced against this measure for the reason that I feel a certain amount of personal responsibility in connection with this Bill. When some three years ago the Bill as originally drafted was *circulated for opinion, I ventured to point out that* to enable the mortgagor to have the mortgagee summoned before the Collector and to obtain redemption only if the two were agreed as to the sum under the conditions of the mortgage deed, would not only fail to achieve the end in view, but would create unnecessary trouble and worry for both parties. And when that Bill was placed before a committee which met at Simla in September 1911, I pointed out that the existing Civil and Revenue Law of the land afforded precedents which ought to be adopted in the present instance if it was intended really to provide a speedy and an inexpensive remedy for redemption of land held in mortgage. I instanced the cases of objections to attachment of property in execution of decree under the Code of Civil Procedure and of contested mutations under the Land Revenue Act and proposed that the adoption of a summary inquiry of the kind with similar consequences was the proper remedy to be adopted in the case. All the members of that Committee, with the single exception of my friend the Hon'ble Mr. Shadi Lal, accepted my suggestion and the Bill was drafted accordingly. The adoption of the present measure, therefore, is a source of peculiar gratification to me, and I rejoice to have had a hand in the enactment of a law which, I am convinced, will be of the utmost benefit to the majority of the population of this Province."

The Redemption of Mortgages Act was consequently enacted in the year 1913.

The working of the Act having proved very beneficial, the Punjab Legislature felt justified in enlarging its scope, and this object was, as has been set out above under the heading "Legislative Changes", achieved through the Punjab Relief of Indebtedness Act (Act No. VII of 1934). The Act as it now stands, therefore, applies to mortgages of land, other than those effected under section 6 of the Punjab Alienation of Land Act, 1900,

(1) in which, whatever the mortgage money, the land mortgaged does not exceed 50 acres in area, excluding the share of the common land appurtenant thereto, or

(2) in which, whatever the area, the principal money secured does not exceed Rs. 5,000/-.

The exception made in the case of mortgages effected under section 6 of the Punjab Alienation of Land Act was due to the fact that such mortgages being usufructuary, are in practice self redeeming. Section 6 of the Punjab Alienation of Land Act reads as under:—

"6. (1) If a member of an agricultural tribe mortgages his land and the mortgagee is not a member of the same tribe, or of a tribe in the same group, the mortgage shall be made in one of the following forms:—

(a) in the form of a usufructuary mortgage, by *which the mortgagor delivers possession of the* land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of the term agreed on or (if no term is agreed on, or if the term agreed on exceeds twenty years), after the expiry of twenty years, the land shall be redelivered to the mortgagor; or

(b) *in* the form of a mortgage *without* possession, subject to the condition that, if the mortgagor fails to pay principal and interest according to his contract, the mortgagee may apply to the Deputy Commissioner to place him in possession for such term not exceeding twenty years as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and for such sum as may be due to the mortgagee on account of the balance of principal due and of interest due not exceeding the amount claimable as simple interest at such rate *and for such period* as the Deputy Commissioner thinks reasonable; or

(c) in the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord and himself remains in cultivating occupancy of the land as a tenant subject to the payment of rent at such rate as may be agreed upon not exceeding sixteen annas per rupee of the amount of the land-revenue in addition to the amount of the land revenue of the tenancy and the rates and cesses chargeable thereon and for such term as may be agreed on, the mortgagor having no right to alienate his right of cultivating occupancy and the mortgagee having no right to eject the mortgagor unless on the grounds mentioned in section 39 of the Punjab Tenancy Act, 1887; or

(d) in any form which the Provincial Government (3) may, by general or special order, permit to be used (4).

(2) If in the case of a mortgage in form (c) the mortgagor is ejected or relinquishes or abandons cultivating occupancy of the land, the mortgage shall take effect as a usufructuary mortgage in form (a) for such term not exceeding twenty years from the date of ejectment, relinquishment or abandonment, and for such sum of money as the Deputy Commissioner considers to be reasonable.

(3) (5) The Deputy Commissioner, if he accepts the application of a mortgagee under sub-section (1) (b), shall have power to eject the mortgagor, and as against the mortgagor to place the mortgage in possession."

Definition of Mortgage.—*A mortgage is defined in* section 58 of the Transfer of Property Act as being "the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of a loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability." Even though the Transfer of

(3) The words "Provincial Government" were substituted for "Local Government" by the Govt. of India (Adaptation of Indian Laws) order, 1937.

(4) So far no order has been made under this clause.

(5) This sub-section was inserted by Punjab Act I of 1907.

Property Act does not apply to the Punjab, the definition of mortgage does hold good here. However it was held by a Division Bench of the Chief Court in the year 1882 (6) that a mortgage creates simply an accessory right arising out of, and dependent upon, the land and that so long as the consideration is not paid in full the mortgage does not come into existence. The correctness of this view was challenged by Plowden J. who held that in spite of the non-payment of consideration a mortgage would in view of the words "securing the payment of money advanced or to be advanced by way of a loan," come to exist, and that in such a case the mortgagor's remedy lay in suing the mortgagee for damages. (7) The matter was, however, gone into exhaustively by a Full Bench of the Punjab Chief Court in 1916, and the view of Plowden J. prevailed. (8) Thus it is now settled law that, if otherwise complete, a mortgage would subsist in spite of the non-payment of the consideration.

Kinds of Mortgages.—There are four kinds of mortgages as set out in *section 58 of the Transfer of Property* Act namely, (i) Simple mortgage, (ii) Mortgage by conditional sale, (iii) Usufructuary mortgage and (iv) English mortgage.

For facility of reference the particular features of each kind of mortgage as given in the *Transfer of Property* Act are stated below:—

Simple Mortgage

"Where without delivering possession of the mortgaged property, the mortgagor binds himself to pay the mortgage money, and agrees expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

Mortgage by conditional sale.

"Where the mortgagor ostensibly sells the mortgaged property,

(6) Alla Bakhsh versus Shaman. 153 P. R. 1882.
(7) Mrs. Gomess versus Mela Ram, 16 P. R. 1884.
(8) Allah Ditta versus Nazar Din. 53 P. R. 1916.

on condition that on default of payment of the 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.

Usufructuary mortgage. Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage money, the transaction is called the usufructuary mortgage and the mortgagee an usufructuary mortgagee.

English Mortgage. Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

PROCEDURE OF REDEMPTION

The mortgagor or any other person entitled to institute a suit for redemption, (e.g., a transferee of the equity of redemption) wishing to take advantage of the procedure prescribed by this Act, may, at any time after the principal money becomes payable, and before a suit for redemption is barred, present a petition, bearing an adhesive court fee stamp of the value of Re. 1|- (Article 1 Schedule 2 of the Court Fees Act), to the Collector of the district where the mortgaged land or any part thereof is situate, at the same time depositing in the Government treasury a sum which according to him is due to the mortgagee under the mortgage.(9) The Collector is then to issue to the mortgagee a summons calling upon him to answer the petition. The summons, on which must be endorsed the date of the deposit of the mortgage-money, is to be accompanied by a copy of the petition.(10) If the mortgagee admits the petitioner's claim the Collector is to pass an order declaring the redemption of the mortgage, and directing the delivery of possession of the land to the mortgagor in case it be with the mortgagee, the deposit in court of the mortgage deed, if any, by the mortgagee for its return to the petitioner, and subject to such deposit the payment of the amount deposited by the petitioner to the mortgagee.(11) If the mortgagee raises any objection on any ground other than the amount of the mortgage money due to him, or if the petitioner does not agree to pay the amount demanded by the mortgagee, the Collector has the power to either dismiss the petition, or to make a summary enquiry regarding the objection raised or the sum due under the mortgage.(12) If after the enquiry the Collector is of the opinion that the objection raised bars redemption, or that there is sufficient cause for not proceeding with the case he is to dismiss the petition.(13) But in case he is not of this opinion, an order as contemplated under section 6 referred to above, is to be made. If, however, he finds that the sum deposited by the petitioner is less than the amount actually due he is to fix a period not exceeding 30 days within which the petitioner should deposit the balance. If the petitioner fails to do so the application is to be dismissed. But if he pays in the money, an order as contemplated by caluses (a) to (d) of section 6 is to be passed.(14) Any party aggrieved by the order of the Collector has a right to institute, within one year (Article 14 of the Indian Limitation Act), a suit in a Civil Court to establish his right in respect of the mortgage.

(9) Section 4 of the Act.
(10) Section 6 of the Act.
(11) Section 6 of the Act.
(12) Section 9 of the Act.
(13) Section 10 of the Act.
(14) Section 11 of the Act.

If no such suit is filed the order of the Collector becomes final.(15)

The dismissal of a petition bars any further petition under the Act by the petitioner or his representative, (16) and any sum deposited by a petitioner under this Act is to be immune from attachment under the order of any court or Revenue Officer.(17)

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

(1) the expression "land" means land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes Subservient to agriculture or for pasture, and includes—

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of an estate or holding;

(c) any dues or any fixed percentage of the land revenue payable by an inferior land-owner to a superior land-owner;

(d) a right to receive rent;

(e) any right to water enjoyed by the owner, or the occupier of land as such; and

(f) any right of occupancy;

(2) the expression "Collector" shall mean the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st Grade;

(3) "prescribed" shall mean prescribed by rules under this Act.

---

(15) Section 12 of the Act.
(16) Section 13 of the Act.
(17) Section 15 of the Act.

"Land."—The definition of the term "land" has been taken bodily from the Punjab Alienation of Land Act, 1900. While dealing with a case under the Punjab Alienation of Land Act, Wilberforce J. held in Amir Khan Vs. Lahori Mal that trees were land(18) and subsequently this proposition received support from Addison J. in the Deputy Commissioner Jhang Vs. Ganga Ram(19). But this view did not find favour with a Full Bench, in the year 1935 in the case of Bhagwan Dass Vs. Gopi.(20) In certain earlier cases too views contrary to those held by Wilberforce and Addison J. had been expressed. The legislature thus felt constrained to clear the point. By means of the Punjab *Alienation of Land (Amendment) Act of 1936 (Act VII of 1936) the definition was amended so as to include trees, on the ground that it was not the intention of the legislature to exclude them from the definition as originally given. The question, however, is, whether this amendment of the definition in the parent Act can be read into the definition given* under the present Act. Legally it cannot be so read, because the Act has purported to *give a* definition *independently* of the Alienation of Land Act, and the legislature would have been well advised to amend the present Act as well.

The definition of the term "land" is important from several points, and it would be expedient to analyse briefly the different judicial pronouncements on this point.

What is Land.—The following have been held to be land:—

(i) A well sunk in land for the purposes of agriculture.(1)

(ii) A water course used for the purpose of irrigation.(2)

(18) 106 P. R. 1919. =58 I. C. 638= A. I. R. 1920 Lah. 351.

(19) 34 P. L. R. 786= A. I. R. 1933 Lahore, 880= 144 I. C. 691.

(20) A. I. R. 1935, Lahore 202. = 155 I. C. 659 = 37 P. L. R. 821.

(1) 62 P. R. 1891.

(2) 1 P. R. 1892.

What is not Land.—The following have been held not to be land:—

(i) A part of a public road even though the wall intended to be the boundary of an agricultural field adjoining the road is built upon it.(3)

(ii) The site of a water mill.(4)

(iii) Land occupied by a tank used for watering cattle and excavating earth for bricks.(5)

(iv) A grave-yard.(6)

A reference to the abovequoted rulings shows that it is the purpose for which land is utilized which determines its character. If the purpose is agricultural or pastoral the area in question would fall within the ambit of the term "land"; but if it is used for any other purpose it would be outside its scope.

Collector.—The term "Collector" includes an Assistant Collector of the 1st Grade. In fact the powers conferred by this Act on Collectors are being exercised by Revenue Assistants who are Assistant Collectors of the 1st Grade, as they have been expressly invested with these powers by the Act itself.

Application of certain sections of Punjab Tenancy Act.

3. Subject to the provisions of this Act and the rules thereunder, the provisions of sections 79, 85, 86, 87, 89, 90, 91, 92 and 101 of the Punjab Tenancy Act, 1887, shall, so far as may be, apply to all proceedings of a Collector under this Act.

The Collector while dealing with cases under this Act is to be guided by the procedure prescribed under the Punjab Tenancy Act of 1887. The sections of the Punjab Tenancy Act which have been made applicable to proceedings under this Act are reproduced below:—

(3) 42. P. R. 1900.

(4) 41 P. R. 1892, 77 P. R. 1904, P. L. R, 1912.

(5) 48 P. R. 1898.

(6) 20 P. R. 1892.

Power to distribute business and withdrawal and transfer of case.

Section 79.

(1) The Financial Commissioner or Commissioner or Collector may by written order distribute, in such manner as he thinks fit, any business cognizable by any Revenue Officer or Revenue Court under his control.

(2) The Financial Commissioner or Commissioner or Collector may withdraw any case pending before any Revenue Officer or Revenue Court under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer or Revenue Court under his control.

(3) An order under sub-section (1) or sub-section (2) shall not empower any Revenue Officer to exercise any powers or deal with any business which he or it would not be competent to exercise or deal with within the local limits of his or its own jurisdiction.

Procedure of Revenue Officers.

Section 85.

(1) The Local Government may make rules consistent with this Act for regulating the procedure of Revenue Officer under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of, immovable property, and rules providing for those matters may confer on a Revenue Officer all or any of the powers in regard to contempts, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejectment from, or delivery of possession, such property.

(3) The rules may also provide for the mode of executing orders as to costs, and may adapt to proceedings under this Act all or any of the provisions of the Punjab Land Revenue Act, 1887, with respect to arbitration.

(4) Subject to the rules under this section, a Revenue Officer may refer any case which he is empowered to dispose of under this Act to another Revenue Officer for investigation and report, and may decide the case upon the report.

The following rules have been made under this section (vide Financial Commissioner's notification No. 145, dated 13th November, 1909).

(1) (i) A Naib-Tahsildar invested with the powers of an Assistant Collector of the second grade shall not hear and determine a suit of any description mentioned in the third group of sub-section (3) of section 77 in which the rent or sum claimed exceeds Rs. 100 in amount. **Limitation of powers of Naib-Tahsildars.**

(ii) Other Assistant Collectors of the second grade shall not hear and determine a suit of any description mentioned in the third group of sub-section (3) of section 77 in which the rent or sum claimed exceeds Rs. 500|- in amount. **Limitation of powers of other *Assistant* Collectors of second grade.**

(2) (*i*) The statements and pleadings made by or on behalf of parties to a revenue proceedings, whether oral or written, shall be as brief as the nature of the case admits; and shall not be argumentative, but shall be confined as much as possible to a simple and concise narrative of the facts which the party by whom or on whose behalf the statement or pleading is made believes to be material to the case and which he either admits or believes that he will be able to prove. ***Statements and* pleadings to be brief.**

(ii) Every written application or statement filed by a party to a revenue proceedings shall be drawn up and verified in the manner provided by the Civil Procedure Code, for written statements in suits. **Verification of *applications*.**

(3) The death of one of the parties to a revenue proceeding, or, in a proceeding to which a female is a party, her marriage, shall not cause the proceeding to abate. And the Revenue Officer before whom the proceeding is held shall have power to make the successor-in-interest of the deceased person or of the married female a party thereto. **Proceedings not to abate on death or marriage of party.**

(4) In fixing dates for the hearing of parties and their witnesses in adjourning proceedings, and in dismissing applications on default or for other sufficient reason a Revenue Officer will, so far as the nature of the case may require or permit, be guided generally by the principles of the procedure for the time being in force in Revenue Courts. **In fixing date etc. Revenue *Officer to* follow procedur of Revenue Court.**

Commission.

(5) The provisions of section 75-78 of the Civil Procedure Code, Act V of 1908 and of Schedule I, Orders XXVI, annexed to the said Code in respect of commissions shall apply in the case of proceedings before a Revenue Officer.

Expenses of witnesses.

(6) (i) A Revenue Officer may at his discretion award to a witness attending on summons a sum on account of his expenses not exceeding the sum to which the witness would have been entitled for a like attendance in a Civil Court.

(ii) The sum so awarded shall be costs in the proceedings.

Record of other proceedings under Tenancy Act.

(7) In proceedings before a Revenue Officer under the Punjab Tenancy Act, the Revenue Officer shall make with his own hand a brief memorandum of the statements of parties and witnesses at the time when each statement is made.

Contents of orders.

(8) In every proceedings in which an order is passed on the merits after enquiry, the Revenue Officer making the order shall also record a brief statement of the reasons on which it is founded.

Apportionment and recovery of costs.

(9) (i) In proceedings in which costs have been incurred the final order shall apportion the costs between the parties to the proceedings.

(ii) Costs thus apportioned shall be recoverable by the Revenue Officer by attachment and sale of the movable property of the person liable for the same in the manner prescribed in section 70 of the Land Revenue Act.

Execution of order of ejectment.

(10) (i) Orders of ejectment from, and delivery of possession of, immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a Civil Court has adjudged ejectment from or delivery of possession, of such property.

(ii) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a court may exercise in the execution of a decree of the description *mentioned* in sub-section (i).

(11) The provisions of the Punjab Land Revenue Act, 1887, with respect to arbitration shall apply to proceedings before a Revenue Officer in respect of any matter described in the first and second group of section 76 of the Punjab Tenancy Act, 1887. Arbitration.

Section 86.

(1) Appearance before a Revenue Officer as such, and application to and acts to be done before him, under this act may be made or done

Persons by whom appearance may be made before Revenue Officer as such and not Revenue Courts.

(a) by the parties themselves; or

(b) by the recognised agents or a legal practitioner.

Provided that the employment of a recognised agent or legal practitioner shall not excuse the personal attendance of a party to any proceedings in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1) recognised agents shall be such persons as the Local Government may by notification declare in this behalf.(7)

(3) The fees of a legal practitioner shall not be allowed as costs in any proceedings before a Revenue Officer under this Act, unless that the officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

NOTIFICATION UNDER THE PUNJAB TENANCY ACT, 1887.

Department of Revenue and Agriculture.

The 1st November, 1887.

No. 728——Notification,——In exercise of the powers conferred by *section* 86 (2) of the Punjab Tenancy Act, the Hon'ble the Lieutenant-Governor is pleased to declare, and hereby declares that the following persons shall be recognised agents for the purposes of section 86 (1) of the same Act, viz.:—

---

(7) See notification No. 728 dated 1-11-1887.

(a) Persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application, or act is made or done, authorising them to make and do such appearances, applications and acts on behalf of such parties.

(b) Mukhtars duly certificated under any law for the time being in force and holding special powers-of-attorney authorising them to do, on behalf of their principals, such acts may legally be done by Mukhtars.

(c) Persons carrying on trade or business for and in the names of parties not resident within the local limits of jurisdiction of the Court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

(d) Persons specially authorized by parties to appear and act on their behalf in any particular suit; provided such persons are agents authorized for the occasion only, and are not practitioners acting in evasion of the law regulating the admission and enrolment of Pleaders and Mukhtars; provided also that it shall be in the discretion of the court to refuse to permit any such person so to appear or act.

Section 87.

Costs.

(1) A Revenue Officer may give and apportion the costs of any proceedings under this Act in any manner he thinks fit.

(2) But if he orders that the costs of any such proceedings shall not follow the event, he shall record his reasons for the order.

Section 89.

Powers of Revenue Officers or Revenue Courts to summon persons.

(1) A Revenue Officer or Revenue Court may summon any person whose attendance he or it considers necessary for the purpose of any application, suit or other business before him or it as a Revenue Officer or Revenue Court.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person or, if the summons so allow, by his recognised agent or a legal practitioner.

(3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue Officer or Revenue Court may require.

Section 90.

(1) A summon issued by a Revenue Officer or Revenue Court shall, if practicable, be served on (a) his recognized agent or (b) an adult male member of his family who is residing with him. *Mode of service of summons.*

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereto at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the district in which the Revenue Officer is employed or the Revenue Court is held, and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue Officer or the Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as the Officer or Court nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue Officer or Revenue Court so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post

in a letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866. (Now the Indian Post Office Act, 1898.)

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the officer or court may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

Section 91.

Mode of service of notice, order of proclamation or copy thereof.

A notice, order or proclamation, or copy of any such document, issued by a Revenue Officer or Revenue Court for service on any person shall be served in the manner provided in the last foregoing section for the service of summons.

Section 92.

Mode of making proclamation.

When a proclamation relating to any land is issued by a Revenue Officer or Revenue Court, it shall, in addition to any other mode of publication which may be prescribed by any enactment for the time being in force, be made by beat of drum or other customary means, and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.

Section 101.

Place for sitting.

(a) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue Officer or Revenue Court may only exercise his or its powers under this Act within the local limits of his or its jurisdiction.

Petition for redemption.

4. The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed, and where the mortgagee is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified

in the manner prescribed by law for the verification of plaints, and shall state the sum for which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector. Verification Deposit.

The petitioner shall state in his petition such particulars and file therewith such documents as may be prescribed. Particulars to be contained in petition.

The mortgagor or any other person, entitled to institute a suit for redemption of a mortgage, has been allowed to apply to the Collector under this Act. But there are two conditions precedent to the making of such an application. The principal money due under the mortgage should have become payable, and a suit for redemption should not have become barred by limitation. The first question namely the payability of the principal money must be decided in the light of the terms of each individual case. Usually parties to a mortgage stipulate as to when is the mortgage debt to become payable. The second question is one of law. The Indian Limitation Act (Article 148) allows 60 years for a suit for redemption to be counted from the date when the mortgage debt becomes payable. But any valid acknowledgment under section 19 of the Indian Limitation Act would give a fresh start to limitation. What is a valid acknowledgment is again a question to be decided on the merits of each case.

The petition to be made under this Act is to be verified in the manner prescribed in the Code of Civil Procedure (Order VI rules 14 and 15) for the verification of plaints in in Civil suits, and before the issue of summons the petitioner must deposit with the Collector such sum as he considers, to the best of his belief, to be due under the mortgage.

Case Law.—The provisions of section 4 of the Act are mandatory and if the sum due on the mortgage was not made till after the expiry of the period of limitation for a suit for redemption, redemption could not be allowed although the application for redemption was presented to the Collector. (7)

(7) Nanak Chand Vs. M. T. Sulhan 40 P.L.R. 1062.

Mortgagee to be summoned.

5. When the petition has been duly presented and the deposit has been made, the Collector shall issue to the mortgagee a summons to appear on a date to be therein specified. Every summons shall be accompanied by a copy of the petition, with the date of deposit endorsed thereon.

After the petition has been presented to the Collector in accordance with above rules he is to issue to the mortgagee a summons, on which must be endorsed the date of the deposit of the mortgage money, and it must furthermore be accompanied by a copy of the petition calling upon him to appear and answer the same. It has been clearly laid down that the summons is not to issue as long as the mortgage money is not deposited. This is to insure that the application is a 'bona fide' one.

Procedure when petitioner is absent and mortgagee present.

6. Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, make an order that the petition be dismissed, unless the mortgagee admits the claim, in which case the Collector shall make an order--

(a) that the mortgage be redeemed;

(b) that where the mortgage is with possession the mortgagor be put in possession of the mortgaged property as against the mortgagee;

(c) that the mortgagee deposit with the Collector the mortgage deed, if any, if then in his possession or power, and that it be delivered to the petitioner;

(d) that subject to the mortgage-deed, if any, being so deposited by the mortgagee the sum in deposit be paid to him.

Provided that no such order shall be made inconsistent with any condition of the mortgage whereby a season or period of the year is fixed for redemption or for surrendering possession.

This section prescribes the procedure which the Collector is to follow when the petitioner is absent but the mortgagee is present. The Collector can either adjourn the case, to some other date, to enable the petitioner to appear, or he can dismiss tthe petition in default. But where the mortgagee admits the claim of the petitioner, as set out in the petition, the Collector is to make an order as contemplated by clauses (a) to (d) of this section. It should be borne in mind that while ordering delivery of possession to the mortgagor the Collector cannot override any condition of the mortgage fixing the time of redemption.

It my be noted that this section makes a departure from the general rule applicable to cases where a petitioner or a plaintiff is absent and the other party is present. Order IX rule 8 of the Code of Civil Procedure lays down that in such cases the suit is to be dismissed. Collectors while acting under this section have however been given the discretion of adjourning cases to enable petitioners to prosecute their petitions. The object underlying seems to be to meet cases where absence may not be intentional, as the dismissal of a petition bars any further application, on the same facts by the petitioner or his representative and forces the unsuccessful party to resort to the lengthy and expensive procedure of civil courts.

Procedure when petitioner is present and mortgagee absent.

7. When the petitioner appears, but the mortgagee does not appear, when the petition is called on for hearing, the Collector shall, unless he adjourns the proceedings, inquire in a summary manner (a) whether the petitioner is entitled to redeem the mortgaged property, and (b) whether the sum deposited by the petitioner is the sum rightly due under the mortgage. If the Collector is not satisfied that the petitioner is entitled to redeem, he shall dismiss the petition.

If the Collector is satisfied that the petitioner is entitled to redeem, and that the sum deposited is the sum rightly due under the mortgage, he shall make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

If the Collector is satisfied that the petitioner is entitled to redeem, but is of opinion that a sum larger than that in deposit is due under the mortgage, he shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order in manner aforesaid.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

This section prescribes the procedure which is to be followed when the petitioner is present but the mortgagee is absent in spite of the service of summons. In such cases the Collector is to make a summary enquiry to find out,

(a) whether the petitioner is entitled to redeem the mortgage, and

(b) whether the sum deposited by him represents the exact amount due to the mortgagee.

If the Collector is not satisfied about the petitioner's right to redeem the mortgage the petition is to be dismissed. The Collector has no choice in such a case as the direction of law is mandatory. But if the Collector is satisfied that the petitioner is entitled to redeem the mortgage, and the sum deposited rightly represents the amount due under it, he is to make an order as laid down in clauses (a), (b), (c) and (d) of section 6. In case the Collector comes to the conclusion that the amount deposited by the petitioner falls short of the total sum due under the mortgage he is to allow the petitioner time not exceeding 30 days to deposit the balance. If such a deposit is made within the period allowed, the Collector is to pass an order as contemplated by clauses (a), (b), (c) and (d) of section 6; but if the deposit is not so made the petition is to be dismissed.

Here again the Collector has been given the discretion of adjourning a case to enable the mortgagee to appear and have his defence, if any, considered, to bring it in line with the concession given to petitioner under the last section.

8. Where both parties appear when the petition is called on for hearing, the Collector shall inquire from the mortgagee whether he admits that the petitioner is entitled to redeem, whether he is willing to accept the sum in deposit in full discharge of the mortgage debt, and where the mortgage is with possession whether he is willing to surrender possession of the mortgaged property. **Procedure when both parties are in attendance: order for redemption.**

If the mortgagee replies in the affirmative, the Collector shall make an order as laid down in section 6 (a), (b), (c), and (d) of this Act.

If the mortgagee admits the petitioner's title to redeem, but demands payment of a sum larger than that in deposit, the Collector shall inquire from the petitioner whether he is willing to pay such larger sum, and if he replies in the affirmative, the Collector shall fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of deposit. If the petitioner makes such deposit within such period as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c) and (d) above.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

This section contemplates the appearance of both parties, namely, the petitioner and the mortgagee. The Collector is in such cases to enquire from the mortgagee,

(a) whether he admits the petitioner's right to claim redemption of the mortgage,
(b) is willing to accept the sum deposited by the petitioner in full discharge of the mortgage debt, and
(c) is willing to surrender possession of the mortgage property in case he be in possession thereof.

In case the mortgagee admits the petitioner's claim, and is prepared to accept the sum deposited and to surrender possession, the Collector is to make an order as laid down in clauses (a), (b), (c) and (d) section 6. Where, however, the mortgagee admits the right of the petitioner to get the mortgage redeemed, but demands payment of a sum larger than the amount deposited, the Collector is to ask the petitioner whether he is willing to pay the sum demanded by the mortgagee, and if he shows his willingness to do so, he is to be allowed time up to 30 days for making up the deficiency. The Collector is not to make any order of redemption, etc., unless the sum agreed between the parties to be due under the mortgage is actually deposited, for if the deposit is not made within the time allowed by the Collector the application is to be dismissed. If the petitioner makes up the deficiency in the amount deposited an order as laid down in clauses (a), (b), (c) and (d) of section 6 is to be made by the Collector.

Procedure in contention cases.

9. If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reasons to be recorded dismiss the petition, or (b) make a summary inquiry regarding the objection raised by the mortgagee or regarding the sum due.

The three previous sections prescribe the procedure which is to be followed when there is no dispute of an intricate nature. Section 9 provides for cases where an objection other than the one relating to the amount of mortgage debt due to the mortgagee is raised. This section applies to cases where the mortgagee raises an objection on any ground other than the quantum of the mortgage debt due to him, or where the petitioner is not willing to pay the sum demanded by the mortgagee.

In such circumstances the Collector may either, holding the case to be of an intricate nature dismiss the petition, or he may make a summary enquiry regarding the objection raised by the mortgagee or the amount claimed by him. This means that it is not incumbent on the Collector to enquire into the dispute, for he can, for reasons to be recorded, dismiss the petition straight away. He may however, if he so likes, make a summary enquiry and give his finding on the objections of the mortgagee. It may be noted that this discretion of dismissing the application summarily or holding the enquiry is to be exercised judicially, and the order passed must give reasons for the course adopted. It has been laid down in Durba Mal versus Asa Ram that in the event of the mortgagee joining issue with the mortgagor petitioner, it is not incumbent on the Collector to make an investigation into the dispute. He may, if he so likes, make a summary enquiry and give his findings as a result of it, or he may refuse to do so and dismiss the petition forthwith. No particular grounds are specified in the section on which alone he might adopt the latter course. His discretion in this matter is not limited in any way but is absolutely unfettered. He may stay his hands for the simple reason that difficult question of fact and law are involved and on this ground alone, he might dismiss the petition. All that is necessary is that he should record his reasons for the course adopted. (7) In the words of late Sir Mian Muhammad Shafi, "Section 9 of the Act empowers the Collectors to refer the parties to their ordinary remedy at law in cases involving decisions of really complicated questions. But, what after all, is the real nature of the so-called complications which ordinarily present themselves for decision in disputes with which the Act is concerned? Suits for redemption between the original mortgagor

(7) 28 P.L.R. 289 = A.I.R. 1927 Lahore 461.

and mortgagee seldom involve a determination of the plaintiff's right to redeem, for it is a well known rule of law that the mortgagee cannot deny the title of his mortgagor. The plea of bar by limitation stands on no better footing ......Questions of limitation involved in these suits are *not always so very complicated as not to be capable of being* correctly decided in a summary proceeding. The determination of the original date of mortgage is, generally, a simple question of fact, and that having once been ascertained, the rest is, in the majority of cases, a simple matter of arithmetical calculation."

Enquiry into *objection* raised by mortgagee.

10.* If on inquiry regarding any objection so raised by the mortgagee the Collector is of opinion that it bars redemption or is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition; but if he is not of that opinion, he shall, unless he dismisses the petition under section 11, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act.

The Collector's decision to hold a summary enquiry under section 9 does not however bind him to complete such an enquiry; for the present section gives him the power to dismiss a petition without completing such an enquiry, if he is of opinion that there is sufficient ground for not proceeding further with the petition. If however the Collector is of opinion that the objection raised by the mortgagee does not bar redemption and there is furthermore no sufficient cause for not proceeding further with the enquiry, he is to make an order as contemplated by this section.

Enquiry regarding sum due.

11. If on enquiry regarding the sum due, the Collector is of opinion that the sum deposited is the sum rightly due under the mortgage, he shall, unless he dismisses the petition under section 10, make an order as laid down in section 6 (a), (b), (c) and (d) of this Act, but if he is of opinion that a sum larger than the sum deposited should be deposited by the

petitioner, he shall unless he dismisses the petition under section 10, fix a period not exceeding 30 days within which the petitioner shall deposit the difference, together with any further sum which may be due on account of interest up to the date of the deposit. If the petitioner makes such deposit within such period or such further period not exceeding 30 days as the Collector may fix, the Collector shall make an order as laid down in section 6 (a), (b), (c), and (d) of this Act.

If the petitioner fails to make such deposit within the period fixed, the Collector shall dismiss the petition.

This section deals with cases where the Collector comes to a finding after summary enquiry that there is no bar to allowing redemption of the mortgage in favour of the petitioner. If he finds that the sum deposited by the petitioner represents the amount due to the mortgagee he is to make an order as contemplated by clauses (a), (b), (c) and (d) of section 6. If, however, he comes to the conclusion that a larger sum than the amount deposited should be paid by the petitioner, he is to allow him a period not exceeding 30 days to make up the deficiency, and when the balance is deposited with him an order as contemplated by clauses (a), (b), (c) and (d) of section 6 is to be passed. If the petitioner fails to deposit the balance as ordered by the Collector the petition is, of course, to be dismissed.

Saving of suits to establish rights.

12. Any party aggrieved by an order made under sections 6, 7, 8, 9, 10, or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive.

Setting aside, ex-parte orders or orders of dismissal.

Notwithstanding anything in this section a mortgagee against whom an exparte order under section 7 has been made or a petitioner whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside, and the Collector may in his discretion set aside, such order of dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order of dismissal shall not be set aside unless notice of the application has been served on the opposite party.

Collector's Order Final.—An order passed by a Collector under sections 6 to 11 has been given finality and no provision for appeal, revision, or review has been made in the Act. Of course where such an order is one of dismissal of the petition for default, or is ex-parte against the mortgagee, the party adversely affected, namely, the petitioner or the mortgagee, as the case may be, has been given the right of moving the Collector for the concellation of the order and the Collector can in such cases, after vacating the order in question, rehear the case. But no such order is to be made without serving the other party with a notice of the application made in this connection. Barring such cases the party aggrieved by the order of the Collector has got only one remedy, namely, a suit in a Civil Court to establish his right in respect of the mortgage. It would thus appear that the Act while providing a summary remedy for the redemption of land in petty and non-contentious cases has maintained the jurisdiction of Civil Courts to adjudicate upon the rights of parties where any one of them feels aggrieved by the order of the Collector. The suit however must be filed within one year of the order of the Collector, and an unsuccessful petitioner cannot rely on the period of 60 years allowed under article 148 of the Indian Limitation Act for claiming redemption of the mortgage. The question arises, as to why should the period allowed by the Indian Limitation Act have been curtailed in such cases. The policy of law is that where it allows a concession to parties in the matter of a summary decision of a dispute, it deprives them of some corresponding right where the order passed on summary proceedings goes against any one of them. Reference may in this connection be made to similar provisions made in Order XXI rule 63 C.P.C.

under which a party aggrieved by an order passed by an executing court on an application under Order XXI rule 58 C.P.C. has to file a suit within one year, in default of which the order of the executing court becomes final.

CASE LAW

Refusal to exercise jurisdiction constitutes denial of jurisdiction.—The rejection of an application by the Collector under section 9 without considering the merits of the dispute and after recording the objections raised by the mortgagee on the ground that the dispute cannot be settled summarily means denial of jurisdiction, and in order to enable the plaintiff to succeed in a suit for redemption it is not necessary to ask for the setting aside of such an order. (8) This has, however, not been entirely supported in Prabhu Mal versus Chandan (A. I. R. 1938, Lahore 638).

During the partition of certain shamilat land M, in 1893 *bruoght a suit against his co-sharers for declaration that he* was an occupancy tenant of the land in dispute or, in the alternative was entitled to compensation for disturbance. A and F, two of the co-sharers, admitted the claim and the Collector, gave a declaration as to M being the occupancy tenant of such land as might fall to A and F on partition. The suit was dismissed as against the others. M thus became the occupancy tenant of the land allotted to F on partition. Later on, in 1895, F. mortgaged the land with possession to M. In 1928 the descendents of F obtained redemption and possession of the land under the Punjab Redemption of Mortgages Act, 1913. In 1928 M brought a suit for possession of the land as an occupancy tenant.

Held, that the suit did not fall under Article 14 Limitation Act, and was therefore not barred by time. The nature of suit contemplated by section 12, Redemption of Mortgages Act was entirely different to that of the present suit. Under section 12 the suit relates to rights arising out of or based on the mortgage. The present suit concerned rights created about a year, before the mortgage which

(8) Asa Ram Vs. Darba Mal, A.I.R. 1929 Lahore 513 = 121 I.C. 379 = 30 P.L.R. 440 = 11 L.L.T. 431.

established quite a different relationship between the parties. The fact that M in the redemption proceedings might or should have set up his occupancy rights as a defence against his dispossession, and the Collector notwithstanding such objection could and did order his dispossession could not alter the nature of the present suit or effect the applicability of section 12.(9)

Limitation for a suit of redemption.—Where the suit is for redemption, and in the orders passed by him under section 9 the Collector refrains from coming to any decision on the merits of the dispute between the parties, the suit is neither in terms nor in effect one to set aside the said order, and is not governed by Article 14, Limitation Act.(10)

The redemption of Mortgages Act is a miniature code in itself. Section 12 governs all cases in which the order under cetrain sections (including section 9) has been passed. The policy of the legislature is that the person who chooses to move the Collector under the Act but fails to achieve his object, cannot be allowed to leave the matter in suspense for a period which may extend to another 60 years, and that in case he feels dissatisfied by the Collector's order he must institute a suit in a Civil court within one year. (11) This view was not endorsed in Asa Ram v. Durba Mal.

A suit for a mere declaration that the mortgagor is not entitled to redeem can be instituted under section 12, though the mortgagor may have obtained possession, and section 42 of the Specific Relief Act cannot stand in the way, because such a right has specifically been given by the statute.(12) As soon as the civil court decrees the suit, the mortgagee would be entitled to recover possession from the mortgagor. The provisions of section 12 are sufficiently wide to allow a Civil court to right a wrong done by the Collector in the summary proceedings.(13)

(9) Rahmat Vs. Muhammad Ali, A.I.R. 1930, Lahore 536.

(10) A.I.R. 1929 Lahore 513 = 121 I.C. 379 = 30 P.L.R. 440 = 11 LL. J. 431.

(11) Darba Mal Vs. Asa Ram, A.I.R. 1927 Lahore 461 = 28 P.L.R. 289 = 102 I.C. 418.

(12) A.I.R. 1922 Lah. 363.

(13) Nizam Din Vs. Daulat Ram, A.I.R. 1921 Lahore 132 = 63 I.C. 890 = 2 Lah. 234 = 95 P.L.R. 1921.

Aggrieved party.—A applied for redemption of a mortgage under section 4 to the Collector. The Collector acting under section 9(a) dismissed his petition. Held, that A was a "party aggrieved" by the order of the Collector.(14) A person, who asks for a relief, which he is authorised to ask for under the Act, but which is denied to him, must be considered to have suffered a legal grievance, and is a person aggrieved.(15)

Section 12 of the Redemption of Mortgages Act, 1913, merely points out the results which would ensue if the procedure laid down in that section is not followed. In order to ascertain the period of limitation for such a suit it is necessary to refer to the provisions of the Indian Limitation Act. Article 14 which provides a period of one year's limitation from the date the order complained against is passed, would govern such cases.(16) In case of Asa Ram v. Durba Mal it was distinguished.

The rule of total abatement is highly technical and should not be applied unless strictly necessary. On the death of B who had mortgaged certain land to the plaintiffs, the property descended in three shares, one of which was mutated in favour of each of the three sets of descendants. There was no partition among the defendants, and they obtained, on the application for redemption to the Assistant Collector, an ex-parte order for possession by way of redemption on payment of Rs. 675|-. The plaintiff brought a suit for a declaration that the land could be redeemed only on payment of Rs. 1,895|-. One of the defendants died after institution of the above suit, and his legal representatives were not brought on record within time, nor was any application made for extension of time. Held, that as no declaration could be made defining the rights of the plaintiff against the surviving defendants without reference to the share of the deceased defendant, the court had reluctantly to apply the rule of total abatement and the suit had abated in toto.

(14) Asa Ram Vs. Durba Mal, A.I.R. 1929 Lahore 513. = 121 I.C. 379 = 30 P.L.R. 440 = 11 L.L.J. 431.

(15) Durba Mal Vs. Assa Ram, 102 I.C. 418 = 28 P.L.R. 289 = A.I.R. 1927 Lah. 461.

(16) Ram Chand Vs. Kaura, A.I.R. 1924 Lahore, 690. 77 I.C. 885.

Held, also that as a result of one of the defendants' death the Collector's order had become final in respect of the shares which belonged to him. (17)

The mortgagee can put the party who seeks the redemption of a mortgage, to proof of his title, unless of course such person is the original mortgagor whose title the mortgagee cannot deny on the principle that the grantee cannot deny the grantor's title. So where the defendants are not original mortgagors but only claimed a derivative title from the mortgagor, they must be put to proof of their title before being allowed to redeem the mortgage. (18)

A suit under section 12 is really one to get rid of the order passed by the Collector allowing or refusing redemption. It is a suit to establish the erroneous nature of the order. It is not in form or in substance a suit for redemption. The provision of Order XXXIV, Code of Civil Procedure relating to the impleading of parties in mortgage suits do not apply to it. Where, therefore, the revenue entries show that the five plaintiffs are co-mortgagees, each holding a well defined and divisible share, each of them is aggrieved by the order of the Collector, and under section 12 possesses an individual right to establish the erroneous nature of the same. So on the death of one of the plaintiffs and the failure to bring on record his legal representatives in time, the suit does not abate in toto, but only qua the share of the deceased plaintiff. (19)

The suit under section 12 of the Redemption of Mortgages Act instituted by a person aggrieved by an order passed by the Collector under sections 6, 7, 8, 9, 10 or 11 of the Act to establish his right in respect of the mortgage is governed by article 14 of the Limitation Act; and it makes no difference whether the suit is one for a mere declara-

(17) Pala Mal Narain Dass Vs. Mohd. Ali. A.I.R. (1933 Lahore 344 = 143 I.C. 364. = A.I.R. 1933. Lahore, 129.

(18) Fakir Khan Vs. Ismail Khan 14 Lah. 218 = I.R. 1933 Lah. 101 = 141 I.C. 264 = 34 P.L.R. 149 = A.I.R. 1933, Lah. 179.

(19) Fakir Khan Vs. Ismail Khan 14 Lah. 218 = I.R. 1933 Lah. 101 = 141 I.C. 264 = 34 P.L.R. 149 = A.I.R. 1933 Lah. 179.

tion, asking for no relief regarding the setting aside the order of the Collector.(20)

14. A co-mortgagor who redeems the whole of the mortgaged land cannot be treated as a mortgagor of the land belonging to his co-mortgagors so as to attract the provisions of the Redemption of Mortgages Act, his legal position being merely that of a charge holder.(1)

Where a mortgage-deed contains an acknowledgment of the receipt of the consideration in the handwriting of the mortgagor, this is strong prima facie evidence that the consideration has been actually received not only against the mortgagor but also against the purchaser of the equity of redemption in a court sale. The burden of proof is on the latter to show that the transaction was without consideration.(2)

The law contemplates the disposal of petitions under the redemption of Mortgages Act on grounds other than those which touch the merits of the petition and it empowers the Collector to dispose of those petitions on those grounds For a Collector, therefore, to dismiss an application on grounds other than merits is not to refuse jurisdiction.(3)

13. The dismissal of a petition under this Act shall bar any further petition under this Act by the same petitioner or his representative in respect of the same mortgage. **No second petition.**

This section provides that where any petition under this Act is dismissed no second petition by the same person or by any one of his representatives in interest can be made. It, however, presupposes that the petitioner making the first application was competent to do so. If prior to the making of a petition the petitioner had transferred his rights, on the

(20) Gangu Vs. Mahan Raj Chand I.L.R. 15 Lah. 389 = A.I.R. 1934 Lah. 384 = 149 I.C. 661 = 6(R). Lah. 723 = 36 P.L.R. 337 = A.N.L.R. 1934 Lah. 728. (F.B.)

(1) Muhammad Ali Vs Ghulam Nabi, 37 P.L.R. 103 = A.I.R. 1935 Lah. 148 = 159 I.C. 633.

(2) Niranjan Singh Vs. Ghulam Mohd. A.I.R. 1938, Lah. 463 = 40 P.L.R. 313.

(3) Prabhu Mal Vs. Chandan, A.I.R. 1938. Lah. 638.

strength of which alone such a petition could be made, a petition by the rightful claimant would not be barred, because the first petition would, in such cases, be regarded as having been made by a person with no **locus standi.** Legislature would not countenance a rightful claimant, for whose benefit provisions under this Act have been made, to be deprived of the benefits of the same merely because of the act of an irresponsible person who may have been actuated merely by a desire to injure the rightful claimant.

The dismissal of a petition for default would not entitle the petitioner to make a fresh petition but he may under section 12 apply for the restoration of his first petition.

Return of deposit.

14. If the Collector dismisses a petition under this Act, he shall order that the sum deposited by the petitioner be returned to him.

It is obligatory on the part of the Collector to return the sum deposited by the petitioner if he dismisses the petition under this Act.

Deposit not to be attached.

15. No sum deposited with the Collector by a petitioner under the provisions of this Act shall be attached by any Court or Revenue Officer.

The section lays down that the sum deposited by the petitioner under the provisions of this Act is not liable to attachment under the orders of any court or Revenue Officer. In a case decided by the High Court, Lahore, in 1922 it was, however, held that this bar does not apply when under the orders passed by the Collector the deposit becomes payable to the mortgagee. In giving this finding the honourable court said, "The provisions of section 15 are primarily for the person depositing the money and the intention of the legislature is that the money deposited under the provisions of this Act should be exempted from attachment in execution of decree against the depositor, but where the depositor has been given the possession of the land the money becomes property of the judgment debtor, it is then attachable in execution of decree against him." (4)

(4) Mohan Lal Vs. Tulsi Ram. A.I.R. 1922, Lah. 290 = 3 Lah. 141 = 28 P.W.R. = 1922.

It is respectfully, submitted that this interpretation does not seem to be borne out by the language used by the legislature. The bar against attachment of the sum "deposited with the Collector by the petitioner under the provisions of the Act," is unqualified and does not depend on its availability to the mortgagor or the mortgagee. It is submitted that this ban cannot be removed. merely because the amount deposited becomes payable to the mortgagee.

Cessation of interest.

16. When the petitioner has deposited with the Collector the sum declared by him to be due on the mortgage, and such sum is accepted by the mortgagee, or is found by the Collector to be the sum actually due, interest on the mortgage shall cease from the date of the deposit.

Where the Collector finds that a further sum is due and the petitioner deposits such further sum, interest shall cease from the date of such further deposit.

Provided that nothing in this Section shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage money:

Provided also that where a suit is instituted under section 12, the court may pass such order as to interest as it deems fit.

This section provides that as soon as the sum declared by the Collector be due under the mortgage, or accepted by the mortgagee as such, is deposited no further interest will accrue thereon.

Power to make rules.

17. The Provincial Government shall have power to make rules, consistent with this Act, for carrying out the purposes of this Act.

No rules have so far been framed under this section.

Selected Judgments

A. I. R. 1921 LAHORE 132

(Wilberforce, J., Abdul Qadir, J.)

NIZAM DIN and another—Defendants-Appellants.

versus

DAULAT RAM and another—Plaintiffs-Respondents.

Punjab Redemption of Mortgages Act (II of 1913), section 12, scope of—Order by Collector for delivery of possession by mortgagee on payment of certain sum—Sum due much larger—Mortgagee, right of, to be restored to possession—Jurisdiction of Civil Courts.

The provisions of section 12 of the Punjab Redemption of Mortgages Act are sufficiently wide to allow a Civil court to right any wrong done by the Collector in the summary proceedings, and, if necessary, to restore possession of the land to the mortgagee on the ground that the sum due under the mortgage is larger than that allowed by the Collector.

Second appeal from a decree of the District Judge, Gujranwala, dated the 8th June 1917, affirming that of the Junior Subordinate Judge, Gujranwala, dated the 27th February 1917.

Mr. Kharak Singh for the Appellants.

Mr. Gulzari Lal for the Respondents.

Judgment.—The defendants mortgagors in this case made an application under Act II of 1913 (Punjab) to the Collector for redemption of their lands and an order was passed in their favour that possession should be given on payment of Rs. 1,063|0|6. Possession passed accordingly. The plaintiffs mortgagees thereupon instituted the present action for restoration of possession on the ground that a far larger sum was due under the mortgages. This plea was upheld by the first Court, which found Rs. 1,987|6|6 due and held that the plaintiffs were entitled to retain possession until they were given the full amount. The lower Appellate Court agreed with this decision and dismissed the appeal. Against this decision a second appeal has been preferred by Mr. Kharak Singh, who has argued many points, but only one point requires any detailed remarks, and this is that no suit for possession lay in the circumstances of the case. On this point Counsel has referred to Balwant Rai v. Gheru (1) and especially Lok Chand v. Hazar Khan (2). The former judgment does not really help the contention for the appellants, as the point now involved was not before the learned Judge. He merely held that after an order by the Collector for possession by way of redemption after payment of a particular sum the person aggrieved had a right to bring a declaratory suit to establish the rights which he claimed to the property, and that he need not seek consequential relief. The latter judgment lays down that

"In such cases the Punjab Redemption of Mortgages Act seems to inflict hardship on the mortgagee, who as long as he is in possession cannot be made to give up possession until he has been paid the amount due to him. But when he has once lost possession in the course of proceedings under the above Act all that he can do is to sue for any sum which he may claim as still being due to him."

Counsel urges that this dictum applies to the present case. We may, however, note that the dictum in question was entirely obiter and the learned Judges did not proceed to describe what is the remedy of an unfortunate mortgagee in such circumstances. It is obvious that obtaining a mere money decree or a decree recoverable from the land would be entirely or practically useless to him, especially if the mortgagor were protected by the provisions of the Punjab Alienation of Land Act. We do not consider that we are bound by this obiter dictum. The language of section 12 of the Act is wide and is to the effect that "A mortgagee

(1) 39 Ind. Cas 451; 85 P.R. 1917; 157 P.W.R. 1917; 5 P.L.R. 1918.

(2) 41 Ind. Cas. 59; 98 P.R. 1917; 107 P.W.R. 1917.

dispossessed by the Collector may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive."

We do not consider that any narrow interpretation of this provision is justified, and we hold that a mortgagee, who has been illegally dispossessed by the Collector, may be restored to the position which he previously occupied. A mere declaration that a larger sum is payable than that granted by the Collector might indeed be considered by the Collector as a sufficient warrant for restoring the land which he had wrongly delivered to the mortgagor, but we are not concerned with the interpretation which a Collector would place upon such a decree. We think, therefore, that the provisions of section 12 of the Punjab Redemption of Mortgages Act are sufficiently wide to allow a Civil Court to right any wrong done by the Collector in the summary proceedings, and, if necessary, to restore possession of the land.

Mr. Kharak Singh urged many other objections against the decree. He argued that under the terms of the covenants interest was not specifically made a charge upon the land. As, however, has been pointed out by the lower Appellate Court, it is clearly provided that the mortgaged land will not be redeemed until the money has been paid. The words used are "jab ropaya ada karenge." Mr. Kharak Singh has referred us to judgments in which there is a promise to pay the 'zar-i-rahn or 'zar-i-marhuna', but such provisions are entirely distinct from that of the present case. We find no force in this ground of appeal.

Counsel's other criticisms of the decree have been fully dealt with by the lower Appellate Court and require no further remark from us. We, therefore, uphold the decree of the lower Appellate Court and dismiss the appeal with costs.

Appeal dismissed.

A. I. R. 1922 LAHORE 290

(Broadway And Martineau, JJ.)

MOHNA MAL—Decree-Holder-Appellant.

versus

TULSI RAM and another—Judgment-Debtor-Respondents.

Misc. S. A. No. 605 of 1919 decided on 23rd December 1921 from an order of District Judge, Ferozepore, dated 14th March 1919.

(a) Second appeal—Order in execution—Amount of *the subject matter to be considered for purposes* of second appeal is that of the suit.

In determining whether a second appeal lies against an order passed in execution proceedings, the amount of the subject matter of the suit and not the amount sought to be recovered in execution must be taken into consideration, 29 P. R. 1902 and 30 Mad., 212 followed. (P. 291, C. I.).

(b) Punjab Redemption of Mortgages Act (II of 1913), section 15. Money deposited by mortgagor and possession got back by him. Deposit can be attached in execution of decree against mortgagee.

The provisions of section 15 of Act II of 1913 are primarily for the protection of the person depositing the money and the intention of the Legislature is that the money deposited under the provisions of this Act should be exempt from attachment in execution of a decree against the depositor. But where the depositor has been given possession of the land, the money becomes the property of the Judgment-debtor, and is therefore attachable in execution of decree against him. (P. 291, C. I. 2.).

Fakir Chand for Appellant.

Broadway, J.—The appellant Mohna Mal held a decree against Tulsi Ram, etc., for Rs. 4,779-2-0. This decree had been passed by a Subordinate Judge. In the course of executing this decree Mohna Mal attached a sum of Rs. 240

which had been deposited in the Court of the Revenue Assistant, under the provisions of Act II of 1913, by Miran Bakhsh who desired to redeem the land mortgaged by him to Tulsi Ram, etc.

It appears that the mortgage had been redeemed and Miran Baksh had been given possession of the mortgaged property. Objection was taken by Tulsi Ram, etc., to the effect that this money was not attachable in view of the provisions of section 15 of Act II of 1913.

This objection was given effect to by the executing Court whose decision was upheld on appeal by the District Judge, Mohna Mal then preferred a second appeal to this Court through Mr. Fakir Chand which came up before Rattigan, J., on the 10th July 1919. Objection was taken on behalf of the respondents that that no second appeal was competent as the order refusing attachment of the sum Rs. 240 must be taken to be a decree in a small cause of a value under Rs. 500. Rattigan J., by an order, dated 11th July 1919, referred the case to a Division Bench for decision both as to the competency of the Second appeal and on the question whether the sum of Rs. 240 referred to was liable to attachment.

Before us the appellant has been represented by Mr. Fakir Chand. The respondents though served are absent their former Vakil Mr. Durga Das having sent in withdrawal slip. After hearing Mr. Fakir Chand we are of opinion that a second appeal is competent and that the sum of Rs. 240 in question is liable to attachment. In Khazan Singh v. Khushal Singh it was held by Reid, J., that where an appeal from the decree in original suit lay to the Divisional-Court, the appeal from an order in execution of that decree lay to the same Court. This view is further supported by a decision of the Madras High Court in Mavul Ammala v. Mavula Maracoir where it was held that in determining whether second appeals lie in such cases in execution proceedings, the amount of the subject-matter of the suit and not the amount sought to be recovered in execution must be taken into consideration. With this view we are in accord. Further, the execution proceedings were being taken in the Court of the Subordinate Judge, and an appeal from an order passed by a subordinate judge, would lie under section 39 (1) (a) of the Punjab Courts Act to the District Judge, and in fact the appeal in this case was lodged in the Court of the District Judge. A second appeal is, therefore, competent.

Coming now to the second point, it seems to us that the provisions of section 15 of Act II of 1913 are primarily for the protection of the person depositing the money, and that the intention of the Legislature was that the money deposited under the provisions of this Act should be *exempt* from attachment in execution of a decree against the depositor. In the present case, the depositor Miran Bakhsh had had his mortgage redeemed and had been given possession of his property. The money thus belonged to Tulsi Ram, etc., and we are unable to see any reason for thinking that it was not attachable as such.

We accordingly accept this appeal with costs and declare that the sum of Rs. 240 in question is liable to attachment in the decree passed in Mohna Mal's favour.

Appeal accepted.

A. I. R. 1922 LAHORE 363

(Scott-Smith And Campbell, JJ.)

NIRANJAN SINGH and others—Plaintiffs-Appellants.

versus

CHARAN DAS—Defendant-Respondent.

Second appeal No. 959 of 1918 decided on 21st March 1922 from the decree of District J., Sialkot, dated 14th January 1918.

(a) Practice-New plea cannot be raised for the first time in appeal.

Where the objection, that the plaintiff could not maintain his suit for a declaration that defendant was not entitled to redeem after he had entered into possession on payment of the amount fixed by the Collector, was raised for the first time in appeal, held the objection could not be allowed.

(b) Punjab Redemption of Mortgages Act (1913), S. 12—Suit for declaration that mortgagor in possession is not entitled to redeem will lie.

A suit for a declaration only that the mortgagor is not entitled to redeem can be instituted under S. 12, though the mortgagor has obtained possession.

Scott-Smith, J.,—The brief facts of the case, out of which the present second appeal arises, are as follows :—

On the 16th August 1889, Diwan Lachhman Das, father of the present defendant-respondent, mortgaged some 39 ghumaons of land to Bhai Sobha Singh, plaintiff-appellant, for Rs. 600. It was agreed that the produce of the land was to be taken by the mortgagee in lieu of interest on Rs. 300 while the remaining Rs. 300 was to carry interest at the rate of 2 per cent per mensem, that the mortgagor was not entitled to redeem the land before the expiry of ten years and that on his failing to redeem the land in the month of Magh after that year the land would be considered as sold to the mortgagee. The defendants's father did not pay the mortgage-money and the plaintiff on his part took no steps for foreclosure under the terms of Regulation XVII of 1806. On the 14th February 1917, the defendant applied under section 4 of Act II of 1913 for redemption of the land. The Assistant Collector held that the defendant was entitled to redeem the land on payment of Rs. 1,392, i.e., Rs. 600 principal and Rs. 792 interest on Rs. 300 for eleven years at the stipulated rate. The plaintiff then brought the present suit for a declaration that the defendant was not entitled to redeem the land except on payment of Rs. 600 principal and Rs. 1,980 interest due from the date of the execution of the deed up to the date of institution of the suit. The Courts below held, following Balanda v. Fateh Din, that the plaintiff was only entitled to eleven years' interest and dismissed the suit.

The plaintiff has filed a second appeal to this Court and it is urged on his behalf (1) that the terms of the mortgage-deed show that it was the intention of the parties that interest should continue to be paid even after the due date and up to the date of redemption and (2) that even if no such agreement can be implied, then in accordance with the decision of the Full Bench in Motan Mal v. Muhammad Bakhsh the mortgagee is entitled to damages which should be calculated at the rate of interest agreed upon in the deed.

In the first place, we find it necessary to refer to an objection raised by counsel for the respondent as to the form of the suit. He urges that as the defendant has got possession of the land after redemption, the plaintiff should have sued either to be again put in possession until payment of the full amount claimed by him, or for recovery of the sum to which, he alleges, he is entitled. Now, there was no objection raised in the Courts below as to the form of the suit, and we therefore do not think that such an objection should be allowed at the present stage. Moreover, section 12 of the Redemption of Mortgages Act, II of 1913, lays down that any party aggrieved by an order made under sections 6, 7, 8, 9, or 11 of the Act may institute a suit to establish his right in respect of the mortgage. This clearly indicates that an aggrieved party may institute a suit to have his right declared. No doubt the plaintiff might have sued for possession of the land, but, having regard to the clear wording of section 12 of the Act, we consider that he was entitled to sue for a mere declaration.

The terms of the mortgage-deed show that the mortgage was for ten years and that it was also stipulated that the mortgagor could not redeem until the month of Magh. The date of the mortgage is 16th August 1889 and, therefore, there could be no redemption before about the 12th January 1900, or nearly 10½ years after the date of the execution. We cannot suppose that the parties to the deed intended that interest should not be payable for the whole of this period though it exceeds the ten years fixed in the deed. It was also stipulated that interest should be paid for the year of grace allowed by Regulation XVII of 1806 and that at the time of redemption, the mortgagor was to pay the cost of repairs of a well together with interest thereon. Diwan Lachhman Das was not an ordinary Zamindar but a man of intelligence and wealth and must have perfectly understood the terms of the deed. His son, the defendant, is a pleader. After a careful consideration of the terms of the mortgage-deed, we are clearly of opinion that the parties intended that interest should not cease upon the arrival of the date fixed for redemption, but should continue until redemption. Under these circumstances, there is no necessity for us to refer to the decision of the Full Bench in the case of Motan Mal and others v. Muhammad Bakhsh and others (2) referred to above. We hold that the plaintiff is entitled to a decree as claimed, namely, that he is entitled to receive from the defendant prior to redemption a sum of Rs. 2,580.

We accordingly accept the appeal and, setting aside the decree of the Lower Appellate Court, give the plaintiff a decree as above together with costs in all Courts.

Appeal accepted.

A. I. R. 1924 LAHORE 690

(Moti Sagar, J.)

RAM CHAND—Defendant-Appellant.

versus

KAURA and another—Plaintiffs-Respondents.

Second Appeal No. 2822 of 1922 decided on 16th June, 1923 from the decree of the District Judge, Mianwali dated the 8th August 1922.

Punjab Redemption of Mortgages Act (II of 1913) section 12, Order under, suit to impeach Limitation Act Art. 14 applies.

Section 12 of Redemption of Mortgages Act II of 1913 merely points out the results which would ensue, if the procedure laid down in that section is not followed. In order to ascertain the period of limitation for such a suit, it is necessary that reference should be made to the provisions of the Indian Limitation Act, and the only Article in that Act under which the suit could fall is Article 14, which provides period of one year's limitation from the date the order complained against is passed. (P. 692, Col. 1).

Jagan Nath—for Appellant.

Har Gopal—for Respondents.

Judgment.—This appeal arises out of a suit for redemption of certain lands attached to Mehugamala well in Mauza Bakkhar in the Mianwali District. The property in suit consists of two plots of land, one mortgaged in 1827 by means of a written document, but alleged to have been subsequently redeemed and remortgaged orally in 1878, and the other said to have been mortgaged in the year 1903. There is no dispute now in respect of the mortgage of 12 kanals, 6 marlas of land made in 1903, and it is admitted before me that the suit for redemption so far as this later mortgage is concerned is within time. The dispute only relates to the first mortgage of 1827, and the contention of the defendants is that the suit with regard to the redemption of this mortgage is barred by limitation. It is contended that the mortgage is more than 60 years old and that the plaintiff has no subsisting rights of redemption in respect of the land covered by this mortgage. The entries in the Settlement Records of 1878 on which reliance is placed by the plaintiff, it is urged, do not mean that the original mortgage of 1827 came to an end and that a new contract creating a fresh mortgage was substituted in its place in 1870. It is stated that the original mortgage remained intact, but that at about the time of the settlement only certain modifications were introduced in its terms which did not, however, in any way affect the existence of the previous contract itself. It is further contended that, in 1916, the predecessor-in-title of the present plaintiff made an application to the Collector for the redemption of this mortgage under the Redemption of Mortgages Act (II of 1913), but that this application was dismissed on the ground that the mortgage was more than 60 years old and that the claim as to its redemption was barred by limitation. It is urged that as no suit was brought by the predecessor-in-title of the plaintiff within one year fom the date of that order to establish his rights in respect of the mortgage, the present suit is barred under Article 14 of the Indian

Limitation Act. Both the courts below have found in favour of the plaintiff and have decreed the suit in its entirety with costs in both courts against the defendants. The latter has now come up in second appeal to this court through Mr. Jagan Nath, and I have heard Mr. Hargopal on behalf of the respondents.

Mr. Jagan Nath's first contention is that the finding of the learned Judge of the court below on the question of limitation is erroneous, and that the Settlement entries of 1870 have been entirely misinterpreted by him. In my opinion this contention has no force and must be overruled. It has not been shown in what way the entries have been misinterpreted, and a reference to those entries clearly shows that the mortgage of 1870 was an entirely new transaction and not a mere continuation of the previous mortgage of 1827 with certain terms here and there modified. I see no reason to differ from the opinion of the learned District Judge on this point and hold that the suit in respect of this mortgage is within time. I am also of opinion that the finding of the learned District Judge that the previous mortgage of 1827 did not remain subsisting, and that a fresh mortgage was created some time between 1861 and 1878 is clearly a finding of fact which cannot be disturbed in second appeal.

The next question to be considered is what is the effect of the proceedings taken under the Redemption of Mortgages Act in 1913 on this suit. It appears that on the 11th of May, 1913 Allah Bakhsh, the predecessor-in-title of the present plaintiffs made an application under Act II of 1913 to the Collector claiming redemption of the land in suit on payment of Rs. 45|-. Notice was issued to the mortgagees to show cause why redemption should not be effected, and on their objecting that the mortgage was made more than 80 years ago and that the applicant did not possess any subsisting rights of redemption therein an inquiry was ordered into the age of the mortgage in dispute. The Collector eventually came to the conclusion that the mortgage was made in Sambat 1834 and that, therefore, the claim as to its redemption was barred by limitation. He accordingly dismissed the petition and directed the applicant to seek his remedy in a Civil Court, if so advised. This application was presumably rejected under section 9 of Act II of 1913. Now, section *12* of that *Act lays down that* "any party aggrieved by an order made under sections 6, 7, 8, 9, 10, and 11 of this Act, may institute a suit to establish his rights in respect of the mortgage but, subject to the result of such suit, if any, the order shall be conclusive." This section embodies a rule of law similar to that which is contained in *rule 63 of Order 21 of the Civil Procedure Code. Under* Rule 63 of Order 21 of the Civil Procedure Code the person who is aggrieved by an order passed against him is entitled to bring a declaratory suit to establish the rights which he claims to the property in dispute within one year from the date of such order, and if no such suit is brought within the period prescribed by law, the order of the court allowing or disallowing the objection becomes conclusive. In the present case no suit was brought by the mortgagor or his representative-in-interest within one year from the date of the adverse order passed against him, and it is consequently contended that this suit, which is practically one for setting aside that order, is barred under Article 14 of the Indian Limitation Act. Articles *11*, *11-A*, *12* and *13* of the Indian Limitation Act provide a period of limitation for suits of a specific nature brought under the Code of Civil Procedure, and Article 14 is a general residuary Article intended to provide a period of limitation for all suits which do not fall within the purview of any of those Articles. The present suit is clearly one for setting aside an order of the Collector passed in his official capacity for which no express provision is made in the Indian Limitation Act, and I do not see how it can be argued that the suit is outside the scope of Article 14. The learned District Judge is of opinion that as no period of limitation for a suit of this nature is fixed in section 12 of the Redemption of Mortgages Act, Article 14 does not apply. I am unable to agree with this view. *Section 12 of the redemption of Mortgages Act* merely points out the results which would ensue if the procedure laid down in that section is not followed. In order to ascertain the period of limitation for such a suit it is necessary that reference should be made to the provisions of the Indian Limitation Act, and the only Article in that Act under which the suit could fall is Article 14 which provides a period of one year's limitation from the date the order complained against is passed.

Next it is argued that it is not a suit for setting aside the order passed by the Collector, but a suit for redemption, pure and simple, and that therefore Article 14 has no application to such a suit. I do not think that there is any force in this contention. Before redemption of the mortgage in suit can be effected, it is necessary that the order passed by the Collector in 1913 should be set aside, and the plaintiff cannot evade the provisions of Article 14 by merely saying that he does not expressly ask for the setting aside of the order. The Collector after due inquiry decided against the claim of the plaintiff's predecessor-in-title, and the plaintiff is, by reason of the latter being a party to the proceedings before the Collector, bound by the order, and it is necessary for him under section 12 of Act II of 1913 to get rid of that order before he can establish his right to redeem the property.

Lastly, it is argued that proceedings under Act II of 1913 are summary in their nature and that the Act is not intended to curtail the period of limitation for a suit for redemption which a litigant ordinarily possesses under the Indian Limitation Act. No doubt this is so, but this argument entirely loses sight of section 12 of the Act under which the order is likely to become conclusive, if not duly contested by means of a suit. In my opinion the order of the learned District Judge is wrong, and the suit is clearly barred by Article 14 of the Indian Limitation Act, so far as the earlier mortgage of 1827 is concerned.

The result is that I accept the appeal and, in modification of the order of the lower appellate court, grant the plaintiff a decree for possession by redemption of 12 kanals 6 marlas of land incorporated in mutation No. 1509 dated the 31st of August, 1903, on payment of Rs. 48 only. The rest of the plaintiff's claim shall stand dismissed. Parties shall bear their own costs throughout.

Appeal allowed in part.

A. I. R. 1927 LAHORE 461.

(Tek Chand, J.)

DARBA MAL and *another*. . .Defendants. . .Appellants.

Verus

ASA RAM and others. . .*Plaintiffs* and Defendants. . .

Respondents.

Second Appeal No. 2581 of *1926* decided on 3rd March 1927, from the Decree of the District Judge, Ambala D. 10th July 1926.

(a) Punjab Redemption of Mortgages Act (1913).

Section 9 Procedure as to making entry or dismissing petition is *discretionary*.

In the event of the mortgagee *joining* issue *with* the mortgagor petitioner, it is *not* incumbent on the Collector to make an *investigation* into the dispute. He may, if he so likes, make a summary enquiry and give his finding as a *result of it*, or he may refuse to do so and dismiss the petition forthwith. No particular grounds are specified in the section on which alone he might adopt the latter course. His *discretion* in this matter is not limited in any way but is absolutely unfettered. He may stay his hands for the simple reason that *difficult* question *of* fact and Law are involved and on this ground alone he might dismiss the petition. All that is necessary is that he should record his reasons for the course adopted.

(b) Punjab Redemption of Mortgages Act (1913) section 12—*Person failing* to move Collector under section 12 must sue within one year.

Act II of 1913 is a miniature Code in itself. Section 12 governs all cases in which an *order under* certain *sections* (including section 9) has been *passed*. The policy of the Legislature is that a person, who chooses to move the Collector under the Act, but fails, cannot be allowed to leave the matter in suspense for a period which may extend to another 60 years, but *that the order is final*, except that it is subject to the result of a suit which he must (if at all) institute within one year of it A. I. R. 1925 Lah. 385 Foll.

(c) Punjab Redemption of Mortgages Act (1913) section 12—Person asking for relief—Relief refused—He is person aggrieved.

A person, who asks for a relief, which he is authorised to ask under the Act, but to which his application is refused, must be considered to have suffered a legal grievance and is a person aggrieved. In re. Read Brown and Co. (19 Q. B. D. 174 Fall.).

Har Gopal for Kharak Singh for Appellants.

Shamair Chand for respondents.

Judgment.—This second appeal arises out of a suit for redemption which was instituted by the plaintiff-respondent on 13-11-1924 on the allegations that his predecessors-in-interest had mortgaged the land in suit to one Goverdhan Dass in 1883, that defendants 1 and 2 are the sons of Goveradan Dass mortgagee, and that Defendants 3 and 4 are transferees from them. The plaintiff claims redemption on payment of Rs. 75|- only.

The defendant pleaded that they were absolute owners and not mortgagee of the land in suit, that even if they were held to be mortgagees the mortgage charge on this and certain other land was Rs. 3,300|- and not Rs. 75|- as alleged by the plaintiff and that the suit for redemption was time barred as the plaintiffs application under the Redemption of Mortgages Act II of 1913 had been dismissed by the Collector on 13-8-1917 and the plaintiff had not instituted a suit in a Civil Court within one year from that date, as required by Article 14 of the Indian Limitation Act.

The Subordinate Judge held that the defendants had failed to prove that they were the absolute owners of the land, that their real status was that of mortgagees, that the land had been mortgaged to them by the plaintiff's ancestors, on 7-12-1883, that the mortgage charge was Rs. 75|- only, but that the plea of limitation had force and must prevail. He accordingly dismissed the suit. On appeal the learned District Judge agreed with the trial Court's finding on all points except limitation, and holding that the suit was within time he passed a decree for possession in plaintiff's favour on payment of Rs. 75|- to the defendants, 1, 3, 4 and 5 in four equal shares.

The Defendants have preferred a second appeal to this court and the sole point for determination is whether the suit is barred by time. Both parties concede that if the order of the Collector was passed under any of the sections 6 to 11 of the Redemption of Mortgages Act, the present suit must be considered to have been brought under section 12 of that Act, and as it was not instituted within one year from the date of the Collector's order it would be barred under Article 14 of the Limitation Act. The Law on this point has been authoritatively laid down by the Letters Patent Bench in Kaura Vs. Ram Chand (1) and neither counsel questions the correctness of that ruling. Mr. Shamair Chand for the respondents, however, contends that as in the present case the Collector made no enquiry into the dispute between the parties and gave no adjudication thereon, his order cannot be said to have been passed under section 9 of Act 2 of 1913, and that he not being "aggrieved" by that order, the rule laid down in Kaura Vs. Ram Chand is inapplicable.

In order to fully appreciate the point, it is necessary to describe in some detail the proceedings before the Collector. On the 26th March 1917 the present plaintiff presented to the Collector an application under section 4 of Act II of 1913, applying for an order that the mortgage be redeemed on payment of Rs. 20|- and that he be put in possession of the mortgaged property. Along with the petition he made a deposit of Rs. 20|- with the Collector and a notice was in due course issued to the mortgagee to show cause against the petition. The defendant appeared and contended that they were not the mortgagees but owners of the land and that the mortgage charge on this and other land was Rs. 3,300|-. After some adjournments the Collector passed the following order on the 13-8-1917.

The mortgagor has deposited Rs. 20|-. The mortgagee states that the mortgage charge on this land and some other land of the mortgagor is Rs. 3,300|-. He also pleads that the mortgage is more than 60 years old and cannot be redeemed. The mortgagor claims the mortgage to be within time. As dispute of this kind cannot be settled in summary proceedings the Court orders that the mortgagor's petition be dismissed. The amount deposited be returned to the petitioner.

It is contended that this order does not fall under any section of the Redemption of Mortgages Act, but is really an order by the Collector refusing to exercise jurisdiction under that Act. After giving full consideration to this argument I am of opinion that it is devoid of all force. As pointed out above the proceedings before the Collector commenced with an application by the mortgagor under section 4 of the Act. The Collector took action under section 5 and issued notice to the mortgagee to appear and show cause on a date specified therein. The mortgagee appeared on the date fixed and on the Collector's making the necessary enquiry from him under section 8, he denied the petitioner's right to redeem and stated that he was not willing to surrender possession of the land on receipt of the amount offered. It is contended that upto this stage the proceedings were in strict accordance with the Act. Now on the defendant's denial of the petitioner's right two courses were opened to the Collector under section 9. He could either (a) for reasons to be recorded, dismiss the petition or (b) make a summary enquiry regarding the objection raised and proceed under section 10 or section 11. It will thus be seen that in the event of the mortgagee joining issue with the petitioner, it is not incumbent on the Collector to make an investigation into the dispute. He may, if he so likes, make a summary enquiry and give his findings as a result of it, or he may refuse to do so and dismiss the petition forthwith. No particular grounds are specified in the section on which alone he might adopt the latter course. His discretion on this matter is not limited in any way, but is absolutely unfettered. He may stay his hands for the simple reason that difficult questions of fact and law are involved and on this ground alone, he might dismiss the petition. All that is necessary is that he should record his reasons for the course adopted. This the Collector admittedly did in the present case. In my opinion therefore the order in question was one contemplated by and actually passed under section 9 of the Act.

It is next argued that as the Collector had given no adjudication on the plaintiff's right to redeem, his order was in no way against the plaintiff, and therefore, he was not a "party aggrieved" by it and need not have sued under section 12 to establish his rights in respect of the mortgage. It must, however, be borne in mind that the Collector's order was one dismissing the petition for redemption. As already shown it is not the reason for this order that are material, but what has to be seen is its final form and effect. By this order, the plaintiff's prayer to redeem the land was negatived and under section 12 the order became conclusive against him, unless he got rid of it in appropriate proceedings under that section. As has been aptly stated by Le Rossignol Judge. In Kaura Vs. Ramchand (1), Act 2 of 1913 is a miniature Code, in itself. It is obvious that section 12 governs all cases in which an order under certain sections (including section 9) has been passed. The policy of the legislature is that a person, who chooses to move the Collector under the Act but fails, cannot be allowed to leave the matter in suspense for a period which may extend to another 60 years but that the order is final except that it is subject to the result of a suit, which he must (if at all) institute within one year of it. In this connection, reference may, perhaps not inappropriately, be made to the provisions of Order 21, rule 63, Civil Procedure Code which makes it incumbent on a defeated claimant to property, attached in execution of a decree, to institute a declaratory suit to establish his rights within one year. The terms of this section are analogous to those of section 12 of the Punjab Act under consideration, and the analogy has been made use of to interpret this section in several rulings of this court and the Chief Court see for the instance Balwant Rai versus Sheru, Narinjan Singh vs. Dewan Charan Dass, Kaura vs. Ram Chand. It has been held that the applicability of Order 21, rule 63, is not confined to cases in which claim petitions had been rejected by the executing court after investigation but that it governs those cases also where the objections were dismissed without any enquiry, e.g., for default of appearanc by the objector. See 'inter alia' Ven Kata Ratman Vs. Ranganayakamma Zamindarini Garu, Najindra Lal vs. Fani Bhusin Dass, Gulab vs. Mutsaddi Lal, and Gopal Singh vs. Ganpat Rai.

Nor am I impressed by the argument that the plaintiffs was not a "party aggrieved" within the meaning of section 12 of the Act. In support of his contention Mr. Shamair Chand has referred to me to Ishar Singh vs. Ladha Ram and Sakhawat Ali vs. Radha Mohan, but these are rulings under the Provincial Insolvency Act and laid that an insolvent, debtor or his creditors are not "persons aggrieved" for the purpose of filing appeals, etc., under the provisions of that Act. Such cases are wholly distinguishable for under that Act as soon as a Receiver is appointed, the property of the debtor vests in him and it is he alone who represents the Estate and is entitled by Law to move the court on appeal and in certain other proceedings. There is no resemblance between the proceedings under that Act, and those under the Redemption of Mortgages Act. Moreover, I find that even these rulings have adopted the interpretation of the expression "person aggrieved" as given by James, L. Judge, in re. ex-parte Sidebotham, meaning.

A man who has suffered a legal grievance, is a man against whom a decision has been pronounced which has wrongfully deprived him of some thing or wrongfully refuse him something, or wrongfully affected his titles to something.

This definition was explained and amplified by Esher, M. R. and Lopes, L. J., in re. Read Browns & Co. who held that a person who asks for a relief, which he is authorised to ask under the Act, but to which his application is refused must be considered to have suffered a legal grievance.

This definition, is by no means exhaustive, but even according to this, it must be held that the plaintiff in this case was a "party aggrieved," by the order of the Collector, and therefore was bound to institute a suit under section 12 to establish his rights in connection with the mortgage and having failed to do so within one year, his claim must be held to have become barred under Article 14 of the Limitation

The learned District Judge has relied upon Kristo Dass Kundu Vs. Ramakant Rao which however, is a decision, under section 7 of the Civil Procedure Code of 1859 and Article 15 of the Limitation Act of 1871, the wording of both of which was quite different. This rulings be considered to have become absolute by virtue of subsequent legislative alteration and amendments and is of no assistance in deciding a case like the present.

For the foregoing reasons I hold that the conclusion arrived at by the learned District Judge on the point of limitation cannot be sustained and that the suit is barred by time. I, therefore, accept the appeal and setting aside the decree of the District Judge, dismiss the plaintiff's suit with costs to the Defendants in both the appellate courts. The orders of the Subordinate Judge as to cost in his court will stand. Appeal accepted.

A.I.R. 1929. LAHORE 513.

(Sir Shadi Lal, C.J. and Sir Allan Broadway, J.)

ASA RAM—(Plaintiff)—Appellant.

Versus

DARBA MAL and others—(Defendants)—Respondents.

Letters Patent Appeal No. 56 of 1927.

Limitation Act IX of 1908, Article 14—Dismissal by Collector of application for redemption under Punjab Redemption of Mortgages Act—Dismissal not on merits—suit for redemption in Civil Court—Limitation, for suit.

A mortgagor whose summary application for redemption under the Punjab Redemption of Mortgages Act has been dismissed by the Collector but not on merits, can bring his regular suit for redemption in a Civil Court within usual period of limitation prescribed for such suits and is not bound to bring such suit within a year from the date of dismissal under Article 14 of the Limitation Act.

I.L.R. 6 Lah. 206 = 26 P.L.R. 383, distinguished from.

Letters Patent Appeal under section 10 of the Letters Patent Act from the decision of the Hon'ble Mr. Justice Tek Chand, in C.A. No. 2581-26, dated 3rd March 1927.

Messrs. Shamair Chand and Qubul Chand, Advocates for the Appellant.

Mr. Hargopal, Advocate, for the Respondents.

Judgment.—Broadway, J. (1st May 1929). One Wazira mortgaged certain property to Gowardhan Das, on the 7th of December 1883. Subsequently he sold the equity of redemption in this property to Asa Ram.

On the 26th of March 1917, Asa Ram filed a petition for redemption before the Collector under section 4 of Act II of 1913. In this petition it was claimed that the mortgage was redeemable on payment of Rs. 20|- and that sum was duly deposited. Notice was issued to the sons of Gowardhan Das and certain transferees of theirs who objected to redemption, pleading that the sum was Rs. 3,300 and further that, owing to more than sixty years having elapsed, there was no subsisting mortgage. On the 13th of August 1917, the Collector apparently acting under section 9 (a) of Act II of 1913, dismissed the application.

On the 13th of November 1924, Asa Ram brought a suit for redemption, claiming to be entitled to redeem on payment of Rs. 75|-. The defendants-mortgagees, raised the same pleas as had been raised before the Collector.

The trial Court found that there was a subsisting mortgage, that the defendants were mortgagees and that the sum payable was Rs. 75|-. Asa Ram's suit was, however, dismissed on the ground that it was barred by limitation, the case falling within the purview of Article 14 of the Indian Limitation Act.

Asa Ram appealed to the District Judge who agreed with the findings of the Court of first instance on all points but held that the suit was within time. Asa Ram was thereupon granted a decree for possession on payment of Rs. 75|.

Against this decree the defendants preferred a second appeal to this Court. It was heard by a single Judge before whom the only point agitated was that of limitation. He held that the learned District Judge had erred on the question of limitation and, accepting the appeal, dismissed the plaintiff's suit.

Against this decision Asa Ram has preferred this appeal under clause 10 of the Letters Patent through Mr. Shamair Chand. It was urged that the view taken by the learned Judge in Chambers was erroneous, and that the suit was within time. Section 12 of Act II of 1913 runs as follows.—

"Any party aggrieved by an order made under section 9 of this Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of each suit, if any, the order shall be conclusive."

Mr. Shamair Chand urged that Asa Ram was not an "aggrieved party" within the meaning of those words as contained in section 12, and, further that the suit was to establish Asa Ram's rights in respect of the mortgage and did not, in any shape or form, attack or seek to set aside, the order of the Collector made on the 13th of August 1917. Further he contended that Kaura Vs. Ram Chand (1) on which the learned Judge in Chambers based his decision, has been erroneously decided, and that in any event the present case was distinguishable. That Asa Ram was a "party aggrieved" by the order of the Collector, dated the 13th of August 1917, is, I think, beyond question. This matter was thoroughly examined by the learned Judge in Chambers whose reasoning I would adopt. It was held by the Single Bench, that, inasmuch as the result of the suit would be to set aside the order of the Collector passed under section 9 of Act II of 1913, Article 14 of the Indian Limitation Act applied, and, as the suit had been brought more than one year after the date of that order, it was barred by time. As stated above, reliance was placed on Kaura Vs. Ram Chand (1). It is not necessary to express any opinion as to whether this case was correctly decided or not, as, in my judgment, the present suit is clearly distinguishable. In Kaura Vs. Ram Chand (1) the order of the Collector was one passed on the merits of the dispute before him and it is, therefore, clear that the setting aside of that order was an essential element in the case. Here the Collector has not considered the merits of the dispute in any way. In his order he sets out the objections raised by the defendants and proceeds to say " as disputes of this kind cannot be settled *in summary proceedings, the Court orders* that the mortgagor's petition be dismissed." This practically amounts to a *denial of jurisdiction and, in order to enable* the plaintiff appellant to succeed in his suit, it is by no means necessary to set aside any order passed by the Collector. Indeed, Mr. Shamair Chand urged that, far from wanting the order to be set aside, it was correctly passed. Admittedly the Limitation Act has to be strictly construed and, unless a suit clearly falls within the ambit of the Article sought to be applied, the decision should be in favour of the continuation of the suit. Article 14 of the Indian Limitation Act relates to a suit "to set aside any act or order of an Officer of Government in his official capacity not herein otherwise expressly provided for." This Article was held in Kaura v. Ram Chand (1) to be applicable to cases governed by Act II of 1913, where, on a true interpretation of the nature of the suit, the setting aside of an order covered by section 12 was a necessary result. The present suit is one for redemption and in the order passed by him under section 9, the Collector carefully refrained from coming to any decision on the merits of the dispute between the parties. In these circumstances this case is not covered by Kaura v. Ram Chand (1) and inasmuch as it is neither in terms nor in effect a suit to set aside the order of the Collector, it is not govered by Article 14 of the Indian Limitation Act and is, therefore, not barred by time.

I would, therefore, accept this appeal and setting aside the order of the learned Judge in Chambers, restore the decree passed by the learned District Judge with costs throughout.

Sir Shadi Lal, Kt. C. J.—I concur.

Appeal accepted.

A. I. R. 1933 LAHORE 129.

(Broadway, C. J. and Monroe, J.)

PALA MAL NARAIN DASS—Appellant.

Versus

MOHD. ALI—Respondent.

Second appeal No. 971 of 1928 decided on 14th November, 1932.

(a) Civil Procedure Code (1908). Order 22, rule 4—Abatement—Rule of total abatement is highly technical rule and should not be applied unless it must be applied, Punjab *Redemption Act (II of 1913), section 12.*

The rule of total abatement is a highly technical rule and should not be applied, unless it must be. On the death of B who had mortgaged a certain land to the plaintiffs, the land descended in 3 shares one of which was mutated in favour of each branch of defendants. There was no partition among the defendants and they obtained on an application for redemption to the Assistant Collector an ex-parte decree for possession on payment of Rs. 695|-. The plaintiffs brought a suit for declaration that the land could be redeemed only on payment of Rs. 1,895-. One of the defendants died after the instituting the above suit and his representatives were not brought on record within time and there was no application for extension of time.

Held: that as no declaration can be made defining the rights of the plaintiffs against the surviving defendants without reference to the share of the deceased defendant, the Court had *to reluctantly* apply the rule of total abatement and the suit had abated in toto.

Held also: that as a result of one of the defendants' death the Collector's order had become final in respect of the share which belonged to him.

(b) Transfer of Property Act, 1882, section 60—Mortgage-*Apportionment of mortgage-debt cannot be made* without consent of all parties interested. An apportionment of a mortgage debt cannot be made without the consent of all the parties interested.

Daulat Ram for appellant.

Asghar Beg for respondent.

Judgment.—Monroe, J. This is an appeal from the judgment of the Additional District Judge at Lahore affirming an order of the trial Court by which the suit was dismissed on the ground that it abated against all the defendants. The land now in dispute was formerly the property of one Baja, he mortgaged it to the plaintiffs and on his death the land descended in 3 shares, one of which was mutated in favour of each branch of his descendants, the first branch being now represented by the defendants Amir and Ismail sons of Jai Mal, the second by Kher Din and the third by Ismail, son of Kamal and Mst. Bakhatawari. There has been no partition. The defendants made an application to the Assistant Collector at Kasur for redemption of the land and obtained an ex-parte decree for possession on payment of Rs. 695|-. The plaintiffs then brought the present suit for a declaration that the land could only be redeemed on payment of Rs. 1,895|-. Khair Din died on 17-4-1926 after the institution of the suit and his representatives were not brought on the record within time; the lower courts have held that there was no proper application for an extension of the time and that in consequence of the death of Khair Din, the suit has abated in toto. Against this decision the plaintiffs have now appealed on both grounds.

I have no hesitation in agreeing with the Lower Court when they hold that there has been no application on the part of the plaintiffs which can be treated as an application for extension of time; the only application on the record is the belated application to bring the representatives of Khair Din on the record. On the 2nd point, the plaintiffs contend that the suit has abated only against Khair Din and his representatives. The present suit has been brought in accordance with the provisions of section 12, Punjab Redemption Act No. 11 of 1913 and its object is to obtain a declaration of "The right of the mortgagee." As a result of the death of Khair Din, the Collector's order has become final at least in respect of the shares which belonged to him.

The only statutory provisions applicable are contained in the Civil Procedure Code which by Order 22, rule 4, provides that where no application is made to substitute the legal representatives of the deceased defendant within the time limited by Law the suit shall abate as against the deceased defendants and Order I, Rule 9, provides that no suit shall be defeated by reasons of the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the patries actually before it; see judgment of Jia Lal, J., in Sant Singh versus Gulab Singh. No case hase been cited to us which governs the present case, nor have I been able to find any authority which I can apply to it and we must proceed on general principles.

The rule of total abatement a highly technical rule should not be applied unless it must be; and it seems to me that the result of the present appeal depends on whether the interest of Khair Din and the other Defendants are severable and a declaration can be made defining the rights of the plaintiffs against the surviving defendants without reference to the position of Khair Din's share. What declaration can now be made in this case? If it is held that the total amount due on the mortgage is Rs. 1,895|-, the amount still to be paid by the surviving defendants can only be ascertained by a reference to the sum already paid not for the redemption of their shares only but for the whole of the mortgaged land. If they then pay the full difference in order to recover their shares, they are compelled to pay more than their due proportion for the effect of the Collector's decree is that Khair Din's share has ceased to be subject to the mortgage and no remedy for contribution against it would now be allowed, and in the result, the surviving defendants by reasons of no fault of their's lose the remedy ordinarily available to one of the several mortgagors who is compelled to pay more than his due proportion towards the mortgaged debts. So far as I can see only one other declaration is possible and I have no doubt that it would have the merits of being just. If the total debt is Rs. 1,895|-. the shares and liabilities being equal, it may be said that each of the surviving defendant's shares should bear its proportion of the total sum, the position remaining undisturbed in the case of Khair Din's share in such case, Khair Din's representatives would hold that advantage which they had acquired by the neglect of the plaintiffs and the surviving defendants would have to bear no greater burden than they would have had to bear, had Khair Din survived. But such a decree requires an apportionment of the mortgaged debt and I think that it is a fatal objection that no such apportionment of a mortgage debt can be made without the consent of all the parties interested, and further, the terms of such a decree could not be ascertained without a reference to the liability borne by the Khair Din's share I reluctantly come to the conclusion that this is one of the special cases where the rule of total abatement must be applied and accordingly I would dismiss this appeal with costs.

Broadway, C. J. I concur.

Appeal dismissed.

A. I. R. 1933 LAHORE 179.

(Tek Chand, J.)

FAKIR KHAN and other—Plaintiffs—Appellants.

Versus

ISMAIL KHAN and others—Defendants—Respondents.

Second Appeal No. 277 of 1928, decided on 4th July 1932, against decree of District Judge, Gurdaspur, dated 15th October, 1927.

(a) Punjab Redemption of Mortgages Act (1913), section 12—Suit under section 12 is not suit for redemption —Order 34, Civil Procedure Code, is not applicable—Civil Procedure Code Order 34.

A suit under section 12 is really one to get rid of the order passed by the Collector allowing, or refusing to allow, redemption, and is not in form or in substance a suit for redemption. The cause of action for such a suit is not the original contract but the order of the Collector which aggrieves the party suing, and therefore Order 34 Civil Procedure Code has no application to such a suit: A.I.R. 1925 Lah. 385 Foll.

(b) Civil Procedure Code (1908), Order 22, rule 3(2) —Suit for possession by co-mortgagees each having distinct share—Death of one during pendency of suit—His representative not brought on record in time—Suit abates only as regards deceased plaintiff's share.

Five co-mortgagees brought a suit in Civil Court for possession of land on the ground that defendants had no right to redeem the land and the Collector had erroneously granted their application under the Redemption of Mortgages Act. All the five plaintiffs were shown in revenue record as co-mortgagees, each having a well defined and divisible share. One of the plaintiffs died after the institution of the suit and his representatives were not brought on record within time.

Held: that the suit abated qua deceased plaintiff's share only, but it could proceed in respect of the remaining shares held by the surviving plaintiffs. A.I.R. 1928 Lah. 572 (F. B.), Foll.

(c) Punjab Redemption of Mortgages Act (1913), section 10—Redemption Suit—Mortgage can put the party seeking redemption to proof of his title.

In litigation arising out of proceedings under (Punjab) Act II of 1913, as in a suit for redemption, a mortgagee can put the party, who seeks to redeem the mortgage, to proof of his title, unless of course such person is the original mortgagor whose title the mortgagee cannot deny on the principle that a grantee cannot deny his grantor's title.

(d) Practice-New-plea-Estoppel-Plea of estoppel cannot be raised for the first time in appeal.

A plea of estoppel cannot be raised for the first time in appeal where the question is not one purely of law to be decided on facts apparent on the record, but is one, which if raised at the proper time, would necessitate further investigation.

(e) Evidence Act (1872), section 115—Party raising plea of estoppel must be shown to have been misled to act to his detriment.

In order to sustain the plea of estoppel it must be proved that the defendants, replying on the declaration made by the plaintiffs, were misled to act to their detriment in such a manner as they would not otherwise have done.

(f) Evidence Act (1872), section 17—Admission. Entire statement must be considerd together—Particular passages cannot be selected.

If a party wished to have a statement made by the opposite party treated as an admission, the whole statement must be taken into consideration. It is not open to him to split up the statement and pick out the portion which may be favourable to him and ignore the rest: A.I.R. 1930 P.C. 245, Foll. (183-C, 1).

M. C. Mahajan—for Appellants.

Shamair Chand and Muhammad Amin—for Respondents.

Judgment.—The property in dispute is plot of agricultural land 34 kanals 3 marlas in area, situate in Mauza Bastan in the Shakargarh Tahsil of the Gurdaspur District. The land originally belonged to one Malle Khan, Afghan, who owned 1|6th share in a Khata of 100 Ghumaons. On some date between 1865 and 1870, Malle Khan mortgaged with possession 34 kanals 3 marlas out of this Khata to Buland Khan, son of Ashraf Khan, for Rs. 43. Mutation was duly effected in favour of the mortgagee and he has been continuously shown in the revenue papers as in possession up to the date of this litigation. The mortgagee Buland Khan, son of Ashraf Khan, has since died and the present plaintiffs-appellants are his descendants. On 10th September 1873 Malle Khan gifted his share in the aforesaid Khata, including the equity of redemption in the land which he had mortgaged to Buland Khan, son of Ashraf Khan, to his sister's son Nazar Din. Mutation of gift was duly effected in the revenue papers and in the order dated 24th January 1874 sanctioning the mutation, it is stated that Jiwan Khan, collateral of Malle Khan, had consented to the gift. It may be stated that Jiwan Khan was an absentee from the village and had been living for some years in the Jummu State territory. After Malle Khan's death sometime in the eighties of the last century, Jiwan Khan's sons came to Mauza Bustan and attempted to get the possession of the property which he had gifted to Nazar Din. Thereupon, Nazar Din brought a suit against them for a declaration that the land had been gifted by Malle Khan to him, that Jiwan Khan had consented to the gift and that his sons had no right in it. This suit was decided on 27th July, 1887, the gift being upheld and a decree passed in favour of Nazar Din.

In accordance with this decision Nazar Din should have been entered in the revenue papers as the mortgagor of the land in dispute which had been mortgaged by Malle Khan to Buland Khan, son of Ashraf Khan, but by some oversight the names of Jiwan Khan's sons were shown in the revenue papers from 1899 and 1910 as "absentee" mortgagors. In the course of the last Settlement, the Assistant Collector, by order dated 18th September 1910, directed the removal of the names of Jiwan Khan's sons from the revenue papers and Nazar Din's descendants were entered as the mortgagors and Buland Khan, *son of Ashraf Khan*, as the mortgagee. When Jiwan Khan's sons came to know of this order, they made an application for restoration of their names. The Assistant Collector, on what was an evidently incomplete inquiry, set aside the order of his predecessor dated 18th September 1910 and directed that the names of Nazar Din's descendants be removed and those of Jiwan Khan's descendants be restored as mortgagors of the land in dispute. It appears, that about the same time, Nazar Din's heirs, who had been entered in the revenue papers as mortgagors by order of the Revenue Officer dated 18th September, 1910, filed an application before the Collector under (Punjab) Act II of 1913 for redemption of the land in dispute from the *present plaintiffs* who are *the sons* of Buland Khan. This application also was disposed of by the same Collector on 15th December 1910, who dismissed it on the ground that the mortgagors were the descendants of Jiwan Khan, absentee, and not Nazar Din's sons. No suit under section 12 of Act II of 1913 was brought by Nazar Din's descendants within one year to contest the Collector's order.

The result of his litigation was that the mortgagee continued in possession until 1922, when the present defendants, who were the descendants of Jiwan Khan, the "absentee" collateral of Malle Khan applied to the Collector under Act II of 1913 for redemption of the land. The Collector granted the application and on payment of the mortgage money, Rs. 43|- put the defendants in possession. On first October, 1923 the plaintiffs, five in number, brought a suit in the Civil Court for possession of the land on the ground that the defendants, as the representatives of Jiwan Khan had no right to redeem the land and that the Collector had erroneously granted their application under Act II of 1913. The suit was decreed by the trial Judge and against this decree the defendants preferred an appeal to the District Judge. During the pendency of this appeal it was discovered that one of the plaintiffs, Ghazi Khan had died 2 days after the institution of the suit in the trial Court, that the factum of his death had not been brought to the notice of the trial Judge and that a decree had been passed in favour of the plaintiffs, including Ghazi Khan, deceased, in ignorance of the fact that he had died. The learned District Judge, Mr. Skemp dismissed the defendant's appeal but added a declaration in his decree that "the decree of the trial Court was a nullity" by reason of one of the plaintiffs having died during the pendency of the suit and his representatives not having been brought on the record within the time prescribed by law for the purpose.

Against this order of the learned District Judge the plaintiffs preferred a petition for revision to this Court which was disposed of by a Single Bench judgment reported as Sikandar Khan Vs. Baland Khan. It was held that the order of the learned District Judge dismissing the defendant's appeal and embodying in this decree for declaration aforesaid was erroneous, and the case was sent back to him for rehearing and redecision. Mr. Skemp having been succeeded by Mr. J. D. Anderson, the defendant's appeal was reheard by him. In a lengthy judgment the learned Judge has held that the death of Ghazi Khan during the pendency of the suit and the failure of the plaintiffs to bring his representatives on the record had resulted in a total abatement of the suit and that the decree of the trial Judge in favour of the plaintiffs was a nullity. On the merits the learned Judge has held that it was not necessary for him to decide whether the equity of redemption in the land in dispute vested in the defendants-respondents or in the descendants of Nazar Din, as he was of opinion that that was a matter for decision between the defendants and the descendants of Nazar Din and that the plaintiffs were bound to surrender the land to the persons, who were recorded as mortgagors in the revenue papers, on payment of the mortgage-money. The learned Judge has further held that the plaintiffs were estopped from denying the right of the present defendants to redeem the land, by reason of a certain admission which they had made before the Collector in the proceedings taken in 1915 on the application of Nazar Din's sons for redemption of the land under Act II of 1913. On these findings he accepted the defendants' appeal and dismissed the suit with costs.

The plaintiffs have come up in second appeal to this Court and have assailed the findings of the learned District Judge on all the three points mentioned above.

The first question for determination is whether the suit in the trial Court has been rightly held to have abated in its entirety by reason of the death of Ghazi Khan and the failure of the plaintiffs to have his representative substituted within 90 days. After hearing both counsel I have no doubt that the decision of the learned District Judge on this point is erroneous and cannot be sustained. The learned Judge has treated the suit as if it were one for redemption to which all the co-mortgagees are necessary parties under Order 34, rule 1, Civil Procedure Code. As one of the mortgagees, Ghazi Khan, had died and his heirs were not brought on the record, the learned Judge has held that the suit could not proceed, and had therefore abated in its entirety. It must be noted however that the present suit is not one for redemption by the mortgagor against the mortgagees. As stated already, it is a suit by the mortgagees instituted under section 12, Redemption of Mortgages Act (Punjab) II of 1913, to get rid of the order of the Collector passed under section 10 of the Act, directing redemption to take place on payment of Rs. 43|- by the defendants to the plaintiffs. It is obvious that the provisions of Order 34 have no application to a suit of this kind. The nature and scope of such a suit have been considered at length by Moti Sagar, J., in Ram Chand Vs. Kaura, and, on appeal from his decision by the letters Patent Bench, in the judgment which is reported as Kaura Vs. Ram Chand. There it was held that a suit under section 12 was really one to ged rid of the order passed by the Collector allowing, or refusingto allow, redemption and is not in form or in substance a suit for redemption (P. 212 of 6 Lah.). As pointed out by LeRessignol, J., who delivered the judgment of the Letters Patent Bench:

"the suit referred to in section 12 of the Act is a suit to set aside an order of the Collector. From the very wording of that section it is clear that the cause of action for such a suit is not the original contract but the order of the Collector which aggrieves the party suing. It is a suit to establish the erroneous nature of that order."

It will thus be seen that the very basis of the decision of the learned District Judge is wrong. It follows from what has been stated above that the rules which govern the impleading of parties to a suit for redemption do not apply to the suit before me. Here we find from the revenue entries that the five plaintiffs are shown as co-mortgagees, each holding a well-defined and divisible share. Each of them is "aggrieved" by the order of the Collector and under section 12 possesses an individual right "to establish the erroneous nature of that order." I fail to see how, in such a case, the death of one of the plaintiffs, Ghazi Khan, and the absence of his heirs from the record can possibly result in the abatement of the suit as a whole. Ghazi Khan's share in the land in dispute is admittedly one-fourth and the suit was one for possession of the entire land by all the five co-mortgagees. In these circumstances it must be held under the authority of the Full Bench decision in Sant Singh Vs. Gulab Singh that the suit abated qua Ghazi Khan's one-fourth share only, but that it could proceed in respect of the remaining 3|4th share held by the surviving plaintiffs. Thus the decree of the trial Judge was good in so far as it granted possession of three-fourths of the land in dispute to plaintiffs 1, 3, 4, and 5, but it was a nullity in respect of the one-fourth share of Ghazi Khan. The decision of the learned District Judge on the merits also is vitiated by errors of law and cannot be sustained. He had held in the present suit it is not necessary to decide whether the defendants have a subsisting interest in the equity of redemption and that this is a matter between them and the descendants of Nazar Din, to be settled in a dispute between themselves. The learned Judge has observed that as the defendants are recorded in the revenue papers as the mortgagors therefore they have a right of redemption unless the mortgagees can show that they are prevented by limitation or other special cause from exercising their right. In my opinion this view is entirely erroneous. In litigation arising out of proceedings under (Punjab) Act II of 1913—as in a suit for redemption—a mortgagee can put the party, who seeks to redeem the mortgage, to proof of his title, unless of course such person is the original mortgagor whose title the mortgagee cannot deny on the principle that a grantee cannot deny his grantor's title. In the present case however as has been stated above, the defendants are not the original mortgagors, but they claim a derivative title from Malle Khan, who had created the mortgage in question in favour of the ancestors of the plaintiffs. The law applicable to such a case is thus enunciated by Ghose in his standard work on the Law of Mortgage, Vol. I, Edn. 5, p. 278:

"The mortgagee may also put any person claiming derivatively from the mortgagor to proof of his title. For he is not bound to give up the property to any person who may start up with the allegation that he has succeeded to the rights of the original mortgagor; on the contarry, it is his duty to admit no claim upon it, until assured of the title of the claimant."

The learned District Judge has cited no authority in support of his conclusion and Mr. Shamair Chand for the respondent has frankly admitted his inability to support it. It is conceded that the original mortgagor Malle Khan had gifted his property including the equity of redemption in the land in dispute, to Nazar Din and in a suit between him and the ancestors of the defendants the gift was upheld. The defendants are bound by that decision and have therefore no subsisting interest in the equity of redemption and it has not been shown how they are entitled to possession of the land on payment of the mortgage-money. The mere fact that the revenue authorities had erroneously entered their names as mortgagors in the revenue papers, cannot confer any title on them, in face of the clear judicial decision in the litigation of 1887. The third ground on which the learned District Judge has dismissed the suit is that the present plaintiffs are estopped by reason of a certain admission made by them before the Collector in the course of the proceedings under Act II of 1913 which were started on the application of the descendants of Nazar Din in 1915. The alleged admission is contained in the written statement (Ed. D-1) which the present plaintiffs filed in those proceedings on 22nd July, 1915, to the effect that the then applicants (the descendants of Nazar Din) had no right to redeem the land in the presence of the defendants, who were the heirs of the original mortgagor Malle Khan, but who, too, had lost their rights to redeem, with the result that the mortgagees (present plaintiffs) had become absolute owners of the land. The learned District Judge has held that this admission operated as estoppel against the plaintiffs and it was no longer open to them to urge in this suit that the right to redeem vested in the descendants of Nazar Din and not in the defendants.

Now the first point to be noticed in this connection is that the plea of estoppel was not raised in the tiral Court, nor is it covered by the issues. It appears to have been urged for the first time before the learned District Judge after the case had gone back to him on remand from this Court. The question is not one purely of law to be decided on facts apparent on the record, but is one, which if raised at the proper time, would have necessitated further investigation. In these circumstances, the learned District Judge was not justified in allowing it to be raised at the appellate stage and basing his decree on it. But leaving this aspect of the case out of consideration, there can be no doubt that the plea is without any substance whatever. It will have been noticed that the so-called "admission" is a qualified one and taken as a whole is not by any means an admission but is in fact a repudiation, of the defendant's right to redeem the land. It is a settled rule of law and if a party wishes *to have a statement made by the opposite party* treated as an admission, the whole statement must be taken into consideration. It is not open to him to split up the statement and pick out the portion which may be favourable to him and ignore the rest; Jawala Das Vs. Sant Das. Further, in order to sustain the plea of estoppel it must be proved that the defendants relying on the declaration made by the plaintiffs, were misled to act to their detriment in such a manner as they would not otherwise have done. There is no allegation, much less proof, that the defendants were aware of the alleged representation made by the plaintiffs in the proceedings of 1915, or that from that time to the date when the present litigation began they had taken any action detrimental to themselves by reason of the representation supposed to have been contained in the so-called admission, I hold, therefore, that the plaintiffs were not estopped from denying the defendants' right to redeem the land.

For the foregoing reasons I accept the appeal, set aside the judgment and decree of the learned District Judge and in lieu thereof pass a decree in favour of Sikander Khan, Alaf Khan, Maula Dad and Nazir Khan, plaintiffs 1, 3, 4, and 5 for possession of 3|4th of the land in dispute. The suit relating to the remaining 1|4th share has abated and is dismissed. The defendants shall be entitled to take back 3|4th of the sum of Rs. 43|- which they had deposited in accordance with the order of the Collector passed in the proceedings under (Punjab) Act II of 1913. Having regard to all the circumstances, I leave the parties to bear their own costs in all Courts.

Appeal Accepted.

A.I.R. 1938. LAHORE 638.

(Addison, Ag. C. J. and Din Mohammad, J.)

PRABHU MAL defendant—Appellant.

Versus

CHANDAN, Plaintiff and another, defendants, Responden...

Letters patent Appeal No. 69 of 1938. Decided on 23rd May 1938, from decree of Abdul Rashid, J., reported in A.I.R. 1938 Lah. 512.

(a) Punjab Redemption of Mortgages Act (II of 1913), section 12—Order of dismissal as contemplated in section 12—Suit must be brought within one year 40 P.L.R. 245 A.I.R. 1938 Lah. 512, Reversed.

Under section 12 a party against whom an order of dismissal is made under any of the sections of the Act enumerated there, is bound to institute a suit to establish his rights in respect of the mortgage within one year under Article 14, Limitation Act and if he fails to do so, his right is lost for ever. 40 P.L.R. 245 A.I.R. 1938 Lah. 512, Reversed. A.I.R. 1925 Lah. 385 and A.I.R. 1934 Lah. 384 Rel. on.

(b) Punjab Redemption of Mortgages Act (2) of 1913 section 12—Disposal of petition without touching merits is contemplated by the Act.

The law contemplates the disposal of petitions under the Redemption of Mortgages Act on grounds other than those which touch the merits of the petition and it empowers the Collector to dispose of those petitions on these grounds. For a Collector therefore to dismiss an application on grounds other than merits is not to refuse jurisdiction inasmuch as this is a manner of exercising jurisdiction permitted by the Act A.I.R. 1929 Lah. 513 Dissent. (P. 640 C-1).

(c) Interpretation of Statutes—Courts should interpret plain words of Law and apply rather than enter into equity or logic of it.

Sitting as a Court of Law, Judges are concerned neither with the equitable side of the legislation nor with the logic of it. They have to interpret law in its plain sense and to apply it so interpreted to the facts of any case that arise without reference to logic or equity.

(d) Punjab Redemption of Mortgages Act (II of 1913) section 12—Orders against party under section 6 to 11: He is person aggrieved.

Any person against whom any order is made under sections 6 to 11 is a person aggrieved within the meaning of section 12 A.I.R. 1929 Lah. 513, Rel. on (1880) 14 Ch.D. 458, Ref.

Achhru Ram—for appellant.

Shamair Chand—for respondent.

Judgment.—Din Mohammad, J. This appeal has arisen in the following circumstances. Shadi mortgaged his land with possession to one Prabhu on 30th May, 1901 and the mutation relating to that transaction was sanctioned on 24th November 1903. In September 1927, Chandan, one of the legal representatives of Shadi, made an application under section 4 Redemption of Mortgages Act II of 1913. The mortgagee resisted the application principally on the ground that the mortgagor's rights had been extinguished and that he, the mortgagee, was not the complete owner of the land. The Assistant Collector while remarking that the objection made by the mortgagee appeared to him to be sound, dismissed the application on the ground that they could not enter into a discussion of a complicated matter in those summary proceedings and directed the petitioner to seek his remedy in regular Courts. No further action was taken by the representatives of the mortgagor until 6th December 1935 when the present suit for redemption was instituted. The mortgagee contended 'inter alia' that inasmuch as no suit had been instituted within one year of the order of the Assistant Collector dismissing the application under the Redemption of Mortgages Act, the suit was barred under Article 14 Limitation Act. The trial Court however did not give effect to this plea and made a decree in terms of the relief prayed for. On appeal the Senior Subordinate Judge also agreed with the trial Court. Thereupon a further appeal was presented to this Court, which came for hearing before Abdul Rashid J. He too upheld the decision of the Courts below on the question of limitation and dismissed the appeal. Hence this letters patent appeal.

Counsel for the appellant contends that under section 12 Redemption of Mortgages Act, a party against whom an order of dismissal is made under any of the sections of the Act enumerated there, is bound to institute a suit to establish his rights in respect of the mortgage within one year under Article 14 Limitation Act and if he fails to do so, his right is lost for ever. Counsel for the respondent, on the other hand, urges that section 12 contemplated such orders only as in any manner prejudicially affect the right of any party in relation to the mortgage in dispute and that those orders which do not touch the merits of the case do not come within the purview of section 12. Certain authorities have been relied upon in connection with the contentions raised on either side and before we formulate our conclusion, it will be necessary to review them at some length. In 6 Lah. 206 the predecessor in interest of the plaintiff had made an application to the Collector for the redemption of a mortgage under the Redemption of Mortgages Act and his application had been dismissed on the ground that the claim was barred by limitation. On a subsequent suit being brought by the plaintiff for redemption more than one year after the date of this order, it was contended by the mortgagee that the suit was barred by time under Article 14 Limitation Act. The contention was repelled by both the trial court and the lower Appellate Court, but was allowed by a single Judge of this Court. Thereupon a letters Patent appeal was presented, which came for hearing before Sir Shadi Lal, C.J. and LeRossignol, J. The main ground of attack being that Article 14 Limitation Act, had no reference to such orders as were passed under the Redemption of Mortgages Act. The learned Judges came to the conclusion that the real nature of the suit contemplated by the legislature in section 12 Redemption of Mortgages Act was a suit to set aside the Collector's order and that consequently if a suit was not brought within one year of that order, it was out of time.

In A.I.R. 1929 Lah. 513 Sir Shadi Lal, C. J. and Broadway, J. held that the rejection of an application by a Collector under section 9 without considering the merits of the dispute and after recording the objections raised by the defendants on the ground that the dispute cannot be settled summarily, practically amounted to denial of jurisdiction and inasmuch as in order to enable the plaintiff to succeed in his suit for redemption, it was by no means necessary to set aside that order, he was not bound to bring a suit within one year of the said order. They however remarked that a party against whom such an order was made was a party aggrieved within the meaning of section 12 of the Act. Counsel for the appellant has criticised this judgment on the ground that it places a very narrow interpretation on the wording of section 12 of the Act and that in so doing it unnecessarily curtails the scope of that section. On giving due consideration to the arguments advanced on either side and to the reasoning employed by the learned Judges responsible for that judgment, we consider with all respect that that case has not been correctly decided. Section 12 is worded as follows:—

Any party aggrieved by an order made under sections 6 7, 8, 9, 10, or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive.

The relevant portion of section 6 lays down that:—

Where the mortgagee appears and the petitioner does not appear when the petition is called on for hearing the Collector shall make an order that the petition be dismissed unless the mortgagee admits the claim.

It is obvious that an order made under section 6 if the mortgagee refuses to admit the claim of the petitioner is that of a bare dismissal without reference to the merits of the case, but still it is an effective order under section 12 and the dismissal will be conclusive if it is not set aside as contemplated by section 12. If it is once held that a party against whom an order is made is a party against whom an order is made is a party aggrieved, even though the order is not on the merits it is impossible to draw a distinction between those orders which go to the determinent of the party concerned on the merits and those that do not. The plain language of section 12 does not admit of any such distinction being drawn and it is well settled that the function of the Courts is to administer the law as they find it and not to introduce into the clear provisions of the legislature words which do not exist there. In other words, their function is to judge and not to legislate. And in these circumstances, it is difficult to follow the reasoning on which the decision in A.I.R. 1929 Lah. 513 is based. Moreover section 9 contemplates objections on grounds other than the amount of the deposit and empowers the Collector either to dismiss the petition in those circumstances or to hold a summary enquiry regarding the objection raised by the mortgagee. Section 10 lays down 'inter alia' that if an enquiry regarding any objection so raised by the mortgagee the Collector is of opinion that there is a sufficient cause for not proceeding further with the petition, he shall dismiss the petition. It will be obvious that the law contemplates the disposal of petitions under the Redemption of Mortgages Act on the grounds other than those which touch the merits of the petition and it empowers the Collector to dispose of those petitions on those grounds. For a Collector therefore to dismiss an application on grounds other than the merits is not to refuse jurisdiction inasmuch as this is a manner of exercising jurisdiction permitted by the Act and it is denial of jurisdiction which is the main ground on which A.I.R. 1929 Lah. 513 appears to have proceeded.

It may be that the interpretation which is sought to be placed by that judgment on section 12 is more reasonable or more equitable but sitting as a Court of Law we are concerned neither with the equitable side of the legislation nor with the logic of it. We have, as remarked before, to interpret it in its plain sense and to apply the law so interpreted to the facts of any case that arises without reference to logic or equity. In 15 Lah. 389 a Full Bench of this Court reaffirmed the principle enunciated in 6 Lah. 206. Both these cases were sought to be distinguished by the respondent's counsel on the ground that there a decision had been given by the Collector on the merits but, as explained above, that circumstance is immaterial. Counsel for the respondent has further contended that the construction put upon the term "aggrieved" by the letters Patent Bench in A.I.R. 1929 Lah. 513 is open to objection and has drawn our attention to a quotation from (1880) 14 Ch.D. 458 which is to the following effect.

It is said that any person aggrieved by any order of the *Court* is entitled to appeal. But the words "person aggrieved" do not realy mean a man who is disappointed *of a benefit which he might have received if some other* order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something.

This my be so but it cannot be urged that in the dismissal of the petition in the present case the plaintiff did not suffer a legal grievance or that the Assistant Collector did not wrongfully refuse to adjudicate upon the merits of the petition or wrongfully deprive the petitioner of the chance of obtaining the redemption of the land in summary proceedings. Even on this authority, therefore, we consider in respectful agreement with the learned Judges who decided A.I.R. 1929 Lah. 513 that any person against whom any order is made under sections 6 to 11 Redemption of Mortgages Act is a person aggrieved within the *meaning of section* 12. We may with advantage quote here the pertinent observations made by LeRessignol, J. in 6 Lah. 206 at P. 216.

It has also been objected that this interpretation operates to reduce the normal period of limitation, but when a dispute has been established we do not think that that in itself is an unfortunate circumstances. However that may be, an individual who takes advantage of a summary procedure must suffer its disadvantages as well as enjoy its benefits.

We are consequently of opinion that having failed to bring a suit within one year of the order of the Assistant Collector dated 26th September 1928, the petitioner lost his right to bring a regular suit under Article 14 Limitation Act and that his suit instituted in 1935 was hopelessly time barred. On these grounds we allow this appeal, set aside the order of the learned Judge of this Court as well as the orders of the Courts below and dismiss the suit. In the peculiar circumstances of the case, however, we leave the parties to bear their own costs throughout.

Appeal allowed.

The
Usurious Loans Act,
1918.

Table of Contents

The Usurious Loans Act, 1918

(ACT No. X OF 1918).

(As amended by Act XXVIII of 1926 and Punjab Act No. VII of 1934).

(AN ACT TO GIVE ADDITIONAL POWERS TO COURTS TO DEAL IN CERTAIN CASES WITH USURIOUS LOANS OF MONEY OR IN KIND:).

Whereas it is expedient to give additional powers to Courts to deal in certain cases with Usurious Loans of money or in kind; It is hereby enacted as follows:—

1. (1) This Act may be called the Usurious Loans Act 1918. **Short title and extent.**

(2) It extends to the whole of British India, including British Baluchistan.

(3) The local Government may, by notification in the local official gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Object of the Act.—The object of the Act was to invest courts with additional powers to give relief to debtors in certain cases of Usurious Loans of money or in kind. Prior to the enforcement of this Act, courts had power under section 19-A of the Indian Contract Act to set aside, absolutely or on certain terms and conditions, contracts brought into existence by the exercise of "undue influence" it has worked incalculable harm to him, and through him to the country as a whole. Courts have been empowered by this Act to re-open transactions and take accounts between parties when there are reasons to believe:—

(a) that the interest charged is excessive; or

(b) that the transaction between the parties thereto is substantially unfair.

Scope of the Act.—Under the Act, as originally enacted, Courts were empowered to re-open a transaction provided it was substantially unfair between the parties, and the rate of interest charged was excessive. It was found, in practice, that the fulfilment of these two conditions was difficult. The Punjab Relief of Indebtedness Act, 1934, amended the provisions of section 3 of the Act and made it applicable to transactions in either of the two cases, i.e., when the interest is excessive or when the transaction is otherwise substantially unfair.

The Act does not apply to a suit in respect of a loan or agreement made or security taken, before its enactment, as it is not retrospective in its operation.[1] The Court is bound to take up the question of its applicability 'suo-motu' in case any one of the conditions set out in section 3 of the Act is present.[2] Even in cases heard ex-parte the court should apply the provisions of the Act.[3] In fact even when a debtor confesses judgment there would be nothing wrong for the court to apply the provisions of the Act and allow relief to him in case the provisions be otherwise applicable.[4] The Act places upon Courts a special responsibility to apply its provisions in order to afford relief to debtors in suitable cases. Courts should be slow in placing restricted construction upon a remedial Act of the type of the Usurious Loans Act.[5]

Applicability.—This Act extends to the whole of British India, but its operation may be restricted partially by any Pro-

1. 94 I.C. 382.
2. A.I.R. 1925 Calcutta; 82 I.C. 830.
3. A.I.R. 1930 Calcutta 876.
4. A.I.R. 1924 Rangoon 144 = I.L.R. 1 Rangoon 580 = 77 I.C. 382.
5. A.I.R. 1928 Oudh 396: 115 I.C. 841.

vincial Government by notification in the Provincial Gazette. Under sub-section (3) the Provincial Government may, by notification in the Official Gazette, direct that the Act shall not apply to any specified area, class of persons or class of transactions.

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

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

The definition of interest as given in this Act has also been embodied in section 2 of the Punjab Relief of Indebtedness Act, 1934, and in section 2 of the Punjab Regulation of Accounts Act, 1930. This definition can be divided into two parts. It means

(i) rate of interest; and

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

The definition does not only give the popular conception of interest but it also explains that any thing delivered to the creditor over and above what was actually lent, in whatever shape or form, is to be treated as interest. The second part of the definition contains the gist of the term as it gives its popular conception. It denotes that the return made by the borrower to the lender over and above what was actually lent is to be treated as interest. The concluding portion of the definition makes it clear that any excess of what is actually lent is "interest," even though it is not described as such. Thus services rendered by a borrower to his creditor are also to be considered as "interest." Each case is to be determined on its merits but it appears that any return in whatever shape or form made by the borrower or any member of his family to the lender in consequence of the loan, over and above what was lent, is to be treated as interest.

> (2) "Loan means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

"Loan" as defined in the Act means not only a loan of money but also a loan in kind. The expression "loan" has been defined in the Punjab Regulation of Accounts Act, 1930, "as an advance whether of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan, but it shall not include:—

(a) A deposit of money or other property in a Government post office, Bank or any other Bank or Company or with a Co-operative society;
(b) A loan to or by or deposit with any society or association registered under the Societies Registration Act, 1890, or under any other enactment;
(c) A loan advanced by Government or by any other local body authorized by the Government;
(d) A loan advanced by a Bank, a Co-operative Society, or a Company whose accounts are subject to audit by a certified auditor under the Companies Act;
(e) A loan advanced to a trader;
(f) An advance made on the basis of a Negotiable Instrument as defined in the Negotiable Instrument Act, 1881, other than a promissory note;
(g) A transaction which is, in substance, a mortgage or a sale of immovable property."

The definition as given in the Punjab Regulation of Accounts Act, is more scientific though of a restricted nature. It will be seen that Courts are also empowered to determine whether a certain transaction, which outwardly appears not to be a loan, can be considered a loan. The form of the transaction is not the determining factor. If the transaction has all the features of a loan it is to be treated as such. The Court has power and in fact is saddled with the responsibility to examine the transaction as a whole and even go behind the form in which it is couched in order to ascertain whether it is or not, in substance, a loan. The *intention of* the parties and the practical effect of what *they have stipulated* should enable the court to determine the true nature of each transaction.

(3) "Suit to which this Act applies" means any suit,

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken, on any agreement, whether by way of settlement of account or otherwise, made after the commencement of this Act in respect of any loan made either before or after the commencement of this Act; or

(c) for the redemption of any security given after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act.[6]

Legislative Changes.—Clause (c) of this section was added by the Usurious Loans (Amendment) Act 1926. (Act No. 28 of 1926.) This Act applies to any suit for the recovery of a loan made after its commencement. It also applies to a suit for the enforcement of any security taken, or any agreement made, after its commencement irrespective of the loan, having been made before such date. By the amending Act of 1926, another clause (c) was added, by virtue of which, any suit for redemption of any security given after the commencement of this Act in respect of any

6. Clause added by Act No. XXVIII of 1926.

loan made either before or after the commencement of this Act would also now be covered by this Act.

Case Law. Applicability: Suits on Negotiable Instruments.—The Usurious Loans Act is applicable to all suits for the recovery of loans advanced after its commencement. Section 2 (3) is quite general and includes not only suits based on bonds but also those based on negotiable instruments.[7]

If the creditor wishes to bind a third person and recover from him a sum of money said to be due on a transaction entered into between himself and his debtor the Usurious Loans Act would be applicable irrespective of the fact whether that third person is liable as a principal debtor or as a surety. Section 2 (3) (b) is wide enough to cover the case of surety also, and the Act makes no distinction on this account.[8]

Reopening of transactions.

3. (1) Notwithstanding any thing in the Usury Laws Repeal Act, 1855, where in any suit to which this Act applies, whether heard ex-parte or otherwise, the court has reason to believe—

(a) that the interest is excessive; or[9]

(b) that the transaction was, as between the parties thereto, substantially unfair, the court shall[10] exercise all or any of the following powers, namely, shall—

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

---

7. 52 All. 776, 136 I.C. 78, I.R. 1932 All. 126 (1), 1931 A.L.J. 645, A.I.R. 1931 All. 662.

8. Baij Nath versus the Estate of K. C. Dennet. 88 I.C. 78, 47 All. 745, 23 A.L.J. 438, 6 L.R.A. Civ. 391, A.I.R. 1925 All. 400.

9. Substituted for the word "and" by the Punjab Relief of Indebtedness Act of 1934.

10. Substituted for the word "may" by the Punjab Relief of Indebtedness Act VII of 1934.

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if any thing has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the Court shall not—

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than **twelve years**[10-a] from the date of the transaction;

(ii) do any thing which affects any decree of a court.

Explanation.—In the case of a suit brought on a series of transactions the expression "the transaction" means, for the purpose of proviso (i) the first of such transactions.

10.-a The word "twelve" was substituted for the word "six" by Act No. 28 of 1926. (The Usurious Loans Amendment Act).

as derogating from the existing powers or jurisdiction of any court.

Legislative Changes.—This section was substantially amended first by section 3 of the Usurious Loans (Amendment) Act XXVIII of 1926, and then by section 5 of the Punjab Relief of Indebtedness Act VII of 1934. The former effected two changes as under:—

(i) The word "six" in clause (i) of the proviso to sub-section (1) was substituted by the word "twelve."

(ii) The phrase "or for the redemption of any such security" was added at the end of section (3).

The Punjab Relief of Indebtedness Act effected the following changes:—

(i) The word "and" connecting clauses (a) and (b) of sub-section (i) was replaced by the word "or".

(ii) The word "may" in clause (b) of sub-section (i) was replaced by the word "shall".

(iii) A new clause (e) of sub-section (2) was added.

These amendments are of far-reaching consequences as the following will show:—

(i) Before the substitution of the word "or" for the word "and," the provisions of the Usurious Loans Act were not applicable unless two conditions were fulfilled that is,

(a) *the rate of interest was excessive;* and
(b) the *transaction* was *as* between the parties thereto substantially unfair.

On account of the substitution of the word 'or' for the word 'and' the provisions of the Usurious Loans Act can *now* be brought *into* operation *if* either of the two conditions is fulfilled. In other words the Act applies in cases where the rate of interest is excessive or where the transaction is found to be substantially unfair.

(ii) Prior to the replacement of the word 'may' by the word 'shall' it was discretionary with courts to exercise the powers given to them under this Act, but now it has become obligatory for them to apply its provisions in case the rate of interest is excessive or the transaction is, as between the parties thereto, found to be substantially unfair. It is thus mandatory for courts to exercise the powers vested in them under section 3 of the Usurious Loans Act if either of the two elements as set out above are present in any case.

(iii) Prior to the addition of sub-clause (e) to sub-section (2) courts had unfettered powers to award interest how high so ever the rate might have been. The addition of this new clause has curtailed the powers of courts by providing that unless the loan has been advanced by the Imperial Bank of India, or any Banking company, registered under the Indian Companies Act, 1930, or any law relating to Companies for the time being in force in British India, interest is to be deemed to be excessive, "if on secured loans it exceeds twelve per centum per annum simple interest, or nine per centum per annum compound interest with annual rests, and if on unsecured loans it exceeds eighteen and three quarters per centum per annum simple interest or fourteen per centum per annum compound interest with annual rests."

Scope of the Section.—The provisions of section 3 can be applied if the court has reason to believe that the interest charged or stipulated is excessive or that the transaction when entered into was substantially unfair. The court has power to go into this question 'suo-motu', and in suits heard ex-parte it is the duty of the court to take it up of its own motion if there are good grounds for doing so.

"Excessive."—The amendment of this section has laid down the maximum of simple and compound interest that can be chargeable on a loan, but even if these limits are not reached, courts have discretion to determine whether under the terms of a particular contract the rate of interest stipulated is excessive or not. In determining whether the stipulated rate of interest is excessive or not, the court should take into account such matters as the financial condition of the debtor, the nature of the security, the risk incurred by the creditor, the period of rests and the total advantage that may be reasonably expected to accrue to the respective parties from the transaction. In each case the court has to take all surrounding circumstances and local conditions into consideration in order to come to the conclusion whether the rate of interest is excessive or not.

Before the amendment courts had power to grant any interest if they came to the conclusion that the rate was not excessive, or that the transaction between the parties was not substantially unfair. The addition of this clause has prescribed the maximum rate of interest that can be allowed. In cases of secured loans the rate of interest is to be deemed excessive if it exceeds twelve per cent per annum simple interest or nine per cent per annum compound interest. In case of unsecured loans simple interest at rates above eighteen and three quarters per cent per annum and compound interest exceeding fourteen per cent per annum is to be considered excessive, but in the case of banks and companies these limits of maximum interest cannot be enforced. In the words of Lord James, in the case of Samuel versus Newbold[12] the word "excessive" is a relative and elastic term impossible of absolute definition. What amounts to excessive interest is to be determined by the tribunal in which the question of risk deserves material consideration.

"Substantially Unfair."—It means something more than harsh and unconscionable. The rate of interest charged *may in itself* be a *sufficient* ground to hold the transaction to be substantially unfair. In considering whether the transaction was substantially unfair the court has to take into account all circumstances materially affecting the relations of the parties at the time of the loan, or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known and must be taken to have

12. 1906 A.C. 461.

been known to the creditor. The following points may ordinarily be considered in order to determine whether any transaction is substantially unfair or not:—

(a) Nature of dealings;

(b) Period of accounts;

(c) Prevailing rate of interest;

(d) Security offered;

(e) Risk involved;

(f) Local conditions; and

(g) All other circumstances materially affecting the relations of the parties, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known and must be taken to have been known to the creditor.

It may be pointed out that a bargain which is fair in its inception cannot become unfair by any subsequent event, nor can interest which was reasonable in the beginning be deemed to be excessive at a later date. The court should determine this question in the light of the circumstances prevailing at the date of the loan.

Procedure.—When a court has reason to believe that the rate of interest is excessive, or that the transaction was substantially unfair between the parties, it has to exercise any of the powers mentioned below:—

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

(ii) Notwithstanding any agreement purporting to close previous dealings and to create a new obligation, re-open any account already taken between the parties, and relieve the debtor of all liability in respect of any excessive interest, and if any thing has been paid, or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereto.

(iii) The court should set aside either in its entirety or in part, or revise or alter any security given or agreement made in respect of any liability, and if the creditor has parted with the security, order him to indemnify the debtor in such a manner and to such extent as it may deem just.

But the court is not to *re-open any agreement purporting* to close previous dealings and to create a new obligation which has been entered into by the parties or any person from whom they claim at a date more than twelve years from the date of the transaction, nor is it to do any thing which affects a decree of any court. Under this section the court has been vested with powers to re-open any transaction and to take an account between the parties thereto in order to afford relief to the debtor so far as his liability in respect of any excessive interest is concerned. Even if the parties have closed their dealings the court can exercise this power. The court has been given vast powers to set aside, either wholly or in part, or revise or alter any security given, or an agreement made in respect of any loan if it has reason to believe that the rate of interest is excessive or the transaction was substantially unfair. The court can re-open a transaction subject to the following limitations:—

1. If the previous transaction is entirely independent of and totally disassociated from the one in suit it cannot be re-opened at all.

2. Where the transaction in suit arises out of or is connected with some previous transaction, the latter cannot be re-opened if it is separated from the one in suit by an interval of twelve years.

3. The court has not been given power to re-open a transaction which has been adjudicated upon in a suit between the same parties and in which a decree has been passed.

Justification for the Change in Law.—As is too well known to require re-iteration nature has not been uniform in the distribution of gifts in its power. We find in every walk of life serious disparity among the talents of different persons. While some are physically stronger than the rest, there are others who have been given the benefit of better brains. But for obvious reasons society, if it aims at peace and tranquillity among its different sections, cannot allow free play to these different talents. It has thus on the one hand tried, through its penal laws, to give protection to the physically weak section against the improper use of their superior physique by the more sturdy members, and no one has ever questioned the legality or wisdom of the assault and battery laws of crime, on the other hand it has from time to time made efforts to remove such of the handicaps as the less brainy section of the public suffer from. Certain provisions were made in the Indian Contract Act to achieve the latter object. Experience, however, proved that these provisions were inadequate, and the Indian legislature had to forge a new law in the form of the Usurious Loans Act. The working of this Act also failed to achieve the object to the extent it was desired, with the result that so far as the Punjab is concerned the local legislature felt constrained to effect certain amendments as set out above. There is no denying the fact that illiteracy and the consequent lack of foresight are the chief stumbling blocks in the way of debtors. For instance it shall ever remain a sad commentary on the inability of the debtors to make a full or even proper use of the provisions made for their benefit under section 3 (i) (ii) of the Act. Can it be imagined that ever since the promulgation of this law these provisions could legitimately not be enforced in favour of the debtor even in one single case? We are sure that these provisions could justly be applied in quite a large number of cases, but that the ignorance of the debtors and their lack of resourcefulness have been responsible for rendering these practically a dead letter.

How is the Law to be Worked.—It will be expedient to incorporate here an extract from the High Court Rules and Orders' Volume I, Chapter 11-F.

"6. The plea is often raised that the interest claimed is 'penal.' Courts should be careful to distinguish between high or excessive interest and 'penal interest.' The mere fact that the rate of interest is high or that compound interest is charged, is, by itself, no justification under the Indian Contracts Act for its reduction, unless some other ground such as coercion, undue influence, etc., is established (see 101 and 124 P.R. 1918 P.C.). There is no definition of 'penalty' given in the Indian Contract Act but its nature is indicated in section 74 of that Act. It would appear from that section that if a sum is named in a contract as the amount to be paid in the event of a breach of the contract, or where there is any other stipulation in the contract making a person liable for an extra sum (e.g., in the shape of interest), for which he would not have been otherwise liable, the stipulation is to be considered penal. According to section 74 of the Indian Contract Act, in such cases, the person entitled to claim advantage of the penal clause can only recover such reasonable compensation not exceeding the penalty as the court may think fit to award, and cannot legally enforce the payment of the 'penalty' as such.

7. The question whether a particular stipulation is or is not 'penal' is to be determined by the court on the facts of each case. It has been held generally, that a stipulation which imposes a higher rate of interest, in the event of a breach of the contract with retrospective effect from the date of contract is 'penal' (C.F. 99. P.R. 1894).

8. The Usurious Loans Act, 1918, gives wider powers to courts to interfere on equitable grounds in order to do justice between the parties, when it is found that interest is excessive, or that the transaction was, as between the parties thereto, subsequently unfair (vide section 3 of the Act). In such cases the Act empowers the court to re-open past transactions and relieve the debtor from liability in respect of excessive interest, etc. Attention is invited in this connection to I.L.R.-VIII Lahore 205. The provisions of the Act should be carefully studied and used in proper cases coming within its powers.

9. The changes made in the provisions of this Act by section 5 of the Punjab Relief of Indebtedness Act, VII of 1934, deserve attention.

(i) The existence of two conditions were formerly essential before the provisions of the Usurious Loans Act could apply. It was necessary that both—

(a) the rate of interest be excessive, and

(b) the transaction be substantially unfair as between the parties.

The word "and" has now been changed by "or" and the court can give relief even if one of these conditions only is fulfilled.

(ii) The courts, according to the wording of the Usurious Act, "may" exercise all or any of the powers specified in that Act.. This word "may" has now become "shall" and it is obligatory for the court to exercise these powers for giving relief in fit cases.

(iii) The Punjab Act has also now prescribed a *maximum rate of interest beyond which "the* Court *shall* deem interest to be excessive."

The maximum limit is—

(a) For secured loans—

(i) 12 per cent per annum simple interest, or

(ii) 9 per cent per annum compound interest with annual rests.

(b) For unsecured loans—

(i) Eighteen and three quarters per cent per annum simple interest.

(ii) Fourteen per cent per annum compound interest with annual rests."

CASE LAW

"Has reason to believe."—The words "has reason to believe" mean something more than mere suspicion.[13]

"Heard ex-parte or otherwise."—The phrases "whether heard ex-parte or otherwise" and the "court has reason to believe", indicate that the intention of the legislature was to enable courts to take up certain questions whether these have been raised by the party concerned or not. It is incumbent on the court even in ex-parte cases to apply its mind to the question of the applicability of the Act.[14]

[N.B.—In this connection also please see 115 I.C. 841, 5, O.W.N. 780, 4 Luck. 1., 82 I.C. 830, A.I.R. 1925 Cal. 392, I Rang. 580, 77 I.C. 382, A.I.R. 1924 Rang. 144, referred to under section 1.]

"Excessive Interest."—In deciding whether the rate of interest charged is excessive or whether the transaction between the parties thereto is otherwise substantially unfair the court must have regard to the prevailing rate of interest on similar transactions in the locality where the transaction in question took place, the security offered to the creditor, the nature of the dealings between the parties and the period during which the accounts have remained outstanding.[15]

Caluses (a), (b) and (c) of sub-section (2) indicate with sufficient particularity the inquiries to be made in order to find out in any given case whether the rate of interest stipulated was excessive or not. The points to be noted are to be determined by taking into account such matters as the financial condition of the debtor, the nature of the security, etc., the risk incurred by the creditor, the extra amounts not paid but added to the principal as expenses, etc., the periods of rests, and lastly the total advantages that the transaction may reasonably have been expected to secure to the parties.[16]

Sub-section 2 of section 3 provides that the factors to be taken into consideration in determining whether the rate

13. Per Mukerji, J. in I.R. 1931 Calcutta 776.

14. I.R. 1931 Cal. 382, 130 I.C. 254, 52 C.L.J. 73, A.I.R. 1930 Cal. 776.

15. 103 I. C. 531, A.I.R. 1927 Lahore. 621.

16. 52 C.L.J. 73, A.I.R. 1930 Cal. 776.

is "excessive," are, the risk incurred by the creditor in lending to the borrower at the date of the loan, and the total advantage which the transaction may reasonably be expected to have yielded to him. In considering the risk the court should take into account the value thereof, the financial condition of the debtor and the result of any previous dealings between the parties. Keeping these considerations in view, the court has to determine, in each case, whether under the circumstances the rate fixed was so high as to bring the case within the ambit of the Act. No hard and fast rule governing such cases can be laid down. A rate which may be reasonable in one case, may be excessive, unconscionable and exorbitant in another. In the case of loans secured against property, which can be converted into money without much difficulty, the risk may be a matter of more or less accurate calculation on the basis of the value of the property encumbered. But this cannot be said of unsecured loans.[17]

A court while using freely the provisions of the Act to relieve cases of genuine hardship, should at the same time refrain from interfering where the rate of interest charged is justified by the economic conditions of the area in which the transaction took place, the character of the borrower, and the nature of the security. It would be positively unjustifiable to attempt to lay down any thing like a general rate of interest as prevailing in the various parts of a province. In each case the court should apply its mind carefully to local conditions; with the object, on the one side, of protecting debtors from unfair and unconscionable terms, and on the other side, affording protection to creditors against unnecessary interference in a proper enforcement of obligations into which their debtors had entered, as such an interference would be against the reasonable interests of those who are engaged in *money-lending business.*[18]

Unless a court finds that the rate of interest stipulated in the contract, was excessive or that the transaction was

17. 28 I.L.R. 10 (1911), (1906) I.K.B. 76 Appr. Samuel vs. New Bold, A.C. 461 Ref. Din Mohd. versus Badri Nath, 120 I.C. 417.

18. 98 I.C. 789, O.W.N. Sup. 222, A.I.R. 1927 Oudh 36.

substantially unfair, it is bound to award to a mortgagee interest at the contractual-rate during the period the suit has been pending and up to the date fixed for payment.[19]

Where the plaintiff fails to prove that 24 per cent per annum with yearly rests was the market rate of interest on the date of the transaction in suit, it was held that the market rate of 12 per cent per annum with yearly rests should be awarded.[20]

Where the rate of interest is high, the Court may proceed to give relief under section 3 (1) Clauses (a) and (b) read with the explanation to the proviso in clause (d), which provides that interest may, by itself, be sufficient evidence that the transaction was substantially unfair.[1]

Where there is absolutely no evidence that the creditor expected to run any unusual risk in advancing money on the security of the property which the debtor was willing to hypothecate and did hypothecate, and the security is ample, the rate of interest should be reduced if it is in excess of that which is deemed reasonable by the court.[2]

Even if it is proved that it is customary in the locality to charge interest at 75 per cent per annum in the first instance and 150 per cent per annum in case of default, the rate of interest can be held to be excessive and court, has under section 3 (1), power to re-open a transaction and order repayment in respect of excessive interest and no specific claim for such a relief is necessary.[3]

It is a common thing in India to charge interest upon secured loans at the rate of one per cent per month, and no rate of interest can be specified as being reasonable or fair in all cases. The burden is on the defendants in each case to show that the rate of interest charged is excessive. Rate of interest between twelve per cent and fifteen per cent alone,

19. 85 I.C. 218, 29 C.W.N. 118, A.I.R. 1925 Cal. 268.
20. 78 I.C. 588, 3 Patna 465. A.I.R. 1924 Patna 580.
1. 107 I.C. 742.
2. 118 I.C. 375, 1929, A.L.J. 1174, A.I.R. 1930 All. 76.
3. 121 I.C. 60, A.I.R. 1929 Nagpur 348.

does not indicate that it is excessive unless accompanied by other circumstances making the transaction unfair.[4]

Where a contract of loan appears to be unconscionable, the court has the power to refuse to enforce it in its entirety, and may re-open the transaction and direct the payment of such sum of money as may be due with a reasonable rate of interest. It is neither possible nor desirable to enunciate a fixed rule as to what is a reasonable rate of interest, but interest at twelve per cent per annum cannot be called excessive, so as to attract the equitable jurisdiction of the court. A covenant to pay interest at twelve per cent up to the end of the year, and in the event of default to pay compound interest is, however, often embodied in transactions of loans and cannot be regarded as either unusual or unreasonable so as to attract the provisions of section 3.[5]

A stipulation by an illiterate mortgagor to pay compound interest at the rate of 2 per cent per annum with monthly rests is unusual, hard and unconscionable.[6]

The court has no jurisdiction to reduce the rate of interest as set forth in a decree of a court.[7]

Where a mortgage executed in 1923 was sought to be redeemed after the Usurious Loans Amendment Act 1926 took effect, held that it was open to the court to reduce the rate of interest payable to the mortgagee.[8]

When the rate of interest is not excessive and the transaction is not substantially unfair, the mere fact that interest is capitalized once in three years, and that as a result of the accounts lasting for about 30 years the amount of Rs. 23|- originally advanced, has swelled to Rs. 5,250|- is no ground

4. 119 I.C. 410, 10 P.L.T. 430, A.I.R. 1929 Patna 383.

5. 23 C.W.N. 233 (P.C.), 99 I.C. 822, 8 Lahore 205, 28 P.L.R. 483 (A.I.R. 1927 Lahore 158.

6. 74 I.C. 784, A.I.R. 1925 All. 31.

7. 163 I.C. 537, 9 R.A. 34, 1936 A.W.R. 478, 1936 R.D. 217, 1936 A.L.J. 510, A.I.R. 1936.

8. 35 C.W.N. 654, 135 I.C. 800, I.R. 1932 Cal. 160, A.I.R. 1932 Cal. 83 (1).

for disallowing the claim, though the case would be a hard one. The Usurious Loans Act does not apply to such a transaction and the court cannot re-open the account.[9]

Section 3 confers ample jurisdiction upon a court to go behind the terms of a contract, when it has reason to believe that the interest charged is excessive, or that the transaction was as between the parties thereto substantially unfair. The mere fact that the principal sum claimed enormously exceeds he amount originally advanced is no ground for holding the transaction to be unconscionable. However, a clause providing for simple interest in the first instance and compound interest on the entire sum advanced in the event of the debtor's failing to deliver about one fourth of the mortgaged property, appears, on the face of it, an unconscionable stipulation.[10]

Section 3 (2) (a)—Reasonable rate of interest duty of court to decide.—The provisions of sub-clause (a), Clause (2) section 3 of the Usurious Loans Act, 1918 impose upon the court the duty of coming to a conclusion as to what will be a reasonable rate of interest, having regard to the risk incurred.[11]

Interest at 25 per cent per annum compound with yearly rests is by itself not excessive, and would not under clause (d), of sub-section (2), justify a conclusion that the transaction was substantially unfair. Further the fact that the amount consisted of arrears of rent and selami, if those items were justly due, and the fact that the debtor was a tenant of the creditor, are hardly sufficient to form the basis of a reasonable belief that the transaction was substantially unfair.[12]

The mere fact that the parties are lenders and that the interest is two per cent per annum simple, and in default

9. 7 L.R. 281, 152 A.I.R. 1935 Lah. 38.

10. 13 Lah. 542, I.R. 1932 Lah. 236, 33 P.L.R. 172, 136 I.C. 556, A.I.R. 1932 Lah. 236, 33 P.L.R. 172, 136 I.C. 556, A.I.R. 1932 Lah. 252.

11. 157 I.C. 232, 8 R.M. 118, 1935, M.W.N. 408.

12. A.I.R. 1931 Cal. 382, 130 I.C. 254. 52 C.L.J. 73, A.I.R. 1930 Cal. 776.

three per cent does not bring the case within the explanation to section 3 (2) (d). "Excessive" is a relative term and what is "excessive" in one case, will not necessarily be so in another. The decision of this question depends upon surrounding circumstances. Courts, however, cannot assume their existence, and these must like other facts, be found on proper evidence.[13]

"Unfair transactions."—In deciding whether a transaction was substantially unfair or not the court should take into account all the circumstances materially affecting the relations of the parties at the time of the loan. Interest may of itself be sufficient evidence of the transaction being unfair. It is open to the creditor to show that the high rate of interest was justified in view of the risk to which he was exposed, and that the transaction was a fair one. But in the absence of such proof the inference in case of high rate of interest would be that the transaction was substantially unfair.[14]

The term "substantially unfair" relieves a court of the necessity of going into elaborate and often very intricate questions which arise under sections 16 and 19-A of the Contract Act.[15]

The transferee of the debtor is a debtor within the meaning of section 3 (b) (i). A court can, therefore, relieve the transferee just like the original debtor. It is, however, a matter for the court to decide whether it should relieve such a transferee. The decision will depend upon the circumstances of each particular case. If the court is of opinion that the transferee has accepted liability with his eyes open or that he is a pure speculator the court while having the power to relieve him, may refuse to do so.[16]

What would constitute an unfair transaction.—For a transaction to be regarded as unfair within the meaning of

13. A.I.R. 1930 Cal. 207, A.I.R. 1928 (P.C.) 249, A.I.R. 1928 Oudh 396, (F.B.), A.I.R. 1893 Nagpur 210, 144 I.C. 218, A.I.R. 1933 Nagpur 224.

14. 118 I.C. 375, 1929 A.L.J. 1174, A.I.R. 1930 All. 76.

15. 52 C.L.J. 73, A.I.R. 1930 Cal. 776.

16. 115 I.C. 841, 5 O.W.N. 780, 4 Luck. 1, A.I.R. 1928 Oudh 396.

sub-section (d), clause (2) of section 3, Usurious Loans Act, it is not necessary that the court should be able to ascribe some moral blame-worthiness to the creditor in the sense that he has tricked the debtor into entering into that bargain, though the terms of sub-clause (d) show that taking undue advantage of the position of the debtor is one category of cases falling under that clause. But it is also open to the court to come to the conclusion that the transaction was substantially unfair by taking into account the circumstances materially affecting the parties at the time of the loan. On a consideration of the facts of the case, showing that the debtor was hardly competent to come to a proper conclusion as to the prudence or otherwise of borrowing on the terms agreed upon, merely for the purpose of effecting improvements in his village; that the terms of the mortgage provided that up to the date of payment, the debt should carry compound interest at 18 per cent per annum with six monthly rests, and that the ends of justice could be met by allowing compound interest at 18 per cent per annum with annual rests, it was held that it was a fit case for interference.[17]

It is possible that a suit for the enforcement of an agreement whether by way of settlement of accounts or otherwise made in respect of a loan, might include a suit brought by a debtor, but section 3 should not be applied to such a case as it would always be possible for a debtor to set up an agreement in his favour contrary to the terms of the contract to support a contention that the court was then entitled to re-open the transaction and exercise the powers given to it under section 3.[18]

Where a suit is not based on any series of transactions but only on one transaction, the explanation to the proviso does not apply.[19]

---

17. 157 I.C. 232 8 R.M. 118, 1935 M.W.N. 408, A.I.R. 1935 Madras 468.

18. 92 I.C. 368, 50 Bombay 107, 27 Bombay L.R. 1462, A.I.R. 1926 Bombay 65.

19. 103 I.C. 531, A.I.R. Lahore 621.

Transferee of a creditor is a creditor within the meaning of section 3, clause (i).[20]

From the mere fact that the mortgagor who being already indebted and was in urgent need of money had raised a loan under a mortgage, it cannot be inferred that the mortgagee was in a position to dominate his will, and interest at Rs. 2|8|- per cent per mensem compoundable quarterly, was held not unconscionable.[1]

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

An insolvency court has also power to re-open a transaction, the difference between ordinary civil suits and insolvency proceedings being that in the case of the former it has been made mandatory on the court to exercise the powers mentioned in section 3 of this Act, but in the case of the latter it is still discretionary with the court to do so or not. It appears that an amendment of this section is called for so as to bring it in harmony with the provisions of section 3.

---

20. 115 I.C. 841, 5 O.W.N. 780, 4 Luck. 1, A.I.R. 1928 Oudh 396.

1. 118 I.C. 663,=1929 A.L.J. 1091.=A.I.R. 1929 All. 680.

Selected Judgments

A. I. R. 1924, RANGOON 144.

Civil Reference No. 5 of 1923.

Present:—Sir Sydney Robinson, Kt., Chief Justice, and Mr. Justice May Oung.

Judgment.—This is a reference under O. XLVI, R. 1 of the Code of Civil Procedure. The question referred is "can a Court apply the Usurious Loans Act for the benefit of a defendant who confesses judgment?"

Plaintiffs brought a suit on a promissory note against three defendants. One failed to appear, another denied execution, and the third admitted the claim and confessed judgment. It was held by the original Court that the case was one to which the provisions of the Usurious Loans Act of 1918 should be applied. The reference is made because it is thought that under O. XII, R. 6 of the Code, had the plaintiff applied for immediate judgment, the Court would have had to pass immediate judgment. There was nothing on the record at that stage to suggest that the interest charged was exorbitant. As to O. XII, R. 6, it is to be noted that the rule is merely premissive; further upon such an application the Court may make such order or give such judgment as the Court may think just. The court is not, therefore, bound to pass an immediate judgment, but in any case in the present instance no such application was made, and when the Court came to pass Judgment the facts were fully before it. It can then pass such judgment as it thinks just: The whole of the terms of the Usurious Loans Act are extremely wide, and they apply to any suit whether heard ex-parte or otherwise. If the judgment in the case of the defendant who did not appear, and in the case of the defendant who denied execution, is not to be for the full amount claimed by reason of the provisions of the Usurious Loans Act, it will clearly be unjust to pass a decree in favour of an honest defendant who truthfully admitted the claim for a very much larger amount. We are able to find nothing in the Act or in the Code of Civil Procedure, which could prevent the Court from taking the Act into consideration in favour of the defendant who confessed judgment, and the answer to the point referred is in the affirmative.

Order in affirmative.

A.R.I. 1925 CALCUTTA 392.

Mukerji, J.

NANA MIA—Defendant|Petitioner.

Versus

MANU MIA—Plaintiff=Opposite party.

Civil Rule No. 30 of 1924, decided on 22nd May, 1924, against an order of the Sub-Judge, Naokhali, in Small Cause Court suit No. 382 of 1923.

Judgment.—Plaintiff sued upon a khata for recovery of Rs. 294|- made up of principal Rs. 100 and interest at the rate of 6¼ per cent, per mensem. Defendant repudiated the execution of the khata entry and denied the loan.

The entry in the khata shows a stipulation to pay interest at 6¼ per cent, without mentioning whether it was per mensm or per annum. Defendant in several places in his written statement adverted to the plaintiff's allegation in the plaint of the stipulated rate of interest being per month but did not controvert it specifically or plead its excessive or unconscionable character, beyond denying the transaction in toto, Paragraph 5 of the written statement, however, when translated runs thus: The stipulation mentioned in the plaint is illegal and no claim for interest is sustainable on the basis of the same. It is exceedingly improbable and unnatural to borrow money at the rate of 6¼ per cent, per mensem for the purposes of business, and if such a transaction ever took place it is humanly improbable that the debt should have been left unpaid or unrealised for such a long time. Besides interest at the rate claimed is penal an unconscionable. Whether by this statement the defendant invited the Court to adjudicate on the question as to the character of the interest or he merely pleaded it showing the improbability of the transaction is not very clear. From the Summons book all that appears, is that only one witness for the plaintiff stated and that in cross-examination that the rate of interest stipulated was 6¼ per cent per mensem.

The Court has disbelieved the defence and decreed the plaintiff's suit in full.

Defendant complains that he had seven witnesses in attendance, and that he had tendered seven witnesses to prove his case including the unreasonableness and penal nature of the interest claimed, but the learned Judge closed the case upon examination of only three witnesses on the petitioner's side. I quote this from the affidavit filed in support of the petition of motion.

To this allegation there is no reply on the other side. The statement, however, is not quite clear, whether the examination of the remaining witnesses was in fact refused by the Court or whether it was given up in consequence of some discussion that may have transpired the insinuation before there was a refusal.

At one stage in the hearing of this Rule, I was inclined to take the view that upon the denial of the whole transaction by the defendant and upon the fact that no real attempt was made to prove that if the transaction did at all take place, the rate of interest was otherwise than what was claimed and upon the vagueness of the statement referred to above, the Rule should be discharged on a further consideration I have come to the opinion, that it would not be right to do so.

The Usurious Loans Act, 1918, applies to the transaction Section 3 (1) of that Act provides that notwithstanding anything in the Usuary Law Repeal Act, 1855, where in any suit to which the Act applies, whether heard ex-parte or otherwise the Court has reason to believe that the interest is excessive and that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the powers which are mentioned in the various clauses therein. The proviso to sub-section (1) need not be referred to as it has no bearing on the present case. Sub-section (2) is important. It lays down certain principles for determining whether the interest is excessive and whether the transaction was as between the parties substantially unfair. The explanation to clause (d) of sub-section (2) is also important. It says that interest may of itself be sufficient evidence that a transaction was substantially unfair. The other sub-sections need not be referred to.

Upon the plain words of the Statute a duty is cast upon the Court, in cases to which the Statute may be applicable to apply its mind to its provisions even in a suit heard ex-parte. The expression "Has reason to believe" clearly indicates that the intention of the Legislature was to enable the Court to take up the question, of its own motion, whether it has been raised by the defence or not. The section is founded upon section I of the English Money-Lender's Act. In Samuel vs. Newbould. Lord Macnaghten observed: "what an intolerable strain would be thrown upon inferior Courts, unfamiliar with the doctrines and the practice of Courts of Equity, if they were privileged or condemned to listen to lengthy arguments and venerable precedents before *deciding* a question that any man of common sense is just as capable of deciding as the most learned Judge in the land, provided he is not hampered by authorities, which require no little training to discriminate and appreciate at their true value." This observation appears to have been borne in mind in the Usurious Loans Act, 1918. While keeping in view the principle of the English Act it has rendered the application of the principle much simpler by substituting the words "substantially unfair" for the words "harsh and unconscionable" and instead of referring the Court to considerations of general principles of equity has laid down certain practical tests for its guidance. The Act, therefore, will relieve the Courts from the necessity of going into elaborate and often very intricate questions which arise under sections 16 and 19-A of the Indian Contract Act. Once a proper case presents itself the rules of evidence disentitling a party from varying the terms of a written agreement by evidence of a parol agreement inconsistent therewith are suspended, the rules prohibiting the setting up of inconsistent defences cease to have operation and the Court can, nay ought to, go behind the written document, find out the real nature of that transaction by admitting evidence relating thereto and do justice to the cause.

It is obvious that 75 per cent per annum is a high rate of interest; it is, at any rate more than the ordinary. The plain duty of the Court in such a case is to apply its mind to consider whether it is excessive and then, if necessary, to apply the provisions of the Act, which it does appear to have done.

I accordingly set aside the decree of the learned Munsif and send back the case to him to admit relevant evidence for the purpose of considering the provisions of the Act and dispose of the suit in accordance with law. I am of opinion that the dishonest defence set up by the defendant let the Court astray. I accordingly make no order as to costs in this Rule.

Case remitted.

A.I.R. 1927 LAHORE, 221.

Present:—Mr. Justice Jai Lal.

RULDU MAL THAKAR DAS—Plaintiff...Petitioner.

Versus

ALLAH DITTA—Defendant...Respondent.

Judgment.—This is a petition by the plaintiff for revision of a judgment dated the 9th May, 1925, passed by the Judge Small Cause Court, Simla, whereby he granted a decree to the plaintiff for Rs. 50|- and costs thereon payable in instalments of Rs. 5|- per month with the proviso that a default in the payment of any one instalment shall render the whole of the remaining balance payable at once. The suit was for recovery of Rs. 458|- by the firm of Ruldu Mal Thakar Das against Allah Ditta, a tailor of Simla. It was based on a bond for Rs. 300|- executed on the 17th of October, 1922. The bond provided that the sum of Rs. 300|-

would be payable without interest by instalments of Rs. 10|-. *per mensem* but that if a default be made in the payment of any one instalment the whole of the balance due was to become recoverable with interest at 37½ per cent per annum. The suit was instituted on the 30th March, 1925, and the amount claimed included the sum of Rs. 158|- interest calculated at the rate of 18 per cent per annum. The defendant admitted the execution of the bond but added that it was made up mainly of interest. The learned Judge thereupon proceeded to examine the plaintiff as to the previous history of the dealings between the parties and finally, acting under the provisions of the Usurious Loans Act, re-opened *the whole transaction and granted a decree to the plaintiff* as already mentioned.

The statement of the plaintiff disclosed that the dealings between the parties started in 1914 and that on the 26th July, 1917, a pronote for Rs. 221|- was executed by the defendant in plaintiff's favour. This amount included Rs. 49|- as interest on the principal amount advanced. Rs. 10|- was paid by the defendant to the plaintiff at the time of the execution of pronote. Thereafter Rs. 18|9|9 more was advanced by the plaintiff to the defendant up to the 17th October, 1921, when the bond in suit was executed. In the meantime the defendant had re-paid to the plaintiff Rs. 126|10|-. Rupees 28|- was paid by him after the execution of the bond in suit. This is the only evidence on the record as to the previous dealings between the parties. The defendant has not gone into the witness box to deny these facts and the learned Judge of the Small Cause Court has accepted them as correct. But he is of opinion that the whole amount is practically made up of interest and that only Rs. 8|- is due to the plaintiff on account of principal and for that reason he has applied the provisions of the Usurious Loans *Act and has granted a decree for a lump sum of Rs. 50|-* in favour of the plaintiff.

In the first instance I am unable to hold, having regard to the proviso to section 3 of that Act, that the learned Judge was entitled to go behind the pronote of the 26th July, 1917. That pronote was admittedly executed more than six years before the date of the suit. The proviso referred to above lays it down that, in the exercise of the powers conferred by section 3 the Court shall not re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction. This suit was not based on any series of transactions but only on one transaction of the 17th October, 1921, and, therefore, the explanation to the proviso does not apply.

Moreover, the Court can act under section 3 of Usurious Loans Act only if the interest be excessive and the transaction between the parties is substantially unfair. Now, so far as the bond for Rs. 300|- is concerned, it is to be observed that initially no interest is payable on the principal mentioned therein which is payable by instalments of Rs. 10|- per mensem. This is indeed a very favourable transaction from the point of view of the debtor. But then a condition is added that if default is made in the payment of any instalment the whole of the balance shall become payable with interest which certainly is excessive. The condition as to the payment of interest does not come into operation unless default is made by the debtor, and it is a question whether, under the circumstances, it can be held that the interest is excessive for the purposes of the Usurious Loans Act. But the second condition necessary for the exercise of the power of the Court does not, in my opinion, exist in this case.

In arriving at the conclusion that at the date of the suit only Rs. 8|- out of the principal was due to the plaintiff the learned Judge has entirely ignored the fact that some interest was to be paid, if not at the agreed rate, at a reasonable rate, on the transaction between the parties from 1914 to October, 1921. The Counsel for the respondent does not contest the allegation of the Counsel for the petitioner that if calculation is made, it would be found that interest upto that date was charged roughly at 15% per annum. I have already stated that after the date of the bond, though the interest provided was 37½ per annum payable only on default in payment of instalments, the plaintiff has charged interest at 18 per cent per annum. In deciding whether the rate charged is excessive and the transaction between the parties thereto substantially unfair, the Court must have regard to the prevailing rate of interest on similar transactions in the locality where the transaction took place, the security offered to the plaintiff, the nature of the dealings between the parties and the period during which the accounts have remained outstanding. I am not prepared to hold that, under all the circumstances of the case, interest at 15 per cent per annum, charged prior to the execution of the bond and 18% per annum interest charged after the execution of the bond on default of payment of the instalments, is at all excessive or that the transaction in suit is substantially unfair as between the parties. I hold, therefore, that the conditions necessary to enable the Court to interfere under the Usurious Loans Act with contract voluntarily entered into between the parties do not exist in this case and the plaintiff was entitled to the decree prayed for.

Accepting this revision, I set aside the decree of the learned Judge of the Small Cause Court and decree the plaintiff's suit with costs throughout.

Petition accepted.

A. I. R. 1927 OUDH 36.

Stuart, C.J., and Wazir Hasan, J.

UMAN SHANKAR and others—Defendants=Appellants.

Versus

RAM NATH and others—Plaintiffs=Respondents.

First appeal No. 72 of 1925, decided on 27th October 1926, from the decree of the Addl. Sub-Judge, Gonda, dated 21st July, 1925.

Judgment.—This is an appeal against a decree passed upon the basis of a deed of simple mortgage which was executed on the 8th September 1923. There were three grounds of appeal. The learned counsel for the appellants has not argued on either of the first two grounds and has stated that he is unable to support them. He has argued, however, that the rate of interest agreed to be paid in the deed in suit was excessive within the meaning of the Usurious Loans Act (Act X of 1918) and that it ought to have been reduced. The amount of the principal of the deed in question cannot be reduced under the provisions of Act X of 1918 as the amount of consideration was based upon an agreement purporting to close previous dealings and create a new obligation at a date more than six years from the first of the transactions included in the agreement; but it would be open to this Court to reduce the interest upon the principal under the provisions of the aforesaid Act.

The rate of interest, which the parties agreed was to be paid on the principal amounts secured by the deed of the 8th September 1923, was 15⅝ per cent compoundable with six monthly rests. As the suit was instituted on the 23rd December 1924 the amount of interest which had accrued at the date of the institution was not very great. We have carefully considered what principles should guide this Court in applying the provisions of the Usurious Loans Act (Act 9 of 1918). In our opinion a Court while using freely the provisions of the Act to relieve cases of genuine hardship should at the same time refrain from interfering where the rate of interest is justified by the economic conditions of the area in which the transaction has taken place, the character of the borrower and the nature of the security. It would be positively mischievous to lay down anything like a general rate of interest which should prevail in the various parts of Oudh and in each case we consider that the Court should apply its mind carefully to local conditions and while on one side protecting debtors from unfair and unconscionable conditions should on the other side protect creditors against a diminution of the interest upon the obligations into which their debtors have entered, which would be against the reasonable interests of those who are engaged in money-lending as a business. Applying these principles we are of opinion that there is no need in this particular case to reduce the amount of interest provided by the deed. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

A. I. R. 1929 NAGPUR 348.

JACKSON, A.J.C.

LALJBARKHAN and another—Plaintiffs=Applicants.

Versus

NANHU—Defendant=Non-Applicant.

Order.—This is an application for revision of a decree passed by the Small Cause Court, Sohagpur, in a suit brought on a bond, dismissing the plaintiff's suit and directing them to pay Rs. 42|8|- on account of surplus recoveries. The bond, on which the suit was brought, was executed on 16th January, 1926 for Rs. 50|-. The rate of interest stipulated for was one anna per rupee per mensem and in default two annas per rupee per mensem. The suit was brought on 24th September 1928, less than three years after the execution of the bond. By that time the defendant had paid Rs. 122|8|-. The Judge of the Small Cause Court, acting on the Usurious Loans Act, reopened the transaction, found that the rate of interest stipulated for was exhorbitant and penal and, allowing interest at two per cent per annum, found that only Rs. 80|- was due to the plaintiffs and gave a decree to the defendant for Rs. 42|8|- paid in excess. It is objected that the defendant never asked for this relief, but it does not seem to me that any such claim is necessary, under section 3(1) Usurious Loans Act the Court has power to order repayment.

It is also objected that the plaintiffs were not allowed to show that the interest was not excessive. Reference has been made to Ruldu Mal Thakar Das versus Allah Ditta[1] where it is laid down that in deciding whether the rate of interest charged is excessive, the Court must have regard to the prevailing rate of interest on similar transactions in the locality, the security offered to the plaintiff, the nature of the dealings between the parties and the period during which the account was outstanding for less than three years. Periodical payments were being made by the debtor and though no security was offered and no evidence given as to

1. A.I.R. 1927 Lah. 621.

the prevailing rate in the locality for loans of the description of the one now under consideration, I consider that the Small Cause Court was right in holding the rate to be excessive. Even if it were proved that it is the custom in the locality to charge interest at 75 per cent per annum and that 150 per cent, per annum in case of default, I should still hold the rate of interest to be obviously excessive. It has been pointed out that the debt was to be repaid in three months and that if that payment had been made within that period, the interest would only have been Rs. 9|-. It does not, however, alter the fact that it would be interest at the rate of 75 per cent per annum. I decline to interfere in revision and I dismiss the application with costs.

Revision dismissed.

A. I. R. 1930 CALCUTTA 776

Mukerji, J.

NARENDRA NATH MITRA—Petitioner.

Versus

PABAN MONDAL—Opposite Party.

Civil Revn. No. 999 of 1928, decided on 10th April 1929, against order of Sub-Judge, Khulna, dated 1st June, 1928.

Judgment.—The suit out of which this revision case has arisen was instituted by the plaintiff for recovery of the principal and interest due on a registered bond, the amounts of principal and interest claimed being respectively Rs. 80|- and Rs. 301|7|6. The rate of interest claimed was what was stipulated in the bond, namely compound interest at 25 per cent per annum with yearly rests. The defendant did not appear to contest the claim. The Judge of the Court below decreed the suit ex-parte for the principal amount of Rs. 80|- and simple interest at the rate of 25 per cent per annum from the date of the bond, namely 1st May 1921, together with costs. The plaintiff has moved this Court and obtained this rule.

The learned Judge has refused enforcement of the stipulation as to compound interest contained in the bond for the following reason: "The transaction", says he: "is between landlord and his tenant and consisting of arrears of rent and selami claimed. I consider that the transaction is substantially unfair inasmuch as an undue advantage has been taken in getting the very hard terms as to stipulation for compound interest. I, therefore, consider that the transaction is substantially unfair inasmuch as an undue advantage has been taken in getting the very hard terms as to stipulations for compound interest. I, therefore, consider the transaction unfair and stipulation to pay compound interest excessive, and by virtue of section 3, I disallow the stipulation to pay compound interest."

Section 3 referred to in these observations is section 3, Usurious Loans Act, of 1918.

In several cases that have come up before me I have seen this Act loosely interpreted and applied and I, therefore, consider it necessary to take this opportunity of saying a few words as regards the precise scope of this piece of legislation.

Section 3, sub-section (1) of the Act provides that, notwithstanding anything in the Usury Law Repeal Act, 1855, where, in any suit to which the Act applies, whether heard ex-parte or otherwise, the Court has reason to beileve that the interest is excessive and that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the powers, which are mentioned in the various clauses therein. Leaving aside the proviso to sub-section (1) we pass on to sub-section (2) clauses (a), (b) and (c), sub-section (2), deal with excessive interest. Clause (d) sub-section (2), says how the question as to whether a transaction is substantially unfair is to be determined and the explanation to this clause provides that interest may of itself be sufficient evidence that a transaction was substantially unfair.

Two conditions, therefore, must be satisfied before the debtor can be relieved: 1st, that the interest must be excessive, and 2nd, the transaction, substantially unfair as between the parties thereto.

Upon the section itself the following points are clear:

Frist. The duty is cast upon the Court, in cases to which the statute may be applicable to apply its mind to its provisions even in a suit heard ex-parte.

Second. The words "whether heard ex-parte or not" and the "Court has reason to believe" indicate that the intention of the legislature was to enable the Court to take up the question of its own motion, whether it has been raised by the defence or not.

Third.—The words "has reason to believe" have a significance. The Indian Legislature has said in some other Act that a person is said to have reason to believe a thing if he has sufficient cause to believe that thing, but not otherwise. It is only when the circumstances are such that a reasonable man would be led by a chain of probable reasoning to the conclusion or inference that the thing exists, though the circumstances may fall short of carrying absolute conviction to the mind of all persons, that the phrase is satisfied. The words, however, mean something more than mere suspicion.

Fourth. As regards "excessive interest" the word "excessive" as James, L.J. said in the case of Samuel vs. Newbould[1] "is a relative and elastic term, impossible of absolute definition." Clauses (a), (b) and (c) of sub-section 2 indicate with sufficient particularity the enquiries to be made in order to find out in any given case whether the rate of interest stipulated for is excessive or not; the points to be noted are to be determined by taking into account such matters as the financial conditions of the debtor, the nature of the security, etc., the risk incurred by the creditor; the extra amounts not paid but incorporated into the principal as expenses, etc., in the case of compound interest the periods of the rests; and lastly the total advantage that may be reasonably expected to accrue to the respective parties from the transaction.

Fifth. The expression "substantially unfair" requires to be properly understood. The section is founded upon

1. (1906) A. C. 461 (467) = 75 L. J. Ch. 705 = 22 T. L. R. 703 = 95 L. T. 209.

section, English Money-Lenders Act. In Samuel vs. Newbould, Lord Macnaghten observed:

"What an intolerable strain would be thrown upon inferior Courts, unfamiliar with the doctrines and the practice of Courts of equity, if they were privileged or condemned to listen to lengthy arguments and venerable precedents before deciding a question that any man of commonsense is just as capable of deciding as the most learned Judge in the land provided he is not hampered by authorities which require no little training to discriminate and appreciate at their true value."

These words appear to have been borne in mind in the Usurious Loans Act of 1918. While keeping in view the principles of the English Act it has rendered the application of those principles much simpler by substituting the words "substantially unfair" for the words "harsh and unconscionable" and instead of referring the Court to considerations of general principles of equity has laid down in clause (d), sub-section (2), certain practical tests for its guidance. The Act, therefore, relieves the Courts from the necessity of going into elaborate and often very intricate questions which arise under sections 16 and 19-A, Contract Act.

Bearing these propositions in mind let us examine the facts of the present case. The only evidence that there is on the record is the evidence of the plaintiff's witness who, besides proving the execution of the bond and the consideration, said:

"Paban (meaning, the defendant) is literate. . . Rs. 80|- was borrowed to pay off arrears of rent and selami. The interest claimed is at 4 annas a rupee per annum and this is the usual rate of interest prevailing there."

The Judge has not taken the trouble of enquiring into the matter by putting further questions to the witness to find out whether there existed circumstances which would enable him to apply the rules laid down in the different clauses of sub-section (2), section 3. Interest at 25 per cent, per annum compound with yearly rests by itself is not excessive and would not under clause (d), sub-section (2) justify a conclusion that the transaction was substantially unfair. The fact that the amount consisted of arrears of rent and selami, if those items were justly due, and the fact that the tenant entered the stipulation with his landlord, are hardly sufficient to form the foundation for a reasonable belief that the transaction was substantially unfair. As regards the Judge's finding, that the creditor has taken an undue advantage over the debtor, there is absolutely nothing which can raise even a suspicion to that effect. It has been said on behalf of the plaintiff here that the arrears of rent for which the bond was executed carried interest under a 'patta' at the rate of 37½ per cent per annum simple.

In my opinion there are no materials on which the debtor may justly be relieved of the stipulation to pay interest according to the bond and the learned Judge of the Court below was wrong in the decree that he has passed.

The Rule is accordingly made absolute. The decree of the Court below is set aside, and it is ordered that a decree be entered in plaintiff's favour for the principal amount of Rs. 80|-, with compound interest at the rate of 25 per cent, per annum, with yearly rests from the date of the bond, i.e., *1st May 1921, till the date of institution of the suit, i.e. 26th* April 1928, and interest at 6 per cent per annum from the date of suit till date of realization. The plaintiff will be awarded the costs mentioned in the decree of the lower Court which will carry interest at the rate of 6 per cent per annum from the date of the lower Court's decree till date of realization. There will be no order as to costs in this rule.

Rule made absolute.

The

Punjab Regulation of Accounts Act,

1930.

Table of Contents

The Punjab Regulation of Accounts Act, 1930.

(Punjab Act I of 1930)

(Received the assent of His Excellency the Governor on the 19th January, 1930, and that of His Excellency the Viceroy and Governor-General on the 9th March, 1930, and was first published in the Punjab Government Gazette, dated 21st March, 1930).

An Act to regulate the keeping of accounts of certain transactions.

Whereas it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Punjab, and whereas the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act has been obtained, it is hereby enacted as follows :— **Preamble.**

1. (1) This Act may be called the Punjab Regulation of Accounts Act, 1930. **Short title, extent and commencement**

(2) It extends to the Punjab.

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

Provided that this date shall not be earlier than six months or later than one year after the date of final publication of the rules made under section 6.

Preamble.—The preamble is intended to give, as briefly as possible, the object of the legislature in enacting the law.

Strictly speaking it cannot be treated as a part of the Act itself, and as such can ordinarily offer no assistance in interpreting the same. But in case of doubt, it may be looked into to find out the object of the legislature.[1] It has thus been held that if the preamble and the enacting part of an Act are not co-extensive, that is, if they do not lay down the same thing or are at variance with each other, the latter, if unambiguous, must prevail.[2] The preamble would, however, be a safe guide in interpreting the intention of the Legislature when the language used in the operative part of the Act is susceptible of more meanings than one.[3]

The statement of objects and reasons also does not form part of an Act, nor can it, or the proceedings of the legislature, be resorted to, to import something in the operative part over and above, or different from, what its plain language signifies.[4]

Object of the Act.—The object of this Act is "to secure between certain classes of creditors and debtors, an improved system of keeping accounts, which will give the debtors the means of ascertaining periodically how their accounts stand and how they are composed. It designedly avoids any unnecessary degree of regimentation which might tend unduly to harras the lender and to restrict the facilities for credit so useful in the rural system of economy."[5]

Justification for this Law.—Money-lending is not only a very lucrative profession, but if properly regulated it can be a real national asset. The system of money-lending is as old as humanity itself. It owes its origin to the inevitable circumstance, that while some people have more money, or if we go back to the age of barter, more goods of daily use than they require, there are other who must, in order to live, implement their immediate resources by borrowing. Then again while there are some who though possessing plenty, lack the spirit of

1. 28 P.L.R. 598, 104 I.C. 661.
2. 9 Lahore 260 (Raj Mal versus Harnam Singh).
3. A.I.R. 1926 Madras 381 (Kersavala versus the Corporation of Madras) 292 I.C. 1053.
4. Churchil versus Crease 5 Bing 180.
5. Statement of Objects and Reasons.

adventure, there are others who possess brains and a desire to take to trade but lack the means of doing so. These and several other causes result in the introduction of some sort of borrowing and lending.

Civilization is another name for putting restrictions on the freedom of action by individuals in the interest of society's good, and the more advanced a society is, the greater will be the restrictions. The owner of a plot of land in a Municipal area cannot build upon it without conforming to certain rules and regulations prescribed by the Municipal Committee against the back ground of public good. You cannot drive your own motor car at an excessive speed, or park it on the thorough-fare. In fact you cannot overload your own horse or take work from it when it is not in a fit condition. Then again just as a person endowed by nature with stronger physique cannot use it to victimise his weaker contemporaries, the entire law of assault and battery being based on this principle, similarly a man possessing better brain or better resources cannot be allowed to use these to the detriment of others not so favoured by providence. Under civilized societies the will of the individual loses its importance, and it is the will of the society as a whole expressed through its representatives in legislative bodies that must prevail. Legislatures have all over the world tried to regulate all trades and professions, in the first instance, to ensure fair dealings between man and man, and secondly to raise funds for meeting the needs of society. Money-lending being a very important profession in all civilized countries could not fail to attract notice particularly when its working is considered to be far from satisfactory in several respects. This, in short, was the justification for this Act.

In proposing the Bill which ultimately assumed the form of this Act, the Government said, "A Regulation of Accounts Bill was passed by the Punjab Legislative Council on the 1st July, 1926, but in refusing either to recommend this bill for the final assent of the Governor-General or to return it to the Council for consideration, His Excellency Sir Malcom

Hailley in his address to the Council on the 25th October, 1926, gave an assurance that the Government was convinced that legislation would be beneficial for the regulation of certain classes of accounts and that steps would be taken to place a Government Bill of a somewhat simpler scope before the Council.

"It was felt that the bill as passed by the Council was not calculated to effect the main object in view, viz., protection of the ignorant borrower without undue interference in trade and credit. In particular the definitions of 'loan' and 'money-lender' appeared likely to prove a stumbling block to the practical utility of the bill; while the penalty of non-suiting provided in the case of the non-compliance with the provisions of the bill seemed unnecessarily harsh.

"In the present bill, which is the fulfilment of Sir Malcolm Hailey's promise made to the Legislative Council in his address on October 25th, 1926, the aim has been to secure as between certain classes of creditors and debtors an improved system of keeping accounts which will give to the latter a means of ascertaining periodically how their accounts stand and how they are composed. At the same time the bill *designedly avoids any unnecessary degree of* regimentation which might tend unduly to harras the lender and to restrict facilities for credit so useful in the rural system of economy. Secondly by excepting certain classes of loans it expressly avoids interference with accounts connected with trade and commerce.

"Subject to these restrictions the bill is of general application. The term 'money-lender' has been throughout replaced by the term 'creditor' suitably defined. The definition of 'loan' has been improved. The positive portion of the definition follows the definition given in the Usurious Loans Act and embodies the result of experience gained by courts in dealing with attempts made by money-lenders to evade the law. The negative portion excepts a number of transactions from the operation of the Act, with the object of avoiding undue interference with trade, commerce and industry.' The penalty for non-compliance with the provisions of the bill has been greatly modified. If it is found that the creditor has failed to maintain the requisite ledger the bill while not permitting non-suiting or even any reduction in the principal amount found due, renders obligatory the disallowance of costs and portion of the interest though it leaves the courts a discretion as to the exact amount of interest to be allowed. Similarly, if it is found that the creditor though keeping the necessary ledger has without lawful excuse failed to submit periodical accounts to his debtor, the bill provides that he will loose the interest for the period or periods for which he has defualted."[6]

Scope of the Act.—It will be seen that the real scope of the Act is wider than mere regulation of accounts. It prescribes the method in which accounts are to be maintained by money-lenders, the manner in which copies of accounts are to be sent to debtors, and the penalties for the breach of these rules. It also imposes a duty on courts to 'suo motu' frame certain issues in suit relating to loans as defined herein.

The Act extends to the whole of the Punjab, and the date of its commencement was fixed as the first day of July, 1931.

Case Law.

According to a Division Bench ruling of the High Court Lahore the Act does not apply to the case of a payment made after its commencement towards a loan advanced before the Act was enforced.[7] It is respectfully submitted that the correctness of this view is questionable. For a detailed discussion see the commentary under section 5, under the heading "Transaction."

Definitions.

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

(1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the

6. Statement of Objects and Reasons.

7. Kalander Shah vs. Devi Dass and another, A.I.R. 1937 Lahore 16=38 P.L.R. 944=164 I.C. 844.

United Kingdom or in any of the Colonies or Dependencies thereof in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Central Legislature.

The word "bank" has been defined to mean a company carrying on the business of banking, and registered under any of the enactments relating to companies for the time being in force. It constitutes an establishment or office where transactions for the deposit and issue of money generally take place.

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

The term "company" has been defined to mean a company registered under any of the enactments relating to companies for the time being in force. A company consists of a number of persons who under the law constitute themselves into a body for transacting any business. The definition of the term would appear to include a private company but the effect of the exemption (iv) to section 2 (7) of the Act restricts its scope so as to exclude a 'private company.'

Private Company.—Section 2 (13) of the Indian Companies Act, 1913, defines a private company as,

"a company which by its articles restricts the right to transfer its shares and limits the number of its members (exclusive of persons who are in the employ of the company) to fifty and prohibits any invitation to the public to subscribe for any shares or debentures of the company, and continues to observe such restrictions, limitations and prohibitions:

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member."

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

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

The definition of the term "court" includes an Insolvency Court, but not an Official Receiver, who has to discharge the functions of a court in the matter of the admission and proof of debts. This seems to be an omission and needs the attention of the legislature.

(5) "Creditor" means a person who in the regular course of business advances a loan as defined in this Act and shall include subject to the provisions of section 3 the legal representatives and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

The definition of the word "creditor" practically corresponds to the definition of the term 'money-lender' under the Punjab Debtors' Protection Act. The chief deciding factor is whether the person concerned is prepared to lend money to all and sundry who may approach him as willing borrowers. The definition requires,

(a) that the person should be advancing loans in money or in kind,

(b) at interest, and

(c) in the regular course of business,

Minor.—The definition of the word "creditor" would not include a minor except for the limited purposes of section 3, because under the Indian Contract Act a minor is incapable of entering into any contract, and cannot sue or be sued even if he does enter into any contract.[8]

Where a plaintiff admits having advanced loans to several other persons, but does not say that he advanced any of these subsequent to the year 1931 when the loan in suit was advanced, there is no reason why he should not be held to have advanced all the loans in the regular course of business within the meaning of the definition of the term 'creditor.'[9]

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

The definition of the term 'interest' can be divided into two parts so as to,

(i) *mean rate of interest, and*

(ii) include the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise. The definition explains that the excess, in whatever shape and form, it is paid, is to be treated as interest. The second part of the definition contains the import of the term 'interest' as it gives its popular conception. It denotes that the return over and above what was actually lent by the borrower to the lender, is interest. The concluding portion of the definition makes it clear that the 'excess' of what is actually lent is 'interest' even though it is not described as such. Services

8. Mohri Bibi vs. Dharmodas Ghose 30 Cal. 539 I.L.R.
9. 38 P.L.R. 164=A.I.R. 1936 Lah. 469.

rendered by the borrower, personally or by some body else on his behalf, to the lender are to be treated as interest. Each case is to be determined on its own merits, and the criterion is that any return, in whatever shape, or form, by the borrower or any body else on his behalf to the lender, over and above what was actually lent by the latter, is to be treated as interest.

Express or Implied Stipulation.—It is not necessary that what is charged or recovered by way of interest should have been stipulated by the parties in so many words. There may be cases where some return by the debtor to the creditor over and above what was actually lent to the former is due, not under any express stipulation, but under any statute or trade, usage or custom.

(i) There are certain statutes which enjoin on courts to allow interest in certain cases even though none may have been stipulated as the following will show:

(a) Section 80 of the Negotiable Instruments Act, 1881, makes it obligatory on the court to allow, except in cases covered by Order XXXVII Rule 2 of the Code of Civil Procedure, interest at 6 per cent per annum.

(b) Section 34 of the Land Acquisition Act, 1894, fixes the rate of interest at 6 per cent per annum in connection with the amount of compensation not paid or deposited before taking possession of land.

(c) Section 34 of the Indian Works of Defence Act, 1903, prescribes interest at 6 per cent per annum in connection with compensations under the said Act.

(d) The Northern India Canal and Drainage Act, 1873, prescribes interest at 6% per annum.

(ii) There are other statutes which make the grant of interest under certain circumstances discretionary with courts, e.g., section 28 of the Land Acquisition Act, 1894, section 28 of the Works of Defence Act, 1903, section 34 of the Code of Civil Procedure, 1908, and section 48 of the Provincial Insolvency Act, 1920.

(iii) There may be a trade usage or custom permitting a party to charge interest in certain dealings. The presumption that persons dealing in such cases knew what the trade usage or custom is and impliedly agree to its incidence.[10]

(iv) Interest may be allowed by courts as damages.[11]

(v) Interest may be permissible on equitable grounds, where for instance one party has deprived the other of its money and has itself reaped profit from it.

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

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

(ii) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1890, or under any other enactment;

(iii) a loan advanced by Government or by any other local body authorized by the Central or any Provincial Government;

(iv) a loan advanced by a bank, a co-

10. Jagmohan Ghose vs. Manack Chand 4 W.R. 8 (P.C.) and 24 P.R. 1915=23 P.L.R. 1915.

11. A.I.R. 1922 Madras 55, 10 Cal. 785 P.C. (I.L.R.)

operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act;

(v) a loan advanced to a trader;

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

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

The term "loan" means not only a loan of money but also a loan in kind. The courts have been empowered to find whether a particular transaction is to be treated as loan or not. The form of a transaction is not to be the sole determining factor. If the transaction has all the features of a loan, it is to be treated as such although it is not expressly stated to be one. The definition is restricted as compared with the definition of this term given in the Usurious Loans Act, 1918.

Postal Charges and the Cost of Copies of Account.— Under rules 17 and 18 framed by the Government under this Act, the postal and registration charges, and the cost of the statement to be furnished by the creditor to the debtor are to be included as loans, and the creditor may be awarded interest thereon. The safest course would be to allow interest on these items at the lowest rate chargeable for other items of loans for the half year during which the former items were incurred. Of course, interest should otherwise be allowable under the Contract.

(i) Deposit of money.—A deposit is not the same thing as a loan. It presupposes the delivery of money or other property for safe custody, and consequently creates a fiduciary relationship. A deposit of money or other property with an for each debtor separately, of all transactions relating to any loan advanced to the debtor, in such manner as the Provincial Government may prescribe.

(b) furnish each debtor every six months with a leg ble statement of accounts signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th Har, and the 31st day of December or 15th Poh in each year. This statement of accounts shall include all transactions relating to the loan entered into during six months to which the statement relates, and shall be sent, in such manner and in such form and containing such details as the Provincial Government may prescribe, on or before the 31st day of August or 15th Bhadon in the case of any balance outstanding on the 30th day of June or 15th Har; and on or before the 28th day of February or 15th Phagun in the case of any balance outstanding on the 31st day of December or 15th Poh.

Explanation.—(i) The Provincial Government shall prescribe the forms and numerals in which the accounts required by this provision of this sub-section are to be maintained and furnished and the creditor shall at his option use one of the following scripts and languages, namely :—English, Urdu, Gurmukhi, Nagri or Mahajani :

Provided that if the debtor in writing demands that the accounts be furn shed in any one of the above scripts it shall be supplied to him in that script at his cost according to the scale prescribed;

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

Provided that—

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

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

(2) Entries in the account prescribed under clause (a) to sub-section (1) shall be deemed to be regularly kept in the course of business for the purposes of section 34,

Indian Evidence Act, 1872, and copies of such entries certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Explanation.—A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

Scope of the Section.—This section prescribes that every creditor should regularly record and maintain separately, about each debtor, an account of dealings in a form to be prescribed by the Provincial Government in English, Urdu, *Gurmukhi, Nagri or Mahajani,* at his option. He is furthermore required to furnish each debtor, six monthly, i.e., on the 30th day of June or 15th Har; and the 31st December or *15th Poh in each year with a statement of his account.* This statement of accounts is to be in a form to be prescribed by rules, and is to show the amounts of principal and interest separately. The Provincial Government has framed rules prescribing the manner in which accounts are to be kept, and statements thereof furnished. The creditor has been given the *option of maintaining his accounts in* English, Urdu, Gurmukhi, Nagri or Mahajani; but if a debtor demands, in writing, that the statement of accounts be furnished to him *in any one of the above scripts, it must be done though at his* cost.

Exemption.—I. The following lenders and creditors are exempt from the observance of the above rules:—

(a) any society or association registered under the Societies' Registration Act, 1860, or any other *enactment [section 2 (7) (ii)];*

(b) *Government* [*section* 2 (7) (iii)];

(c) any local body empowered by *Government* to advance loans [*section* 2 (7) (iii)];

(d) a bank [section 2 (7) (iv)];

(e) *a co-operative society* [section 2 (7) (iv)];

(f) a company whose accounts are subject to audit by certificated auditors under the Companies Act [section 2 (7) (iv)];

(g) a widow or a *minor*, for six months after the *acquisition* of right to any loan by inheritance or assignment [proviso (1) to section 3];

(h) two or more persons who as rivals in a court of law, claim title to the same loan, till their dispute is settled finally [proviso (2) *to section* 3].

II. The following *transactions* are exempt (vide section 2 (7)].

(a) deposit in Government Post Office or Bank;

(b) deposit in any *other bank;*

(c) deposit with any company;

(d) *deposit with any co-operative society;*

(e) deposit with any society or association under the Societies Registration Act, *1860;*

(f) an advance made on the basis of a negotiable instrument other *than a promissory note;*

(g) a transaction which is in substance a *mortgage* or a sale of *immovable* property.

III. Loans raised by the following are also exempt [vide section 2 (7)]:—

(a) a loan to a society or association registered under the *Societies* Registration Act, 1860;

(b) loan to a trader.

Procedure.—The *local* Government has framed rules under section 6 prescribing the manner in which accounts are to be maintained under this Act. Under rule 3 a form has been devised for the maintenance of accounts and this form has to be used for the statement of accounts required to be furnished periodically by the creditor to each debtor under the provisions of clause (b) of sub-section 1 of section 3 of the Act.

It is mandatory on the part of the creditor not only to record but also to maintain the accounts for each debtor separately, and to furnish each debtor six monthly with a legible statement of accounts signed by the creditor himself or his agent. The account is to be kept so as to indicate separately and distinctly the amounts due as interest and principal. Separate ledgers of principal and interest are to be maintained, and the principal and interest are to be separately shown in the opening balance of each new six monthly account. There are two exceptions to this rule:—

(1) If the loan has passed by inheritance or assignment to a widow or minor such widow or minor is not bound to maintain accounts and furnish statements thereof as prescribed by this section for a period of six months from the date of such passing.

(2) Where the title to recover any loan is subjudice between two or more persons claiming as creditors adversely to each other, no duty has been placed upon any person for maintaining and furnishing the prescribed accounts, till the dispute is settled.

SPECIMEN OF ACCOUNTS WHEN THERE IS A PREVIOUS EXISTING LIABILITY OF THE DEBTOR

Loan Account of Ida, son of Budha, caste Jat, residence Patti, District Lahore.

From 1st July, 1938 to 31st December, 1938.

Opening balance (if any).
Principal Rs. 500-0-0.
Interest .. 45-0-0.

NAM.								JAMA.							
		ADVANCE IN FIGURES.								REPAYMENTS IN FIGURES.			APPROPRIATION.		
Date.	Particulars of advances in words whether cash of kind. (See rule 9).	Cash.	Kind (number or weight).	Value of advances in kind.	Rate of interest.	Amount of interest charged.	REMARKS.	Date.	Particulars of repayment whether cash or in kind in words. (See rule 9).	Cash.	Kind (number or weight).	Value of repayment in kind.	Principal.	Interest.	REMARKS.
1-8-1938	Two hundred rupees. (half one hundred rupees).	200			1 p.c. p.m.	10-0-0		15-9-1938	One cow.			30-0-0	30-0-0		
16-8-1938	Wheat ten mds. (half five mds).		10 mds.	25-0-0	1 p.c. p.m.	1-2-0		1-12-1938	Fifty rupees. (half twenty-five rupees).	50-0-0			50-0-0		
31-12-1938	Total ...	200		25-0-0		11-2-0			Total ...	50-0-0		30-0-0	80-0-0		

Balance outstanding on 31st December 1938.

15th Poh Sambat 1995.

	Principal.	Interest.
Add opening balance as above.	500 0 0	45 0 0
	145 0 0	9 9 3
Total ...	645 0 0	54 9 3

(Signature) Creditor or Agent.

SPECIMEN OF ACCOUNTS WHEN THERE IS NO PREVIOUS EXISTING LIABILITY OF THE DEBTOR

Loan Account of Basan, son of Ram Jaway, caste Khatri, residence Kabna, District Lahore.

From 1st January, 1937 to 30th June, 1937.

Opening balance (if any).
Principal Nil.
Interest Nil.

NAM								JAMA							
		Advance in figures.								Repayments in figures.			Appropriation.		
Date.	Particulars of advance in words whether cash or kind. (See rule 9).	Cash.	Kind (number or weight).	Value of advances in kind.	Rate of interest	Amount of interest charged.	Remarks.	Date.	Particulars of repayment whether cash or in kind, in words. (See rule 9)	Cash.	Kind (number or weight.)	Value of repayment in kind.	Principal.	Interest.	Remarks.
1-3-1937	Wheat five mds. (half two mds. twenty seers).		5 mds.	12-0-0	1 p.c. p. m.	0-7-8		16-5-1937	Fifty rupees (half twenty five rupees).	50-0-0			50-0-0		
15-6-1937	One hundred rupees. (half fifty rupees)	100			1 p.c. p. m.	0-8-0									
30-6-37	Total	100		12-0-0		0-15-8			Total ...	50-0-0			50-0-0		

Balance outstanding on 30th June 1937.

15th Har Sambat 1994.

	Principal.	Interest.
Add opening balance as above.	62 0 0	0 3 8
Total	62 0 0	0 3 8

(Signature) Creditor or Agent.

Method of Maintaining the Prescribed Accounts.— The rules framed by the Provincial Government lay down the following procedure. Each entry in the form prescribed should, as far possible, be made on the date to which the transaction in question relates. (Rule 7) The entry should contain the name and address of the debtor and in the case of joint-debtors, of each such joint-debtor. (*Rule 8*) The address is to be supplied by the debtor at which the statement of account is to be sent. (Rule 8) Items of advances or repayments, whether in cash or in kind, should be noted in the prescribed form along with the half of each such item. (Rule 9) The rate of interest as agreed between the parties for each advance whether in cash or in kind and the amount of interest actually charged is to be shown in the appropriate column. (Rule 10) The money value of each repayment in kind and the amount appropriated towards principal and interest is to be entered on due dates in the columns provided for the purpose. (Rule 11) The form is to be kept by the creditor in duplicate so that there should be a foil and a counter foil. (Rule 12) (see the specimen form duly, filled opposite to this page.) The counterfoil is to be retained by the creditor and the foil sent to the debtor in the prescribed manner. Entries in both foils should be identical. *(Rule 12) In case of two or more joint-debtors* the statement of accounts should in the absence of an agreement to the contrary, be furnished to the debtor named first at the head of the form. (Rule 13)

The accounts are to be recorded and maintained at the option of the creditor in English, Urdu, Gurmukhi, Nagari or Mahajani. (Rule 5) The numerals to be used for the purpose of making entries in the forms are to be the numerals ordinarily used with the particular script selected by the creditor or demanded by the debtor, as the case may be, in accordance with explanation (i) to section 3 of the Act. (Rule 6)

Method of Furnishing Account to Debtor.—The statement of account is to be furnished by sending the foil to the debtor through registered post, acknowledgment due, at the address entered at the head of the form. If the debtor has agreed in writing to accept the foil by personal

Provided that if the creditor has after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A person who has kept his account and sent his six-monthly statements of account in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3, shall be held to have complied with the provisions of the clauses, in spite of errors and omissions, if the court finds that errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

Penalties.—This section prescribes penalties for money-lenders' failure to comply with the procedure laid down in section 3, and in order that the law be properly enforced, enjoins on courts trying money suits to frame and decide, in each case, an issue whether the creditor has complied with the provisions *of recording and maintaining accounts and furnishing* statements thereof to the debtors concerned in the prescribed manner. In case, it is found that the accounts have not been so recorded and maintained, and the plaintiff's claim is on merits established in whole or in part the court is to disallow the whole or portion of the interest found due, as may seem reasonable to it, and is to disallow the entire costs This means that while the court can for sufficient reasons allow a portion of the interest, (it cannot allow the whole) the costs must in their entirety be disallowed. This very rule is to determine the question of costs even in the court of appeal or revision.[13] But if the court finds that the creditor had maintained accounts as prescribed by the Act and the rules, but had not supplied the debtor with a statement of the same as required, it must while computing the amount of interest due upon the loan exclude every period for which the statement has

13. Hukumat Rai vs. Fateh Ali, A.I.R. 1937 Lahore 58.

not been so furnished. An exception has been made in the case of a plaintiff furnishing accounts after the due dates if he satisfies the court that the delay was unavoidable. Reading both the clauses together we find that a creditor who does not maintain any accounts whatsoever, may, so far as the grant of interest to him is concerned, be in a better position as against one who though maintaining regular accounts only fails to supply statements thereof to the debtor. May be that this was occasioned by a mere oversight, or may be that the legislature intended this very result in view of the additional penalty in the former case in the matter of the loss of costs. Courts have, however, to enforce the law as it is, and it is not permissible for them to supplement it in any respect.

"Not withstanding any thing contained in any other enactment for the time being in force."—This means that in what follows the legislature intended to prescribe something opposed to some law existing or supposed to exist at the time, and wanted to lay down that the law being prescribed was to have a binding authority in preference to the previously enacted one. A reference to the three clauses that follow this phrase shows that reference was being made to two points, namely,

(1) the framing of two special issues, suo motu, by courts before proceeding on merits with suits relating to loans, and

(2) the special rules as to the disallowance of interest and costs in consequence of the creditor's failure to comply with the provisions of section 3 of the Act.

The question is what particular provisions of the existing law were being affected by this section? The reference evidently was to Order XV rule 1 of the Code of Civil Procedure, sections 10 and 37 of the Contract Act and section 35 of the Code of Civil Procedure, respectively. It may be advisable to deal with these separately.

(1) Order XV rule 1 of the Civil Procedure Code says,

"Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or fact, the Court may at once pronounce judgment."

The present section, however, lays down that even if the defendant in a suit relating to a loan as defined in this Act confesses judgment, and parties are not at issue about any question of law or fact the Court is not to pass any order as contemplated by Order XV rule 1 of the Code of Civil Procedure, but is first to frame and decide the issue whether the creditor has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3. If the finding on this issue goes against the creditor, the consequences set out in clauses (b) and (c) of this section are to follow, that is, the creditor is to lose interest or costs or both even though the other side may have confessed judgment in his favour. Of course, if the finding on this issue goes in favour of the creditor and the parties are not at issue about any question of law or fact, the provisions of Order XV rule 1 of the Code of Civil Procedure will have to be enforced.

2. Interest. The different provisions made in the Code of Civil Procedure and the Indian Contract Act respectively would be relevant in this connection.

(a) Section 34 of the Code of Civil Procedure provides,

"(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to

the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit thereof shall not lie."

Sections 10 and 37 of the Indian Contract Act read as under:—

Section 10.—"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

"Nothing herein contained shall affect any law in force in British India, and not expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

Section 37.—"The parties to a contract must either perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

"Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract."

The combined effect of the provisions of the Code of Civil Procedure and the Contract Act as set out above is that the terms of a contract, express or implied, are to be enforced by courts unless the promisor can avoid the incidence of the same under provision of the Contract Act or any other law. This means that interest due to the creditor under any express agreement, or under any provision of law (e.g. section 80 of the Negotiable Instruments Act) or under any trade usage must ordinarily be decreed unless there is any law to relieve the debtor of the burden of the same. The present section, however, subordinates the incidence of these provisions to the result of the issue suggested by it. If the creditor succeeds in proving the special issue suggested by the section, he will get interest otherwise the penal clause will be forced to deprive him of the same wholly or in part, as the case may be.

Ordinary Costs.—Section 35 of the Code of Civil Procedure lays down,

> "(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact hat the Court has no jurisdiction to try the suit shall be no bar to the exercise such powers.
>
> "(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.
>
> "(3) The Court may give interest on costs at any rate not exceeding six per cent per annum, and such interest shall be added to the costs and shall be recoverable as such."

This means that usually costs are to abide the result of the case, and where a court directs to the contrary, it has to assign reasons for it, Sub-clause (b) of section 4 of the present Act, however, says that where a creditor as defined under the Act has failed to maintain accounts as prescribed, he must, even if he succeeds on merits, lose all costs.

Compensatory Costs.—Section 35-A of the Code of Civil Procedure provides for the grant of special costs as under,

> "(1) If any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the

knowledge of the party by whom it has been put forward, and if thereunder, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if the objection has been taken at the earliest opportunity and it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector, by the party by whom, such claim or defence has been putforward, of costs by way of compensation.

"(2) No Court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

"Provided that where the pecuniary limits of the jurisdiction of the Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, and not being a Court constituted under that Act, are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees."

The question is whether the present section covers the case of compensatory costs as well. A reference to the language shows that it makes no distinction between ordinary costs and compensatory ones, the words used being, "and shall disallow costs."

Ordinary and Special Laws.—Even if the section had not contained the words "notwithstanding any thing contained in any other enactment for the time being in force", the special provisions made therein would under the general rule governing the interpretation of statute law have prevailed as against the general law as set out in the Code of Civil Procedure and the Indian Contract Act, because all special laws override general laws.

"In any suit for proceeding relating to a loan."—This means that the provisions of this section are not necessarily restricted to suits filed by creditors for the recovery of their loans. In cases tried by Insolvency Courts too these provisions have to be enforced. In fact even in suits other than those for the recovery of loans if the question of the existence of a loan is raised, the present section will apply. An Official Receiver is not a court within the meaning of section 2 (4) of this Act, even though the major part of the work of the Insolvency Court in the matter of admission and proof of debts is done by him, and as such these provisions would not apply to proceedings held by an Official Receiver. This point needs the attention of the legislature.

"Before deciding the claim on the merits frame and decide the issue whether the creditor has complied with the provisions of clauses (c) and (d) of sub-section (1) of section 3."

This means that the court can frame issues on merits as well as those contemplated by this section simultaneously and even record evidence, thereon but the decision of these special issues must precede the decision on merits. This is as it should have been. These issues are to be framed whether the debtor has raised any plea or not. In fact even if the debtor admits the creditor's claim in toto, the court must frame and decide these issues. The rule being imperative applies equally to suits tried ex-parte.

Issues.—The section speaks of one issue only. But it is always convenient to have separate issues for separate points and this is what the Code of Civil Procedure contemplates in Order XIV Rule 1 (3) which lays down.

"Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.'

Under this Act however though there may be no affirmation of the two points, covered by this section, by the creditor or their denial by the debtor, law has to presume the existence of both these circumstances and these points are to be the subject of issues. The two issues contemplated by the section should be

(i) Has the creditor maintained regular accounts as required by section 3 (1) (a) of the Punjab Regulation of Accounts Act?

On Creditor.

(ii) If issue No. (i) be held proved for the creditor did he furnish the debtor with statements of his account as required by section 3 (1) (b) of the Punjab Regulation of Accounts Act?

On Creditor.

If the Court finds the first issue not proved, it has to disallow the whole or a portion of the interest due under the contract to the creditor and has to disallow all costs. But if the Court while finding the first issue proved decides the second against the creditor, it has to disallow interest to the creditor for such periods for which the debtor was not supplied with statements of accounts. In the latter case the question of costs does not arise and must abide the result.

Anomaly.—Reading both the clauses (b) and (c) together the position becomes anomalous to some extent. Where the creditor does not maintain any account whatsoever, that is where he ignores the law in its entirety, the Court has been given the discretion of allowing him a portion of the interest, but where while maintaining an account as required the creditor has merely failed to comply with the provision regarding the transmission of statements of account to the debtor, which means his failure to comply with a part of the procedure, he is to lose all interest. May be that the disallowance of costs in the first case was the deciding factor. But this does not seem to be clear.

"Late despatch of the Statements of accounts."—If the creditor satisfies the court that there were sufficient reasons for his not furnishing statements of accounts to the debtor in time, and that he had taken the earliest opportunity of complying with the rules, the Court has been given the discretion of relieving the creditor of the penalties under clause (c). But evidently the creditor must have furnished statements of accounts relating to one half year before the time for the submission of the statements, for the subsequent half year arrives.

"Errors and omissions in maintaining accounts and submitting statements thereof."—The errors and omissions must be accidental and not material, as the section itself says. Where one person was indebted to three brothers separately, but only one of them kept a joint account in connection with all the three dealings and furnished the debtor with a statement thereof it was held that the law had not been complied with and that the object could not be covered by the plea of accidental or immaterial mistakes.[12]

"Good faith."—This term has been defined in clause 22 of section 2 of the Punjab General Clauses Act, 1898, which says,

> "A thing shall be deemed to be done in good faith, where it is in fact done honestly whether it is done negligently or not."

Case Law.—In a suit governed by the provisions of this Act the question of costs stands on a different basis from that of other suits, as the court is bound to disallow costs if the case falls within the purview of section 4 (b). If, therefore, the defendant wants to have the orders of the lower court allowing costs to be set aside in the appeal, it is incumbent on him to pay court-fee thereon.[14]

According to Act I of 1930 the court cannot grant costs in any proceeding arising from a suit in which costs could not be granted. Where, therefore, plaintiff bringing suit on a

---

12. Tirlok Chand vs. Subedar Mohammad Khan, A.I.R. 1937 Lahore 565.

14. 160 I.C. 883=8 R.L. 625=38 P.L.R. 164=A.I.R. 1936 Lah, 469.

promissory note does not comply with the provisions of section 3 Act I of 1930, he is not entitled to any costs in revision from the decree dismissing his suit although he succeeds, *notwithstanding objections of the respondent.* Ordinary rule as to costs does not apply.[15]

5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act :

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

Scope of the Section.—The Act is not retrospective in its operation, and any loan advanced before 1st July, 1931, cannot come under the purview of its provisions. But if in connection with a debt raised before the Act was enforced any fresh transaction is entered into after this Act has come into operation then that transaction shall fall within the ambit of this Act, and the creditor shall have to comply with the provisions of section 3 so far as such transaction is concerned.

"Transaction."—The Act does not define the term 'transaction' as used in the proviso to this section, as such the ordinary dictionary meaning shall have to be adopted. "*Transaction*" *according to dictionary means* "*the doing or* performing of any business, management of any affair, that which is done, an affair. . . ."

It has sometimes been suggested that this term must be restricted to mean advance of a fresh loan by a creditor to his debtor or the execution of a document in connection with an earlier loan. The latter would certainly be a fresh transaction relating to a previous loan, but the former would ordinarily be a loan by itself unless there is an express understanding that it is to be treated as an addition to the earlier

15. Hakumat Rai vs. Fateh Ali, 39 P.L.R. 133=A.I.R. 1937 Lah. 58.

loan, in which case it would be a transaction relating to the original loan. The proviso, however, says, "any fresh transaction relating to a loan," which means that the transaction must not be independent of the loan. Surely a payment made by a debtor towards a loan would be a transaction relating to the loan and this interpretation gets support from at least one other provision of the Act itself, when the word transaction occurs. Section 3 says:

> "A creditor shall in order to comply with the provisions of this Act regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to the debtor in such manner as the Provincial Government may prescribe."

Now according to the rules framed by the Provincial Government payments made towards loans are to be noted in the accounts. Surely these payments come within the definition of transactions, because it is only these transactions that are to be entered in accounts. The rule of interpretation is that when a word is used by the legislature more than once in any enactment identical meaning must be ascribed to it in all places. As such it is quite clear that the term transaction covers the case of payments as well. A reference may in this connection be permissible to the speech made by Mr. S. L. Sale, Legal Remembrancer to Government, Punjab, in the Legislative Council. He said, "The intention of this Act is that it should not be retrospective, and I should be the first to say that if this proviso could be genuinely interpreted to make the Act retrospective, it would be a wrong provision. The intention of this proviso is to ensure that debtors who contracted a loan before this Act was passed, should have the benefit of this Act in regard to transactions relating to the loan made after the commencement of this Act. Let us take a concrete example of a debt, which was contracted, say on the 1st January 1929 when the Act was not in force; the Act will not apply to such a loan. Let us assume for the sake of argument that the Act comes into force on the 1st January 1931. Suppose, the debtor goes to the creditor on 2nd January and says "I want an additional loan which please add to the previous loan." That is a transaction which must be made subject to the provisions of this Act. Or let us put in another way. Two months after this Act comes into force the debtor makes a payment towards the principal or interest, it does not matter which; that would be a transaction relating to the loan and from the date on which that payment is made, it will be the duty of the creditor to keep an account of that and any further transaction there may be; and send to the debtor a statement of the balance that accrues against the debtor with effect from the date of that payment, but he will not be required to send accounts of any transactions that accrued before the payment. He will only have to send acounts of that particular transaction or any further transaction that was made after the Act came into force. I, therefore, do not see how it can be said that this Act could be retrospective so as to cover loans contracted before the Act in which there has been no transaction since the Act comes into force. The important words in the proviso are "such transaction," i.e., those made after the commencement of the Act, shall be subject to the provisions of this Act."

It is true that courts have to interpret the language of the section as it stands, that a natural grammatical interpretation must be put on the words used by the legislature,[14] and that usually speeches made in the Legislative Council should not be allowed to influence the interpretation of the statute law, because the legislature is supposed to have a sufficient command over the language, so as to bring out its intention in clear and unambiguous terms.[15] But where the language used is not very clear, or is capable of more interpretations than one, there would be no harm in gathering the intention of the legislature from the proceedings of the Legislative Council. All these considerations show that the case of a payment would be covered by the proviso, and it is respectfully submitted that the contrary view

---

14. *Lila Ram vs. Tikan Dass, A.I.R. 1928* Sindh *225=119* I.C. 537.

15. Gurdyal Singh vs. Central Board and Local Committee Amritsar, A.I.R. 1928 Lahore 137.

expressed in Kalandar Shah versus Devi Dutt and another[16] does not seem to be correct.

The Act was not intended to be retrospective in its effect, and there can be no denying the fact that in the absence of a clear provision courts cannot allow it to be given retrospective effect.[17] It has sometimes been suggested that if a payment made after the Act comes into force, towards a loan raised before its enforcement is to be covered by this proviso, it would amount to giving retrospective effect to the Act. But this is wrong. As soon as a payment is made under the above circumstances, the creditor has to maintain an account thereof, from the date of the payment, and he has then to send a statement to the debtor at the appointed time telling him how the account stands after crediting the payment. He need not give the items previous to the payment in question, and will be required merely to show this payment and the balance due, at the close of the half-year, as marked out by taking into account this payment and subsequent transactions if any. It is thus clear that this interpretation while giving effect to the letter and spirit of the law does not make it retrospective in any way.

6. (1) The Provincial Government may make rules not inconsistent with the Act for the purposes of carrying out all or any of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Provincial Government may make rules :—

(i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of section 3;

(ii) prescribing the manner in which the accounts required by clause (b) of sub-

16. A.I.R. 1937 Lahore 16 (b).

17. Harindra Kumar Roy vs. Secretary of State, A.I.R. 1928 Calcutta 808; Lahri vs. Bala, A.I.R. 1922 Nagpur 227.

section (1) of section 3 shall be furnished by the creditor, the forms to be used and the details to be incorporated therein and the scale of costs to be paid by such debtors as may demand that the account required by this clause should be furnished in one of the particular scripts mentioned in explanation (i) of this clause;

Provided that before making any rules under the provisions of this section, the Provincial Government shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, published by notification a draft of the proposed rules for the information of persons likely to be effected thereby, at least thirty days before a meeting of the Punjab Legislative Assembly. The Provincial Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Assembly next following the publication of the draft in order to give any member of the Assembly an opportunity to introduce a motion for discussing the draft.

The general procedure for framing rules under a Punjab Act has been given in section 21 of the Punjab General Clauses Act I of 1898, which may be reproduced below:—

Section 21. Where, by any Punjab Act a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, unless such act otherwise provides the following provisions shall apply:—

(1) The authority having power to make rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the

information of the persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Provincial Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall, consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date specified;

(5) the publication in the gazette of the rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

The following rules have been framed under this section:—

REGULATION OF ACCOUNTS RULES.

1. Short title and comencement. (a) These rules may be called the Regulation of Accounts Rules.

(b) They shall come into force on such date as the Governor-in-Council may by notification appoint in this behalf. (These rules came into force on the 1st July, 1931).

2. Interpretation.—In these rules unless there is anything repugnant in the subject or context,

(a) The Act means the Punjab Regulation of Accounts Act, 1930.

(b) 'Form' means the form in which the accounts prescribed by section 3 of the Act are to be maintained and furnished.

(c) The Punjab General Clauses Act, I of 1898, shall apply for the purpose of interpretation of these rules in like manner as it applies for the purpose of interpretation of the Punjab Act.

3. **'The Form.'**—The account prescribed by clause (a) of sub-section (1) of section 3 of the Act shall be maintained in the form shown in the schedule attached to these rules.

4. The form shall also be used for the statement of account required to be furnished periodically by the creditor to each debtor under the provisions of clause (b) of sub-section (1) of section 3 of the Act.

5. **"Supply of forms."**—Samples of the forms printed in English, Urdu, Gurmukhi, Nagri and Mahajani (Amritsari) and bound into registers containing fifty or a hundred forms shall be available for sale at all Post Offices, Branch Post Offices, Treasuries and Sub-Treasuries throughout the Province and shall be supplied to printing presses in districts. A creditor while being solely responsible for obtaining the requisite number of forms shall be under no obligation to purchase the forms from official sources, but may obtain supplies in the open market or from such other source as he may desire.

Explanation.—Government accepts no responsibility for the supply of forms.

6. **Numerals to be used.**—The numerals to be used for the purpose of making entries in the forms shall be the numeral ordinarily used with the particular script and language selected by the creditor or demanded by the debtor, as the case may be, in accordance with explanation (i) to section 3 of the Act.

7. **Method of maintaining the prescribed accounts.**— Each entry in the form shall as far as possible be made on the date to which the transaction in question relates.

8. The name and address of the debtor, and in the case of joint-debtors, of each joint-debtor, shall be entered at the head of the form after words, "loan account of."

The address so entered shall be the address supplied by the debtor or joint-debtor as the address to which the statement of accounts should be sent in accordance with the requirements of rule 14.

9. Particulars of each entry relating to repayments or advances, whether in cash or kind, shall be entered in words in the column provided in the form for this purpose.

Immediately after the mention of the amount in words in that column, half of this amount shall also be expressed in words.

10. The rate of interest as agreed on by the parties for each advance whether in cash or in kind, and the amount of interest charged shall be entered in the column provided in the form.

11. The value of a repayment in kind by a debtor and the amount appropriated to principal and interest shall be entered on due dates in the columns provided in the form.

12. The form shall be kept by the creditor in duplicates, so that there shall be a foil and counter-foil. The counter-foil shall be retained by the creditor and the foil shall be sent to the debtor in the manner hereinafter mentioned. The entries in the foil so sent to the debtor shall in all respects be an exact copy of the entries in the counter-foil retained by the creditor.

13. Where there are two or more joint-debtors the statement of account shall, in the absence of agreement to the contrary, be furnished to the joint-debtor named first at the head of the form.

14. **Method of furnishing account to debtor.**—The statement of account shall be furnished by sending the foil to the debtor by registered post, acknowledgment due, at the address entered at the head of the form in accordance with the requirements of rule 8:

Provided that if the debtor or joint-debtors, as the case may be, agreed in writing to accept the foil by personal delivery it shall not be necessary to send it by post.

Explanation.—To prepare for posting the foil should be folded into packet form, with the space provided for the address left on the outside. As many foils intended for the same debtor as can be conveniently sent together may be enclosed in one packet. After folding, the open outside edge should be fastened down with a slip:—

"Form of account under the Regulation of Accounts Act, 1930."

The packet thus folded, addressed and stamped should be sent by registered post, acknowledgment due, without any outer cover.

15. **Proof of acceptance by Debtor.**—If the debtor accepts the foil when delivered to him in person, he shall give an acknowledgment of the receipt of the form on a separate sheet of paper. This acknowledgment shall bear the debtor's signature or thumb-impression.

Explanation.—The acknowledgment shall not be deemed to be an admission of correctness of the entries in the form.

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

17. **Recovery of postal registration charges.**—The postal registration and acknowledgment chargs incurred by sending the statement of account by registered post shall be recoverable by the creditor as though it were a loan advanced in cash to the debtor and shall be duly entered in the loan account form.

SCHEDULE.

Counterfoil.

Loan Account of son of caste residence

Opening balance (if any)
Principal
Interest

NAM.								JAMA.							
		Advance in figures.								Repayments in figures.			Appropriation.		
Date.	Particulars of advances in words whether cash or kind (See rule 9).	Cash.	Kind (number or weight).	Value of advances in kind.	Rate of interest.	Amount of interest charged.	Remarks.	Date.	Particulars of repayment whether cash or kind in words. (See rule 9).	Cash.	Kind (number or weight).	Value of repayment in kind.	Principal.	Interest.	Remarks.

Balance outstanding on 30th June / 31st December 19 .
15th Har / 15th Poh Sambat 19

	Principal.	Interest.
Add opening balance as above		
Total. ...		

(Signature) Creditor or Agent.

Selected Judgments

A.I.R. 1936 LAHORE 469.

Bhide, J.

KUNDAN LAL—Defendant...Appellant.

Versus

RAM PARTAP—Plaintiff and another....Defendant....
Respondents.

Judgment.—This is a suit for recovery of Rs. 1600|- on the basis of a bond. Defendants pleaded that the suit was governed by the provisions of the Punjab Regulation of Accounts Act and the issue I framed in the case was:

Is the present suit exempt from the provisions of the Punjab Regulation of Accounts Act?

The trial Court found that the plaintiff was a creditor within the meaning of the definition given in the Punjab Regulation of Accounts Act and as he had not kept accounts in accordance with the requirements of that Act, he was not entitled to claim any interest or costs. As a result of these findings, the plaintiff was granted a decree for Rs. 1278|- only. From this decision an appeal was preferred by the plaintiff to the District Judge, who held that it had not been proved that the plaintiff was a 'creditor' within the meaning of the Punjab Regulation of Accounts Act, at any rate at the time when the loan in question was advanced. He, therefore, accepted the appeal and granted the plaintiff a decree for Rs. 1,600|- with costs in both the Courts. From this decision a second appeal has been perferred to this Court on behalf of the defendants.

The sole point for decision in this appeal is, whether the learned District Judge was right in holding that the plaintiff was not a 'creditor' within the meaning of definition of the Punjajb Regulation of Accounts Act at the time when the loan was advanced. It may be noted at the outset that the position taken up by the plaintiff in the trial Court was that he was not a 'creditor' within the meaning of the Act at any time. He made no distiction between his position in 1931 when the loan was advanced and his position later on. The learned counsel for the appellant contended that the distinction which the learned District Judge has drawn between the two positions is not supported by any evidence on the record and this contention appears to me to be correct. The plaintiff admitted in the course of his cross examination that he had advanced loans to a number of persons and he did not say that he had advanced these loans subsequent to the year 1931. In the circumstances I do not think that the finding of the learned District Judge can be supported on the ground on which it proceeds. In view of the number of loans which the plaintiff has admitted to have advanced I do not see why he should not be held to have advanced these loans in the regular course of business within the meaning of the definition of the term 'creditor'. The learned counsel for the plaintiff contended that bonds had been taken only from tenants in lieu of arrears of rent, etc., but the evidence on the record does not bear out this contention.

The learned counsel next contended that the burden of proof as regards issue I was wrongly placed on the plaintiff and there is no presumption that the provisions of the Punjab Regulation of Accounts Act are applicable to every suit for recovery of a loan. There is some force in this contention, but it appears that no objection was raised on the question of onus in the trial Court, and although the point was taken in the memorandum of appeal to the learned District Judge, it does not appear to have been pressed in the course of arguments. The parties have apparently produced such evidence as they had on this point and I do not think that there is any justification for a remand at this stage in second appeal. I, therefore, agree with the finding of the trial Court that the plaintiff is a 'creditor' within the meaning of the Punjab Regulation of Accounts Act.

According to section 3 of that Act that Court may disallow the whole or a portion of the interest in such a suit and is also bound to disallow costs. The learned Judge of the trial Court had disallowed the whole of the interest as well as costs. It was urged that the learned Judge should have used his discretion and should have allowed at least a portion of the interest. The learned counsel has, however, not been able to point out any particular reasons for showing leniency to the plaintiff in this respect.

As regards costs, however, the learned counsel for the respondent is right in pointing out that the appellant is not entitled to raise the question of costs in this appeal as he has not paid any court fee in respect of the costs. The learned counsel for the appellants urged that costs are only incidental and, therefore, no payment of court fee was necessary. In support of this contention he relied on 37 P.L.R. 50 (1), but that ruling does not appear to me to be applicable in the circumstances of this case. In the present case the question of costs stands on a different basis as the Court is bound to disallow costs if the case falls within the purview of section 3 Punjab Regulation of Accounts Act. If, therefore, the defendant wanted to have the order of the District Judge allowing costs to be set aside, it was, in my opinion, incumbent on him to pay court fee thereon.

I accept the appeal to the extent of reducing the decree passed by the learned District Judge by the sum of Rs. 322 on account of interest on which the appellant has paid court fee. The appellants will get their costs in this Court.

Appeal accepted.

A.I.R. 1937 Lahore 16.

Jai Lal and Abdur Rashid, JJ.

KALANDER SHAH—*Defendant—Appellant.*

versus

DEVI DAS and another—Plaintiffs. . . Respondents.

Judgment.—Jai Lal, J. The respondents Devi Das and Fateh Chand instituted a suit against the appellant Kalandar Shah for recovery of Rs. 14,154-10-9 claimed to be due on two bonds executed by the appellant on 26th February, 1930 for Rs. 9,753|10|- and Rs. 4,000|-|- respectively. The amount payable under these bonds was to carry interest at the rate of Rs. 1|4|- per cent per mensem. The interest was to be calculated from the date on which the default be made in the payment of instalments which were stipulated to be paid in the bonds. Some payments were admitted to have been made by the respondents. They amounted to Rs. 3,685. The suit was for the balance which was claimed by the plaintiffs to be both principal and interest, Rs. 14,154-10-9. Both these bonds were registered, but the appellant denied receipt of consideration and further pleaded that interest was excessive. He also claimed the protection of the Usurious Loans Act and pleaded that the plaintiff was not entitled to costs because he had not complied with the provisions of the Punjab Regulation of Accounts Act. The Senior Subordinate Judge has found against the appellant on all these points and has decreed the suit in full and has further directed that the decretal amount shall bear interest at 6 per cent per mensem from the date of the decree till payment. He has refused to grant instalments to the appellant on the ground that there was no proof that the defendant was unable to pay the amount.

The consideration for the two bonds was previous debts due to the respondents from Jafar Hussain Shah, deceased brother of the appellant, and Rs. 753-10-0 due from the appellant personally. The amount due from Jafar Hussain Shah was evidenced by two bonds executed by him on 9th

March, 1924 for Rs. 3,000|- and Rs. 5,000|- respectively. The burden of proving want of consideration was on the appellant and the Court has rightly held that he has given no satisfactory evidence in support of his plea. On the other hand, the respondents have produced the previous bonds and their account books and have proved the execution of these bonds by good and reliable evidence. The main plea of the appellant's counsel before us, however, was that the lower court should have applied the provisions of the Punjab Regulation of Accounts Act to this case. That Act came into force on 31st July, 1931 and, as I have already stated, the bonds in suit were executed on 26th February 1930. The Act has no retrospective effect as it is clearly provided in section 5 that the provisions of the Act shall not apply to any loan advanced before the commencement of this Act. The learned counsel, however, relies on the proviso to this section which is that if any fresh transaction relating to a loan advanced before the commencement of this Act is made after the commencement of this Act such transaction shall be subject to the provisions of this Act. It is contended that, as after he commencement of the Act some payments were made by the appellant to the respondents, therefore, there had been *some transaction relating to* the loan *after* the commencement of the act and to that extent the Act is applicable. In my opinion the mere payment of a debt does not amount to a fresh transaction within the meaning of the proviso to section 5, and this is clear from the limitation imposed upon the application of the Act to the transaction which has taken place after the commencement of the Act. If the mere payment were held to be such a transaction, then I cannot conceive how the provisions of the Act can be made to apply to a payment alone. In my opinion, therefore, the Punjab Regulation of Accounts Act has no application to the present case as no transaction took place between the parties relating to the loan in question after the commencement of the Act.

The *other question raised by the* learned counsel is that the rate of interest being excessive the lower court should have re-opened the accounts under the *provisions* of the

Usurious Loans Act. The trial Judge, however, has held that the rate of interest is not excessive, on the other hand he is of opinion that it is fair, just and reasonable. With this opinion, I agree. Having regard to the fact that there was no security for the loan and the appellant had inherited the property of his deceased brother which he wanted to save for himself by executing the bonds in favour of his creditors, the rate of interest is reasonable and within the maximum limit now provided for this Province for the purposes of the Usurious Loans Act. This limit has been provided in the case of unsecured loan by the Punjab Relief of Indebtedness Act and is fixed at 18¾ per cent per annum simple. The only other question raised on behalf of the appellant is that the appellant should have been allowed to pay the amount of the decree by instalments, but he produced only one witness who could give no satisfactory evidence as to the financial condition of the appellant and in any case this is not a case in which the appellant is entitled to a provision for payment of the decretal amount by instalment because he had already been given that opportunity in the bond and has made default in the payment of the instalments. Taking into account all the circumstances of the case, in my opinion the trial court exercised a fair discretion in granting a decree to the respondents without any condition as to instalments. I would dismiss this appeal with costs.

Abdul Rashid, J., I agree.

Appeal dismissed.

The

Punjab Relief of Indebtedness Act,

1934.

Table of Contents

Table of Contents–(contd.)

The Punjab Relief of Indebtedness Act, 1934.

Punjab Act No. VII of 1934.

PART I.

PRELIMINARY.

1. (1) This Act may be called the Punjab Relief of Indebtedness Act, 1934. Short title, extent and commencement.

(2) This part and Parts III, IV, V, VI, VII and VIII shall extend to the whole of the Punjab and Part II to such areas as the Local Government may from time to time, by notification, direct.

(3) This Act shall come into force on such date as the Provincial Government may, by notification, appoint in this behalf.

Object of the Act.—The object of the Act is to *provide for the relief of indebtedness in the Punjab* by amending the law governing the relations between debtors and creditors. "In view of the sharp fall in the prices of agricultural produce the pressure of debt on the cultivators had become unbearable and the province was faced with the problem of finding some relief to alleviate distress. The Government of the Punjab in formulating this measure, have endeavoured to hold the balance clearly between the creditor and the debtor, and to give the debtor such relief as is possible without making any change in the law which will have the effect of destroying or seriously impairing the system of rural credit."[1]

The law governing relations between debtors and creditors had been found, in practice, to be harsh to the

1. Statement of objects and reasons.

former, and in view of the financial depression it had particularly become impossible for the debtor to liquidate his debts. With a view to enable the creditors to realise their debts in a manner which may not cause hardship to the debtors, the Punjab Government undertook to enact this law. The Act has amended certain provisions of the following Acts which govern the relations between debtors and creditors:—

1. The Provincial Insolvency Act, V of 1920 [sections 10 (1), and 74.]
2. The Usurious Loans Act, X of 1918, (section 3).
3. The Redemption of Mortgages (Punjab) Act, II of 1913, [section 1 (3) (a)].
4. The Code of Civil Procedure, Act V of 1908, [section 60 (1) (c) and Order XXI, Rule 2].

Besides this, with a view to effect amicable settlements of debts between debtors and their creditors, provision has been made to constitute Debt Conciliation Boards, and the severity of the law regarding arrest of judgment-debtors in execution of money decrees has been toned down a great deal. A provision has furthermore been made in section 37 penalizing the false inflation of accounts by creditors.

By making these provisions the Government of the day met a desperate situation replete with serious potentialities. The economic situation had deteriorated, and the natural insistence of creditors to recover their dues through courts and otherwise increased the difficulties of debtors. It was certainly harsh to eject debtors from their hearths, homes and lands when they had no means of liquidating their liabilities. The proposed law, however, raised a storm in the provincial politics. The money-lending class characterized it as a discriminative measure, directed against their very existence, and called it a lawless law. Others feared that it would give a death blow to village economy, and it was argued that protection in any form, if continued indefinitely, weakens what it protects. The situation was, however, so serious that in spite of this opposition a drastic remedy was considered justified, and consequently the present Act was placed on the Statute book in order to relieve indebtedness and improve the law governing the relations between debtors and creditors.

Applicability.—This Act came into force on 19th April, 1935, vide Government Notification No. 16639 (Home Judicial), dated April 18, 1935. With the exception of part II which deals with Insolvency procedure, the other provisions, of the Act were at the very start made applicable to the whole of the Punjab. Part II of this Act has also now been made applicable to the whole of the Punjab with effect from the 25th of November, 1936 (vide Punjab Government Notification No. 6365-J-36-36537, dated the 25th of November, 1936).

The following extract from the High Court Rules and Orders (Volume I Chapter 11-E) is worth perusal:—

> "The provisions of the Punjab Relief of Indebtedness Act, 1934, require attention in so far as they affect the jurisdiction of the Civil Courts. The Punjab Government is empowered by section 8 of the Act to establish Debt Conciliation Boards for the purpose of effecting amicable settlement between debtors and creditors. The Government will define local and pecuniary limits of the Board's jurisdiction. If the Board succeeds in bringing the parties to an amicable settlement, the agreement made takes effect under section 17 (2) as if it were a decree of a civil court. The Board may further, in certain cases grant the debtor a certificate under section 20 of the Act if it is of opinion that the debtor has made the creditor a fair offer.

> "When an application has been made to a Board under section 9 of the Act for settlement between the debtor and his creditors, the Civil Courts cannot entertain any suit or other proceedings relating to that debt. Any pending

suits or proceedings are to be suspended until the board has had either dismissed the application or an agreement has been arrived at (vide section 25).

"Section 21 of the Act debars a Civil Court from entertaining certain types of suits, e.g. suits to question the validity of any procedure or the legality of any agreement made under this Act.

"When any creditor sues in a Civil Court in respect of a debt for which a certificate under section 20 of the Act has been granted the Court can entertain the suit, but shall disallow costs and interest in excess of 6 per cent per annum simple interest."

(Vide correction slip No. 196 dated the 16th of May, 1938, to Rules and Orders, Volume I, Chapter 2-B).

Interpretation clause. (Definitions.)

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

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

(2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the court, in substance a loan.

Interest.—The definition of the expression "interest" can be divided as follows:—

(a) Rate of interest;

(b) The return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest, or otherwise. In ordinary parlance "interest" means something over and above what was actually lent by the creditor to the debtor. It may be in the shape of money or in kind. Even personal services rendered by the debtor or any member of his family to the creditor are to be denoted as interest. It may be defined as something paid by way of compensation for the use of money or kind advanced. It makes no difference whether the stipulation regarding interest is express or implied. The crux of the definition is that the return made by the borrower to the lender is in excess of what was actually lent by the latter to the former. It makes no difference whether it is charged or recovered specifically as interest or otherwise.

Loan.—This definition has been taken from the Usurious Loans Act, 1918. The term "loan" has been defined in the Punjab Regulation of Accounts, 1930, as well, but that definition is more elaborate. "Loan" means something lent to another for his temporary use, whether in money or in kind. There is a variety of transactions which can be described as loan, and the definition therefore empowers court to hold a particular transaction as a loan although it may not have been described as such. The definition given in the Punjab Regulation of Accounts Act is as follows:—

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

(a) The deposit of money or other property in a Government Post Office, Bank or any other bank or in a Company or with a co-operative Society;

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

(c) A loan advanced by the Central or any Provincial Government or by any local body, authorised by the Central or any Provincial Government;

(d) A loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act;

(e) A loan advanced to a trader;

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

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

It should be noted that where a creditor sues in a Civil Court for the recovery of a debt in respect of which a Debt Conciliation Board has granted a certificate under section 20 (1) of the Punjab Relief of Indebtedness Act, 1934, the Court cannot allow the plaintiff any costs of the suit.

The court may disallow the whole or part of the interest and must disallow costs if it is found that the creditor has not complied with the requirements of section 3 (1) (a) of the Punjab *Regulation of Accounts Act*, 1930, about maintenance of accounts as prescribed by this Act. (Vide correction slip No. 197, dated the 16th of May, 1938, to Rules and Orders, Volume I, Chapter 11-E).

PART II

INSOLVENCY PROCEDURE

[Note.—This part of the Act was applied to the whole of the Punjab with effect from 25-11-1936 under the Punjab Government Notification No. 6365-J-3673 dated 25-11-1936.]

Amendment of section 10 of the Provincial Insolvency Act 1920.

3. In section 10 (1) of the Provincial Insolvency[2] Act, 1920, after the existing clause (a) the following clause shall be inserted—

2. V of 1920.

"(aa) his debts amount to two hundred and fifty rupees, and he satisfies the court that he is entitled to summary administration of his estate under section 74 of this Act; or"......

Section 10 (1) of the Provincial Act as amended reads as follows:—

10 (1). A debtor shall not be entitled to present an *insolvency petition unless he is unable to pay his debts* and:—

(a) his debts amount to five hundred rupees; or

(aa) his debts amount to two hundred and fifty rupees and he satisfies the court that he is entitled to summary administration of his estate under section 74 of this Act; or

(b) he is under arrest or imprisonment in execution of the decree of any court for the payment of money; or

(c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

(2) A debtor in respect of whom an order of adjudication whether made under the Presidency-Towns Insolvency Act, 1909, or under this Act has been annulled owing to his failure to apply or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the court by which the order of adjudication was annulled. Such court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition, on which the order of adjudication was made.

The object of this amendment is to afford a larger number of persons an opportunity to avail themselves of a simple and less expensive procedure of insolvency. Before this amendment only those persons could present a petition for insolvency whose debts amounted to five hundred rupees or more, but this limit has been lowered with a view to help poor people to avail of the expeditious and summary remedy contained in the Provincial Insolvency Act. It has, however, been provided that in the case of a debtor, whose debts amount to Rs. 250|- only, the court has to be satisfied that he is entitled to summary administration of his estate under section 74 of the Provincial Insolvency Act.

As to the provisions of section 74, see the next section.

Amendment of section 4 of the Provincial Insolvency Act 1920.

4. In section 74 of the Provincial Insolvency Act. 1920, for the words "five hundred rupees" the words "two thousand rupees" shall be substituted.

Section 74 of the Provincial Insolvency Act after this amendment reads:—

"When a *petition is presented by or against debtor, if the* court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value **two thousand rupees,** the court may make an order that the debtor's estate may be administered in a summary manner and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

(i) Unless the court otherwise directs, no notice required under this Act, shall be published in the local Official Gazette;

(ii) On the admission of a petition by a debtor the property of the debtor *shall vest in the court as* a receiver;

(iii) At the hearing of the petition the court shall enquire into the debts and assets of the debtor and determine the same by order in writing and it shall not be necessary to frame a schedule under the provisions of section 33;

(iv) The property of the debtor shall be realised with all reasonable despatch and, thereafter, when practicable, distributed in a single dividend;

(v) The debtor shall apply for his discharge within six months from the date of adjudication, and

(vi) Such other modifications as may be prescribed with a view of saving expense and simplifying procedure, provided that the court may at any time direct that the ordinary procedure provided for in this Act, shall be followed in regard to the debtor's estate and thereafter the Act shall have effect accordingly."

Before this amendment the benefits of summary administration of a debtor's estate could be availed of only if the debtor's entire property could not yield more than five hundred rupees. By raising the value of the property of the debtor to two thousand rupees the advantage of summary administration have been thrown open to a larger number of debtors. A considerable number of debtors can now avail of the advantages of simple, quick and inexpensive remedy provided for in section 74 of the Provincial Insolvency Act. The amendments of the Provincial Insolvency Act under sections 3 and 4 of the present Act widen its scope in order to alleviate distress and relieve indebtedness.

The following are, in brief, the benefits of summary administration provided for in section 74 of the Provincial Insolvency Act:—

(i) No notice as required under section 91 (1) of the Act is ordinarily to issue in the official gazette, and as such the expense necessary for such a publication is avoided;

(ii) No receiver of the debtor's property is to be appointed, as the court is to administer the estate directly, thus saving the commission etc. payable to the receiver.

(iii) No schedule of the debts owed by the insolvent is to be prepared;

(iv) Special efforts are to be made to administer the estate as early as possible;

(v) The insolvent has the right of claiming discharge within six months from the date of adjudication.

The amendments effected in sections 10 and 74 (Provincial Insolvency Act) are, therefore, very welcome, as a larger number of debtors, unable to liquidate their debts, can now avail of the Insolvency law and secure adjudication and discharge by a more simple, expeditious and less expensive procedure which would for obvious reasons be beneficial both to the debtors and their creditors.

PART III

USURIOUS LOANS

Amendment of the Usurious Loans Act, 1918.

5. In section 3 of the Usurious Loans Act, 1918—

(i) for the word "and" in clause (a) of sub-section (1) the word "or" shall be substituted :

(ii) for the word "may" where it appears for the first time in sub-section (1) the word "shall" shall be substituted :

(iii) for the word "may" after the word "namely" in sub-section (1) the word "shall" shall be substituted :

(iv) to sub-section (2) the following clause shall be added—

"(e) The court shall deem interest to be excessive if on secured loans it exceeds twelve per centum per annum simple interest or nine per centum per annum compound interest with annual rests, and if on unsecured loans it exceeds eighteen and three-quarter per centum per annum simple interest, or fourteen per centum per annum compound interest with annual rests : provided that the court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the Imperial Bank of India, or any banking company reg stered under the Indian Companies Act. 1913,[3] or any law relating to companies for the time being in force in British India.

Scope of the Section.—This section has substantially amended section 3 of the Usurious Loans Act. Before this amendment the court was empowered to re-open a transaction, if besides the rate of interest being excessive the transaction between the parties thereto was substantially unfair. In practice debtors found it very difficult to fulfil both conditions simultaneously, with the result that this salutary provision of law had practically become a dead letter. It was realised that this extremely useful provision needed amendment so as to eanble the court to re-open a transaction in which either of these conditions was fulfilled. Moreover even when the requirements of law were fulfilled, the discretion vested in courts to re-open a transaction, was not exercised in many cases, because it was purely discretionary with them to proceed under section 3 of the Usurious Loans Act or not, and they were in no way bound to take any action. It has now become obligatory on their part to re-open a transaction when there are reasons to believe:—

(a) that the interest is excessive; or

(b) that the transaction was as between the parties, thereto, substantially unfair.

Apart from these two defects the Usurious Loans Act contained no definition of the expression "excessive interest." It was left entirely to courts to determine what rate of interest could be regarded as excessive. It was felt that the term should be defined for the guidance of the courts.

The section as amended reads:—

"(1) Notwithstanding any thing in the Usury Law Repeal Act, 1855, where in any suit to which this Act

3. VII of 1913.

applies whether heard ex-parte or otherwise, the court has reason to believe,

(a) that the interest is excessive; or

(b) that the transaction was, as between the parties thereto, substantially unfair, the court shall exercise all or any of the following powers, namely, shall,

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

(ii) notwithstanding any agreement, purporting to close previous dealings, and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that in exercise of these powers the court shall not,

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from they claim at the date more than twelve years from the date of transaction;

(ii) do anything which affects any decree of a court.

Explanation.—In the case of a suit brought on a series of transactions, the expression "the transaction" means, for the purpose of proviso (i) "the first of such transactions."

(2) (a) In this section "excessive" means in excess of that which the court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the court shall take into account any amounts charged or paid, whether in money or in kind for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transaction of the debtor, by way of loan, so far as the same were known or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantiaaly unfair, the court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan, or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor.

(e) The court shall deem interest to be excessive if on secured loans it exceeds twelve per centum per annum simple interest, or nine per centum per annum compound interest with annual rests, and if on unsecured loans it exceeds eighteen and three quarter per centum per annum simple interest, or fourteen per centum per annum compound interest with annual rests; provided that the court shall not deem interest in excess of the above rate to be excessive if the loan has been advanced by the Imperial Bank of India, or any banking company registered under the Indian Companies Act, 1913, or any law relating to Companies for the time being in force in British India.

Explanation.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan, or, for the redemption of any such security.

(4) Nothing in this section shall affect the rights of any tranferee for value who satisfies the court that the transfer to him was bona fide and that he had, at the time of such transfer, no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

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

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

Retrospective effect.

6. The provisions of this part of the Act shall apply to all suits pending on or instituted after the commencement of this Act.

Laws promulgated by legislatures normally do not affect past transactions, because the public is supposed to conduct its affairs in the light of existing laws only, and the giving of retrospective effect to any law results in unnecessary interference in such transactions. But the legislature may for sufficient reasons make a departure from this rule and give retrospective effect to any law. The amendments effected under this Act in the Usurious Loans Act fall in the latter category.

The amendment effected in section 3 of the Punjab Usurious Loans Act, 1918, have been made applicable to all suits pending on or instituted after the date of the commencement of this Act. The Act came into force on the 19th April, 1935, and these amendments became applicable to suits pending on, or instituted on or after that date. It would apply to all transactions which were completed before the Act but with respect to which relief is sought after the commencement of this Act. The object underlying this provision evidently was to give immediate relief to debtors.

Cases ripe for decision.—The amendments made would affect cases ripe for decision in trial courts at the time of the enforcement of the Act, since these consequences flow from giving retrospective effect to it. This shows how dire was the necessity for amending the law.

Appeals.—The word used in the section is "suit" and as such it would not cover the case of an appeal pending at the time of the enforcement of the Act. An appeal may for some purposes be regarded as the continuation of the suit to which it relates, but it cannot be so for all purposes. Besides an appeal will take into consideration the law as it stood at the time of the decision of the suit, and the court will not be justified, unless there be a clear indication in any law to the contrary, in upsetting a decision merely because of some change in the law effected subsequent to it.

According to section 6 the provisions of part III of the Act apply only to suits which were pending on or instituted after the commencement of the Act. Hence these do not apply where the suit is decided before the coming into force of the Act, even though an appeal is pending. An appeal cannot be included within the scope of section 6. The legislature presumably used the word "suit" advisably in section 6 and that section cannot be held to be applicable to appeals.[4]

The provisions of section 6, Punjab Relief of Indebtedness Act, apply to part III and not to part VIII. Section 35 is to be found in part VIII and a judgment-debtor whose property has been attached in execution of a decree, against him, is entitled to raise an objection, even in appeal, that the property attached is not liable to attachment and sale, provided the objection is raised before sale of

4. (Bhide, J.) Mohammada versus Chuni Lal, 165 I.C. 657, 9 P.L.R. 277, 38 P.L.R. 885; A.I.R. 1936 Lahore 678.

the property has taken place. Where the court on such objections being raised, refuses to apply the provisions of the Punjab Relief of Indebtedness Act, it fails to exercise jurisdiction vested in it by law and its order is open to revision.[5]

PART IV

DEBT CONCILIATION BOARDS.

As the very heading of this part of the Act shows, the provisions made herein aim at establishing an agency for attempting amicable settlements of debts between debtors and their creditors. The determination of all disputes cognizable by law is the duty and privilege of courts. But evidently courts, how much it may be desirable, cannot assign to themselves the functions of conciliatory boards, because their main duty is to decide cases in accordance with law irrespective of all other considerations. The administration of justice through the agency of courts would not necessarily in all cases be an ideal arrangement, nor can *courts always claim to be doing real and substantial justice* between parties, for their decisions are to be based on law the working of which may in particular cases result in harshness. It was therefore considered necessary to find out some other means of tackling the situation, which on account of abnormal conditions of the peasantry, who, so far as the Punjab is concerned, have always formed, and will continue to form the bulk of debtors, was from day to day becoming very grave. Several proposals were before the Government. Of these, two, namely, a few years' moritorium, and a substantial scaled reduction of the amount of debts in individual cases had the greatest support. Government, however, seems to have hit at a harmonious blending of these two objectives and certain other devices, and the scheme enunciated in this part of the Act was the result.

5. (Agha Haidar, J.) Hira versus Ram Singh, 164 I.C. 225, R.L. 93 (2), A.I.R. 1936 Lahore 574.

In framing the law set out in this part of the Act the legislature had as its model the Central Provinces Debt Conciliation Act II of 1933, which has since been amended by Acts No. I of 1934 and No. XIV of 1935. But the Punjab Act differs from the Central Provinces Act in several respects as the following will show:—

(i) The definitions of the terms "debt" and "debtor" different in the two Acts in certain important respects, these being more elaborate and comprehensive in the Central Provinces Act.

(ii) While in the case of the Punjab Act, Conciliation Boards cannot entertain any case involving the indebtedness of a debtor exceeding Rs. 10,000|-, the limit in the Central Provinces has been fixed at Rs. 25,000|-.

(iii) The Punjab Act does not require the registration of an agreement between a debtor and his creditors under the Indian Registration Act, while the Central Provinces Act does.

(iv) The Central Provinces Act forbids the appearance of legal practitioners before a Board while the Punjab Act allows it with the permission of the Board.

(v) Under the Central Provinces Act any amount due under an agreement is, in the case of default on the part of the debtor in paying it, recoverable as land revenue but there is no such provision in the Punjab Act.

7. (1) "Debt" includes all liabilities of debtor in cash or in kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether mature or not, but shall not include debts incurred for the purposes of trade, arrears of wages, land-revenue or anything recoverable as an arrear of land-revenue, **Interpretation clause.** *(definitions.)*

or any debt which is barred by the law of limitation, or debts due to co-operative banks or to co-operative societies or to the Imperial Bank of India or to any banking company registered under the Indian Companies Act, 1913, of the law relating to companies for the time being in force in British India.

(2) "Debtor" means a person who owes a debt and

(i) who both earns his livelihood mainly by agriculture, and is either a land-owner, or tenant of agricultural land, or a servant of a land-owner, or of a tenant of agricultural land, or

(ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture.

Provided that a member of a tribe, notified as agricultural under the Punjab Alienation of Land Act, 1900, shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources is greater than his income from agriculture.

Explanation :—(i) A debtor shall not lose his status as such through involuntary unemployment or on account of incapacity, temporary or permanent, by bodily infirmity, or, if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

(ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.

(iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

If any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

(3) "Agriculture" shall include horticulture and the use of the land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like.

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

Debt.—The definition of the expression "debt" enumerates as to what this term would, for the purposes of this part of the Act, include, and what it would exclude. It is neither exhaustive nor precise. It lays down that certain obligations shall be deemed to fall within the ambit of this definition, while others are not to be so included. "Debt" includes all liabilities whether in cash or in kind, secured or unsecured, matured or unmatured and whether payable under a decree or order of a civil court or otherwise. But it does not include:—

(a) a debt incurred for the purpose of trade;
(b) arrears of wages;
(c) land-revenue or anything recoverable as arrear of land-revenue;
(d) a debt which is barred by the law of limitation;
(e) a debt due to a co-operative bank or a co-operative society or to the Imperial Bank of India or to any other banking company registered under the Indian Companies Act, 1913, or the law relating to companies for the time being in force in British India.

The definition of this term under the Central Provinces Act is much wider as it does not exclude items (a) and (e) above. It says "debt" includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether due or not due, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any money for the recovery of which a suit is barred by limitation."

This means that the Punjab Legislature has been careful not to jeopardize the interests of trade, because debts incurred for trade purposes or due to the Imperial Bank of India or other companies registered under the Indian law are, under the Punjab Act, beyond the jurisdiction of Debt Conciliation Boards.

Payable under a decree or order of a civil court.—This means that for the purpose of coming to an agreement under section 17, the amount due by a debtor under a decree or order of a civil court can be reduced. This does not in any way conflict with the provision made in section 14 of the Act. The latter merely means that a decree or order of a civil court will be conclusive to show what sum is due under it.

Whether mature or not.—This means that even debts which have not fallen due can form the subject of an agreement.

Debts incurred for trade.—In not defining 'trade' or 'trader' the legislature has obviously left a lacuna in the Act. We shall consequently have to adopt the dictionary meanings for these terms. Trader is a person whose normal business is to buy and sell goods or property. A casual buyer or seller of goods or property cannot be a trader, nor can debts raised by him for the purpose of buying goods or property be treated as trade. The Punjab Regulation of Accounts Act and the Punjab Relief of Indebtedness Act are complementary laws, and there would be nothing wrong if the definitions given in the former are so far as these may be applicable read into the latter. The Punjab Regulation of

Accounts Act defines 'trader' as "*means* a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include a wholesale or a retail merchant, a commission agent, a broker, a manufacturer, a contractor, but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use."

Debtor.—A debtor is a person who besides owing a debt as defined in section 7 (1) of this Act,

(a) earns his livelihood mainly by agriculture;

(b) is either a land owner or tenant of agricultural land, or a servant of a land owner, or of a tenant of agricultural land; or

(c) earns his livelihood as a village *menial* for work connected with agriculture.

Proviso.—Under this proviso a person belonging to an agricultural tribe notified under section 4 of the Punjab Alienation of Land Act, if owing a debt is to be presumed to be a debtor unless it is shown that his income from other sources is greater than from agriculture.

Village menial.—This term has no where been defined. At first sight it seems that the person claiming to fall within the category of village menial must be a resident of the village of which he is a menial. But a little probing removes this misunderstanding. The term really means a menial who attends to the needs of agriculturists in villages. Those who are acquainted with village life know that kamins (carpenters, masons, sweepers, barbers, washermen, etc.) attending to the agricultural needs of the zamindars of any village do not necessarily reside there. They may be residing in other villages or in towns nearby. They are generally paid a certain fixed share of the agricultural produce, although at times they work for cash remunerations as well. However, it would have been better if the legislature had defined the term. We commend this course to the attention of the legislature in order to avoid unnecessary hair splitting.

Explanations.—The explanations were added to alley the anxiety entertained by the representatives of the debtors that the benefits which the legislature desired to confer on them would in actual working of the law be practically denied. This argument was in the main based on the limitations with which certain earlier provisions of a similar nature are hedged round, e.g., the term "agriculturist" as used in the provisos (b) and (c) of section 60 of the Code of Civil Procedure, has in view of judicial pronouncements, based as these are on the dictionary meaning of the term, come to mean an actual tiller of land.[6]

Agriculturists have at times, particularly during off season, to supplement their income from agriculture by taking to other vocations, not strictly agricultural, e.g., plying carts for transport. Besides this an agriculturist may find it necessary to join military service. In fact a large percentage of military men in the Punjab is represented by the agriculturists of Jhelum and Rawalpindi districts. The explanations lay down that a debtor whose case otherwise falls within the definition given in this Act will not lose this status merely because,

(i) he has been forced by circumstances to give up agriculture;

(ii) he has given up agriculture on account of bodily incapacity, permanent or temporary;

(iii) his income from present or past service in His Majesty's military or naval forces exceeds his income from land,

(iv) he uses his plough cattle for making income through transport, or

(v) he does not cultivate land with his own hands.

Defective language.—The latter portion of explanation (1) which says "if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from

6. Muther Venkatarama versus Official Receiver, I.L.R. 49 Madras 227, Radha Kishan versus Balwant I.L.R. 7 Bombay 630, Bank of Chatinand versus KO San Ok A.I.R. 11 Rangoon 372.

agricultural sources," is not happily worded. Its plain interpretation would be that even if the income of a person from "pay and allowances or pension" on account of service in His Majesty's Military or Naval Forces taken exclusively exceeds his income from agriculture he will not lose the status of a debtor, but that if this income plus income from any other source, may be a rupee only, exceeds his income from agriculture, he will lose his status. Surely this does not seem to have been the intention of the legislature. What the legislature wanted to lay down was that income from pay and allowances or pension in consequence of service in His Majesty's Military or Naval Forces is not to be taken into account when assessing a debtor's income from sources other than agriculture under the proviso, because military or naval service is in reality service of the country. It may be advisable for the legislature to look into this matter.

Finality to Board's Decision.—The decision of a Conciliation Board as to whether a person is or is not a debtor has been given finality, and such a decision cannot be questioned by any court.

Agriculture.—This definition has enlarged the scope of agriculture with a view to bestow the benefits under this part of the Act on a larger number of people than a strict and restricted meaning would have permitted. By using the words "and the like" at the end of the clause, door for the inclusion of other vocations akin to "the keeping or breeding of live stock, poultry or bees" has been kept open.

A lacuna.—The Act does not attempt to define words like land, agricultural land, land-owner, tenant, etc., which in view of different definitions given in certain other enactments have assumed a technical significance. It is always advisable to define such words in order to avoid legal quibbling especially when these have been differently interpreted under different Acts. The legislature could have adopted the definitions given under any other Act by a simple reference to it. Now it will be for the Conciliation Boards to interpret these words so as to adjust them with the objects of the legislature, and the incidence of different provisions made in this Act.

Setting up of Debt Conciliation Boards.

8. (1) (a) The Provincial Government may for the purpose of amicable settlement between debtors and their creditors establish debt conciliation boards.

(b) The Provincial Government shall define the local limits of the area in which a board shall have jurisdiction.

(c) The Provincial Government shall determine the pecuniary limits of the jurisdiction of the board, provided that no board shall have jurisdiction to make a settlement between a debtor and his creditors if the total debts of the debtor exceed Rs. 10,000 or such larger amount as the Local Government may prescribe for any area.

(d) Such board shall consist of a chairman and two or more members to be appointed by the Provincial Government.

(e) The chairman and every member of a board so established shall be appointed for a term not exceeding three years, but shall be eligible by for re-appointment on the expiry of his term.

(f) The quorum of a board shall be prescribed by the Provincial Government.

(g) Where the chairman and members of a board are not unanimous, the opinion of the majority shall prevail, and, if the board is equally divided, the chairman shall exercise a casting vote.

(2) The Provincial Government may cancel the appointment of any member of a board or dissolve any board.

(3) The Provincial Government shall notify in the Gazette—

(a) the establishment of a board and the appointment of its members; and the board shall be deemed to have been established and its members appointed from the date specified in such notification or notifications;

(b) the cancellation of the appointment of any member of a board; and from the date specified in such notification the member shall cease to be a member of the board;

(c) the dissolution of a board; and from the date specified in such notification the board shall cease to exist.

(4) When a board is dissolved or ceases to exist otherwise, the Provicial Government may at any time establish another board within the same local limits in which the former board had jurisdiction and may declare this board to be the successor in office of the first board and may confer on it power to dispose of such applications under section 13 (2) and section 23 as the Provincial Government may direct.

Scope of the section.

Scope of the Section.—This section relates to the establishment of Debt Conciliation Boards in the province for the purpose of settlement between debtors and their creditors. The pecuniary limit of the jurisdiction of each Board as well as its territorial limits are to be defined by the Provincial Government; but no board is to have jurisdiction in any case in which the debtor's total indebtedness exceeds Rs. 10,000|-. Each board is to consist of a chairman and two or more members and the quorum is to be determined by the Government. On the dissolution of a board by the Provincial Government it has the power to appoint another board within the same local limits.

To start with, the Government set up five Conciliation Boards in the districts of Jhang, Hoshiarpur, Gurdaspur, Amritsar and Karnal. The territorial jurisdiction of these Boards has in all cases been restricted to the limits of a tehsil. The confidence, that the successful working of these Boards inspired among debtors and creditors, has encouraged the Government to extend this scheme to other districts as well and now a Conciliation Board is being set up in each district in the province. From the information which was supplied by Government in reply to certain questions put in the legislative council, it appears that creditors have freely moved these Boards for the settlement of their dues which means that the fears entertained in the beginning that the creditors will not feel inclined to take advantage of this law have proved groundless.

Application for settlement between a debtor and his creditors.

9. A debtor or any of his creditors may apply to the board appointed for the area in which a debtor resides or holds any land, to effect a settlement between the debtor and his creditors :

Provided that no application shall be made if the debtor's debts exceed ten thousand rupees or such larger sum, as the Provincial Government may prescribe for any particular area.

Scope of the Section.—The only condition laid down for an application for settlement between a debtor and his creditors is that the debtor's debts should not, in case the Provincial Government has not fixed a higher limit for any particular area, exceed Rs. 10,000|-. The application is to be made to the board appointed for the area in which the debtor resides or holds any land.

Debtor and creditor.—These terms have been used in an unqualified sense, and are not intended to exclude cases in which, under a private arrangement, the debtor has given a lease of his land to any one of his creditors in satisfaction of any debts. So long as the lease has not expired the relationship of debtor and creditor subsists between the parties; and an application for the settlement of the debt under section 9 would be competent. The instruction issued *by the Government on this point are as under:—*

Q. Whether or not a Debt Conciliation Board can entertain applications under section 9 of the Punjab Relief Indebtedness Act regarding debts in satisfaction of which a creditor has already received a lease of land in the course of execution proceedings in a civil court?

A. Yes, but the Board cannot cancel the farm or lease or come into conflict with the civil court by altering the decree or the execution, except with the consent of the decree-holder. But if a creditor has a decree for a thousand rupees in course of satisfaction by a farm, and also an unsecured debt of another thousand rupee, the Board can certify the second debt if the creditor is greedy and unaccommodating. (Abstract from letter No. 2856-E., dated the 7th May, 1938, from the Deputy Secretary to Government Punjab to all Commissioners and Deputy Commissioners in the Punjab.)

Area in which a debtor resides.—This means, normal residence, and not merely casual (e.g. traveller's) or involuntary (e.g. prisoner's) residence, although the language used is not at all precise or definite. In case a debtor does not normally reside within any area for which a Board is appointed, nor holds any land, no application can be made to such a Board.

Holds land.—Here again the phraseology used by the legislature leaves room for doubt as to its true intention. In the first place 'land' has not been defined any where in the Act as a whole or for the purposes of this section, and it cannot be surmised whether the legislature had agricultural land in view or any land. Secondly by using the word 'hold' without any qualifying word the matter has been made still more elastic. It is not stated whether the debtor should hold land as on owner, as a mortgagee, as a lessee, as an occupancy tenant or as a tenant-at-will. This word must be given widest interpretation and in whatever capacity a debtor may be holding land his case would be covered by this clause.

A Query.—*As already stated the language of this section like many other sections is very indefinite,* and in actual working it may lead to queer unforeseen situations. Supposing a person residing in any other province and owing debts to the residents thereof acquires a piece of land in the Punjab. Can he apply to the Board appointed for the locality where his leased land is situate and seek settlement with his creditors living outside the Province. There is nothing in the language to deny him such a right. But a case like this would lead to anomalous results because the creditors of the debtor who reside outside the province will not be amenable to the jurisdiction of the Board, nor would the Board's finding bind courts situate in the other province, because the Act is a provincial one. The legislature would do well to advert to this question.

Verification of Application.

10. Every application to a board shall be in writing and be signed by the applicant and verified in such manner as may be prescribed.

Formalities of applications.—According to this section an application to a board must be in writing and must be signed by the applicant, and also verified under the rules. Under rule 5 of the rules made by the Provincial Government an application for a settlement between a debtor and his creditors must be verified at the foot by the applicant who is to state with reference to the numbered paragraphs of the application the paragraphs of which he verifies from his own knowledge and those which he verifies on information received and believed to be true. The verification must be signed by the applicant and he is to give the date on and the place at which it is signed. In the ordinary course the verification is to be done in accordance with Order VI, Rule 15 of the Code of Civil Procedure, which may be reproduced here:—

"(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the parties or one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

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

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

There is hardly any difference between the verifications contemplated under these two provisions, except that under the Code of Civil Procedure verification can also be made by some person other than the party on whose behalf the pleading is put in, if proved to the satisfaction of the court to be acquainted with the facts of the case.

Object of verification.—The object underlying verification is to give solemnity to the averments made in the document to be verified; so that if any fact turns out to be incorrect the person making the verification may be answerable for it.

11. (1) Every application presented by a debtor to a board shall contain the following particulars, namely,— Particulars to be stated in application.

(a) the place where he resides or holds land;

(b) the particulars of all claims against him together with names and residences of his creditors;

(c) the particulars of all his property, together with a specification of the value of such property and the place or places at which any such property is to be found;

(d) a statement that he is unable to pay his debts, and that they do not exceed the prescribed amount;

(2) Every application presented by a creditor shall contain the following particulars.

(a) the place where the debtor resides or holds land;

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

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

This section prescribes the particulars which must be stated in an application presented by a debtor or his creditor to the board. In either case the following two facts have to be given :—

(a) the place where the debtor resides or holds land; and

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

Besides these while the creditor is to set out only the particulars of his claim against the debtor, the latter is to give the particulars of all claims against him along with the names and residents of the persons to whom they are owed. In the case of an application by a debtor he is bound to give some additional facts, namely, the particulars of all his property and that his total debts do not exceed the limit prescribed by the Government, or in case no special limit has been prescribed, Rs. 10,000|-.

Property.—The term "property" is rather vague so far illiterate masses are concerned. In fact even jurists differ about the true interpretations of this term. For the benefit of illiterate persons it would have been better to give some idea of what sort of property is intended to be covered by this section.

Procedure on receipt of application.

12. (1) On receipt of an application under section 9 the board shall pass an order fixing a date and place for hearing the application :

Provided that the board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and the creditors.

(2) Notice of the order under sub-section (1) shall be sent to creditors by registered post, acknowledgment due, and where the debtor is not the applicant, notice of the order under sub-section (1) shall be sent to him in a similar manner.

Procedure.—This section prescribes the procedure to be followed on the receipt of an application for the settlement of debts. Unless the application is dismissed summarily, the Board is to fix a date for its hearing. It is obligatory on the part of the board to proceed with the hearing of the application unless it is dismissed under the proviso to sub-section (1) of this section. Sub-section (2) lays down the mode in which a notice is to be issued. It has to be sent to the creditors or to the debtors, as the case may be, by registered post, acknowledgment due.

May at any time dismiss the application.—Left to themselves these words would give the board unfettered discretion in dismissing an application for any reason. But the words that follow "if for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and the creditors" make it quite clear that dismissal on mere technical grounds is not permissible. The board can dismiss an application in limini only when it thinks that it is not desirable to attempt a settlement between the debtor and his creditors. The reasons for this decision are to be reduced to writing which would be an additional check on an arbitrary exercise of this right.

If the board does not dismiss an application in limini, it has to proceed in the manner set out in this and other sections that follow.

13. (1) On the date fixed the board shall publish, in such manner as may be prescribed, a notice, **Notice calling upon creditors to submit statements of debts.**

calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be submitted to the board in writing within two months from the date of publication of the notice :

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

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

Provided that if a creditor proves to the satisfaction of the board, or, if no board is vested with jurisdiction by the Local Government, to the satisfaction of a civil court, that the notice was not served on him and that he had no knowledge of its publication, the board or court may revive the debt.

Publication of notice to creditors.—On the date fixed, the board is to to publish a notice in the manner prescribed by rules framed by the Government calling upon every creditor of the debtor to submit a statement of debts, owed to him within two months or such extended period as may be allowed to any creditor for sufficient reasons, from the date of the publication of the notice. Every debt, of which a statement is not submitted to the board is to be deemed for all purposes and for all occasions, to have been discharged unless the board, if such a board exists when the question arises, or a civil court is satisfied that the creditor had no knowledge of this publication, in which case the board or the court, as the case may be, may revive the debt.

The procedure relating to the publication of a notice under this section is laid down in rules 12 and 13 of the Punjab Debt Conciliation Rules, 1935, which run as follows :—

Rule 12.—On the date fixed for hearing the application, the board, after any other proceedings it may consider necessary, shall, unless it dismisses the application, publish in the manner prescribed in the next following rules, a notice in accordance with section 13 of the Act, calling upon every creditor of the debtor to submit within two months, a statement to the board of all debts owed to him by the debtor.

Rule 13 (1).—The notice shall be in form (2) attached to these rules and shall be published as follows :—

(a) It shall be read out and explained in open session by the Chairman of the Board.

(b) A copy of the notice shall be posted at the place where the board is sitting.

(c) A copy shall be sent by registered post, acknowledgment due, to those creditors who have been named by the applicant or debtor and are not present before the board. The costs shall be borne by the applicant but shall be recoverable at the discretion of the court.

(2) If the Board has reasons to believe that the applicant has not disclosed the names of all the creditors, it shall further cause the notice in form (2) to be published at the cost of the applicant in some vernacular newspaper commonly read in the area in which the board has jurisdiction, at least within one month of the order."

Contents of a statement.—A statement contemplated by his section must give all debts due by the debtor to the creditor filing the statement. If any debt is left out, it will be considered to have been discharged, and there is no provision in the Act for its revival under any circumstances. The proviso to sub-section (1) would not apply to such a case, as it contemplates the failure to submit any statementt whatsoever.

If a creditor fails to submit his statement of accounts in time, his debts will be considered to have been discharged unless these are subsequently revived under the proviso to sub-section (2). It may be noted that the law makes no distinction between ordinary debts and those due under a decree or order of a court.

Consequences of creditor's failure to submit statement within time.—It may be noted that the penal clause of sub-section (2) must be stirctly construed in favour of the creditor. So long as a case does fall within the ambit of this clause, the penalty prescribed by it cannot be enforced. As such, any disregard of section 14 (failure to furnish full particulars of debts) would not entail this penalty, and the board would in such a case have the power, under section 16, to examine the creditor and his account books to get the necessary information. This interpretation of the law has the support of the official interpretation as conveyed by the Government to all Commissioners and Deputy Commissioners under the Deputy Secretary to Punjab Government's letter No. 2856-E., dated the 7th May, 1938, the relevant portion of which reads as under :—

Question.—Whether section 13 (2) of the Punjab Relief of Indebtedness Act is applicable in case of creditor *who submitted the statement of debts owed to him [section* 13 (1)] but did not furnish along with the statement full particulars of debts [section 14 (1)].

Answer.—No, in so much as the particulars required by section 14 (1) *are not part of the statement*, but *are to be* furnished along with the statement. Section 13 (2) operates only when the statement is not submitted to the Board, *and there is no reference in the sub-section to the particulars* which must by section 14 (1) accompany the statement. If the creditor refuses to supply the particulars, the Board should consider the exercise of the powers conferred upon it by section 16, which enables it to compel a party to produce documents and answer questions. If the creditor remains obdurate, the Board has the same power of punishment which a *civil* court enjoys, and may if satisfied, in what must be really ex-parte proceedings, that the debtor has made a fair offer to the creditor, exercise the power of certification which it has under section 20.

Extention of time for the submission of statements.

No hard and fast rule can be laid down for determining as to what would be good and sufficient cause for any creditor's failure to submit his statement of accounts within the period of two months, and each case must naturally be decided on merits.

"For all purposes and all occasions".

These words are very important. These denote that a debt with regard to which the creditor has failed to submit a statement will be considered to have never existed. Not only will the creditor not be allowed to recover it by a suit but it will not be available to be pleaded as a defence. This is a special provision, and its incidence cannot be towed down on the anology of other provisions of law, e.g., limitation. Under the law of limitation a debt may be barred, but still its existence may be availed of for certain purposes, namely, if any money due to the debtor comes into the hands of the creditor, he may appropriate it towards the liquidation of the time barred debt, because it is only the remedy that is barred and not the right which continues to exist.

But a debt discharged under the provisions of section 13 (2) stands on a different footing, and is to be considered to have been wiped off "for all purposes and all occasions." The creditor cannot avail of it for any purpose. Thus a mortgagor whose case falls within this rule will be competent to claim restoration of his land without paying the mortgage debt. But the board will not be competent to order restoration of land under these circumstances; nor has it been invested with the power to direct Revenue authorities to give effect to the order of discharge of a debt. Of course there would be nothing wrong if the board sends, at the request of the debtor, a copy of its order, discharging a debt, to the Collector of the District where the land is situate. Here are the Government instructions on the point:

Q. Whether or not a Debt Conciliation Board can issue to revenue authority order regarding the redemption of a mortgage in respect of a creditor whose debts have been discharged by it under section 13 (2) of the Punjab Relief of Indebtedness Act for non-submission of his debt statement.

A. A Board has no jurisdiction over questions which do not arise before it, and the question whether a debt is to be regarded as redeemed or not for want of declaration is a matter which would eventually have to be decided by a civil court.

(Abstract from letter No. 2856-E., dated the 7th May, 1938, from the Deputy Secretary to Government Punjab to all Commissioners and Deputy Commissioners in the Punjab).

Joint debtors.—A question arises as to how is this section to work when the application has been made by one of several joint debtors. The language of sub-section (2) would lend support to the interpretation that the debt is to be discharged even against the debtors not parties to the proceedings because it does not qualify the word debt. This view, however, did not prevail in the case Ilachi Ram versus Amir Ali, A. I. R. 1937 Lahore, 685=39 P.L.R. 481.

Court decrees.—If a judgment creditor fails to submit a statement about the debt due to him under a decree or order of a court, he will not be able to execute the same later on, as the section makes no reservation in favour of such decrees and orders.

Revival of debts.—It was only fair that some provision should have been made for the revival of debts which may under sub-section (2) be discharged without the creditor's getting any information about proceedings before the board. There can be cases where a creditor is not only not served with the notice issued by the Board, but even otherwise gets no information about the issue of such a notice, and it would have been hard to deprive such a creditor of his outstanding dues. But before a creditor can take advantage of this proviso he has to prove to the satisfaction of the board, or in case there be no board in existence, to the satisfaction of the court before whom the question arises,

(i) that he was not served with the notice issued by the board, and

(ii) that otherwise too he did not come to know of the publication of the notice.

Power of Civil Court to revive a notice.—The question of a Civil Court's power to revive a debt arises only when there is no board competent to go into his question. If the board which held the proceedings in the original case is still functioning, or if any other board has been constituted by the Government in its place, such a board alone can go into this question and not any civil court.

14. (1) Every creditor submitting in compliance with a notice issued under sub-section (1) of section 13 a statement of the debts owed to him shall furnish, along with such statement, full particulars of all such debts, and shall at the same time produce all documents (including entries in books of account) on which he relies to support his claims together with a true copy of every such document : *Procedure on submission of statements of debts.*

Provided that a decree or order of a civil court shall be conclusive evidence as to the amount of the debt to which the decree relates, but the amount may be reduced as the result of an agreement arrived at in accordance with section 17.

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

This section prescribes the procedure regarding the submission of statement of debts. Along with the statement of debts owed to him the creditor has to furnish.

(i) Full particulars of all such debts;
(ii) All documents in original including entries in books of account on which he relies in support of his claim, along with a true copy of every such document.

The original documents after being compared with the copies and marked for purposes of identification, are to be returned to the creditor and the copies retained by the board. A debt due under a decree or order of a civil court, would also be subject to the jurisdiction of the board, but a copy of the decree or order is to be conclusive evidence as to the amount of such a debt.

Full particulars of the debt.—The Act does not claim to give any idea of what is meant by the term 'full particulars.' Nor has the point been cleared in the rules framed by Government. What the legislature intended to lay down was that such particulars should be given as would enable the board to find out how the dealings started, what were the amounts of the actual advances, in cash or kind, made to the debtor, the amounts of repayments in cash or kind made by him, the rate and amounts of interest charged, the remissions, if any, allowed by the creditor, so on and so forth. Without knowing these facts the board would not be in a position to suggest any basis for a settlement or to decide whether the terms offered for settlement by any party are just and fair. In our opinion all the above facts must be stated by the creditor with regard to each transaction covered by the dealings. Even with regard to a decree or order of a court these particulars should be given because the copy of the decree or order will merely settle the amount of the debt due under it, and will not give the other necessary information set out above.

Failure to furnish full particulars.—If any creditor fails to furnish full particulars of any debt, the board would be competent to examine him and his accounts. But if the creditor does not comply with this requisition of the board, the latter would be competent to punish the former in the manner in which a civil court would under such circumstances would punish. It may besides taking any other step permissible under the Code of Civil Procedure or other allied provisions of law, declare under section 20 of this Act that the debtor has made a fair offer to the creditor. But the penalties prescribed under section 13 (2) of the Act cannot be imposed on a defaulting creditor. See in this connection the abstract from the Punjab Government letter No. 2856-E., dated 7th May, 1938, reproduced at page—under the heading consequences of debtor's failure to submit statement of accounts in time.

15. The board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement. Board to attempt amicable settlement.

Before using its powers of persuasion for an amicable settlement between the parties, the board is to hear the case of the debtor and the creditor, because it is the history of a debt which alone can enable the board to effect a mutual settlement so as to give each party its due. This settlement, based on equity, is bound to be in the interest of both the parties. The board is to be guided by the history of the debt which includes the benefits received by the creditor as well as the present capacity of the debtor to pay.

16. Any board empowered under this Act may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on civil courts by the Code of Civil Procedure, and every proceeding before the board shall be deemed a judicial proceeding. Power of board to require attendance of persons and production of documents and to receive evidence.

In order to appreciate the true position of the parties with regard to any item of accounts, it may be necessary for the board to examine them and other witnesses, and as such it was necessary, to invest the board with certain powers for the summoning and examining parties and witnesses and production of documents by them. The board possess the same powers as are possessed by civil courts under the Code of Civil Procedure. The proceedings before the board are to be deemed judicial proceedings. The provisions of the Code of Civil Procedure which have to guide the board under this section are as follows :—

Order V which deals with the summoning of parties.

Order X which deals with the examination of parties.

Order XIII which deals with the production, impounding and return of documents.

Order XVI which deals with the summoning and attendance of witnesses.

Judicial Proceedings.

Judicial Proceedings.—This means that the obligations which the law of the land (both Civil and Criminal) imposes on the members of the public with regard to their dealings with courts are to be discharged by them with equal rigidity when dealing with conciliation boards. Any insult or interruption offered to any member of a board while sitting as such would be punishable under section 228 of the Indian Penal Code.

Registration and effect of agreement.

17. (1) If the debtor and all or any of the creditors come to an amicable settlement, the board shall forthwith reduce such settlement to writing in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties : provided that if the board is of the opinion that the period fixed for payment is excessive, the board may refuse to authenticate the agreement. The board shall also pass an order dismissing the application so far as it relates to the creditors who have not come to an amicable settlement.

(2) An agreement thus made shall take effect as if it were a decree of a civil court having jurisdiction in the area of the jurisdiction of the board.

This section provides that an agreement reached as a result of an amicable settlement between a debtor and his creditors, is to be reduced to writing, setting forth therein, the amount payable to each creditor and the manner in which and the time at which it is to be paid. The agreement has to be read out and explained to the parties concerned, and it is then to be signed by them and by the members of the board. The agreement thus made, has the force of a decree of a civil court. The board can refuse to authenticate an agreement if in its opinion the period fixed for payment is too long. This power has been given to the board to afford protection to creditors against collusive adjustments of spurious debts between a debtor and some friends of his posing as creditors. This seemed to be necessary because an agreement accepted by a board has far reaching consequences under the Act. (vide section 20).

Registration.—The word "registartion" as used in the marginal note is likely to cause some confusion. It does not mean registration under the Indian Registration Act, but merely registration by a board. However, since the word registration has come to possess a technical significance, its use should have been avoided. In the bill as originally drafted provision was made for the registration of agreements and the marginal note of this section was appropriately worded. Provision was furthermore made in clause (f) of sub-section (1) of section 28 for the framing of rules "prescribing the plea at which and the manner in which" such agreements were to be registered. Later on the provision regarding registration was replaced by the provision as we now find it in section 17 (1), but inadvertently the marginal note to this section and clause (f) of section 28 (1) were allowed to stand intact. These mistakes can be corrected only by an amending Act.

Difference between the Central Provinces and the Punjab Acts.—Besides what has been said above about registration of an agreement, the Punjab Act differs in two material respects from the Central Provinces Act as under :—

(i) Under the Latter Act an agreement cannot be accepted by a board so long as creditors to whom not less than 40 per cent of the total amount of the debtors' debts are owing do not accept it. There is no such restriction in the Punjab Act.

(ii) While the Punjab Act as stated above empowers a board to reject an adjustment if the period fixed for payment is too long, there is no such provision in the Central Provinces Act.

Take effect as if it were a decree.—This means that the agreement after its authentication can be executed as a decree of a civil court. The execution shall have to be sought in the court having jurisdiction in the area within the jurisdiction of the board.

Dismissal of applications in default.

18. If in the opinion of the board any applicant fails to conduct his application with due diligence, the board may dismiss the application at any stage.

This section is an improvement on the Central Provinces Act. That "equity and law aid the vigilent" is an old theory. As such a person who does not conduct his application diligently has no right to enjoy the protection of this law. A reference to section 25 will show that so long as an application about any debtor is pending before a board no civil court can entertain a suit or go on with a suit already pending, if it relates to a debt due by the debtor. As such it was necessary to ensure against dilatory tactics on the part of a debtor moving a board, because in the absece of such a provision a debtor inclined to abuse the process of law could successfully paralyse the agency of courts by unduly protracting proceedings under this Act.

Scope of the section.—The question may at times arise whether the dismissal under section 18, of a debtor's application (under section 9 of the Act) directed against only one creditor would have a subsequent application by him against the same creditor and certain other creditors. The reply is in the affirmative because the words used by section 9 are "......to effect a settlement between the debtor and his creditors."

Bar to successive applications.

19. If once an application has been made by a debtor and disposed of, no board shall entertain a

second application within two years of the date of disposal of the first application.

This section which aims at avoiding repitition of unsuccessful applications by debtors is a counterpart of the last section. The applicant can oust the jurisdiction of a civil court by presenting an application to a board, and were it not for this provision, a debtor could have successfully set at naught the machinery of civil courts indefinitely by making repeated applications one after another.

Grant of certificate by board in respect of debts.

20. (1) Where, during the hearing of any application made under section 9, any creditor refuses to agree to an amicable settlement, the board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor :

Provided that the board shall not grant a certificate unless the board is satisfied that creditors to whom not less than forty per centum of the debtor's debts are owing have come to an amicable settlement with the debtor.

Power to court to disallow costs or interest.

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

(3) Where after the date of an agreement made in accordance with section 17 or of certification

any unsecured creditor sues for the recovery of a debt in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit nothwithstanding anything contained in the Code of Civil Procedure, 1908, shall not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (1) of section 17.

Analysis of the Section.—This is a very important section, as it lays down provisions of far-reaching consequences. It deals with three distinct subjects as under :—

(a) Sub-section (1) lays down the conditions under which a board may issue a certificate in regard to any debt;

(b) Sub-section (2) lays down the consequences which such a certificate has on a suit filed by a creditor for the recovery of the certificated debt;

(c) Sub-section (3) refers to the consequences which are to flow from the authentication of an agreement under section 17 or the certification of a debt under section 20 (1) in regard to decrees passed by civil courts for the recovery of unsecured debts covered by the certificate, or debts whether secured or unsecured, incurred after the date of the agreement.

Grant of certificate.—It was very necessary to make some provision for the grant of a certificate on some lines, if the object of conciliatory settlements of debts was to be secured. The establishment of conciliation boards which naturally means so much expense to the Governmnet could have brought on corresponding gain to any body so long as the boards were not invested with certain powers to be used as a pressure against unwilling debtors and creditors. The section, therefore, invests boards with certain powers which are hedged round certain restrictions as set out above. A debtor in order to have the sympathies of the board, and through it of the law, must make an offer which is reasonable and fair on the principle "one who seeks equity must do equity." If the offer made by him to any of his creditors is not fair he cannot expect to have the sympathy of law. Once the offer is regarded by the board as *reasonable or fair, the creditor must* accept it if he desires to benefit by the settlement aimed at by the former. If he refuses to accept a fair offer he must suffer the consequences of his obduracy.

Difference between the Punjab and the C.P. ACTS.— As already stated the Punjab Act has been planned on the model of the C.P. Act, but it has in certain respects, made important changes; and the conditions laid down for the grant of a certificate under this section, as also the limit of six months after the period fixed under an agreement for the execution of certain decrees, are among these. The corresponding provisions in the C.P. Act read,

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

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

"(3) Where, after the registration of an agreement under sub-section (2) of section 12, any unsecured creditor sues for the recovery of a debt, other than a debt incurred subsequent to such agreement, in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such registration, any decree passed in such suit shall, nothwithstanding anything contained in the Code of Civil Procedure, 1908, not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist."

It would thus appear that the Punjab Act has been more deferencial to the interests of creditors, and it has, in certain quarters, been feared that the proviso to sub-section (1) of section 20 may in practice amount to taking away by the left hand what has been given by the right. The creditors of a debtor may, it is argued, conspire not to allow the fulfilment of the condition regarding the acceptance of the settlement by creditors to whom forty per cent of the total debts of the debtor are owed. However, it can safely be surmised that such cases will not be of any great frequency, because if taking into consideration all the surrounding circumstances, a debtor is really offering a fair settlement, there is no reason why should the creditors, who are proverbially an astute class, *not accept it.* They *should normally welcome a* fair settlement. But there is no denying the fact that cases may arise where for some reason, political or otherwise, the creditors may get antagonized against their debtor and may abuse this provision. Such cases must, from the very nature of things, be few and far between particularly in these days of financial depression. However, the working of the law will show how far the above noted fears were correct.

The board is satisfied.—This means *that* a mere paper forty per cent calculation will not do. The board has to be satisfied that the requisite percentage is constituted by creditors having genuine claims against the debtor. Once *the expediency of the principle of acceptance of a settlement* by creditors is conceded it becomes necessary to see that the acceptance is on the part of 'defacto' creditors and relates to genuine transactions only. Certain friends of a debtor may, but for this rider, be able to falsely figured as his creditors with a view to secure for him a wrong benefit against his genuine creditors, and this would have amounted to an abuse of the process of law. The legislature wanted to guard against it and laid down this provision.

Fair offer.—The term "fair offer" has, for obvious reasons not been defined, and a board will consequently have full discretion in the matter. Each case must naturally be decided on its merits, and the board has to take stock of all surrounding circumstances before deciding whether an offer is fair or not.

Conditions for the issuing of a certificate.—A board can grant a debtor a certificate in respect of his debts due to any creditor if all the following conditions are fulfilled, i.e. if,

(a) the board is satisfied that the creditors to whom not less than forty per cent of the debts are owed have come to an amicable settlement with the debtor;

(b) the debtor make an offer of settlement to a creditor who has not settled;

(c) the board regards the offer as fair and worthy of being accepted, and

(d) the creditor refuses to accept it.

Consequences of issuing a certificate.—The effect of a certificate granted under sub-section (1) is that the creditor will neither be allowed any interest on the debt after the date of certificate beyond simple interest at the rate of six per cent per annum, nor would he get costs of any suit filed for the recovery of the debt.

Posponetment of certain decrees.—*In order to give* creditors accepting a settlement of their debts some real benefits over those refusing to do so, or advancing loans to the debtor after the settlement, it was necessary to make some provision in the matter of the realization of their dues. Sub-section (3) was therefore enacted. It deals with decrees which after the date of an agreement authenticated under section 17 (1), or of a certificate issued under section 20 (1) may be secured by the creditors of a debtor on the basis of

(1) unsecured debts covered by the certificate, or
(2) debts whether secured or unesecured advanced after the date of the agreement.

It says that such decrees are not to be executed within less than six months after the expiry of the period fixed in the agreement authenticated under section 17 (1) for the payment of sums due under it.

Secured debts.—The above rule does not apply to the case of a decree on the basis of a secured debt even though the debt is covered by a certificate. Such a decree can be executed at any time. But the law makes no such distinction in the case of debts incurred after the date of the agreement, and all such debts whether secured or unsecured are equally hit, and the executions of decrees secured on their basis have to be postponed. This is based on the principle that a person advancing a loan to a debtor after a settlement has been registered with a board must be presumed to be aware of it, as also of the consequences that flow from it, and must suffer the risk involved in such a venture.

Six months period.—The †Central Provinces Act does not prescribe any limit of time. It postpones the execuion of decrees secured on the basis of unsecured debts covered by a certificate, or debts, secured or unsecured, incurred after the date of the agreement till after the realization of all debts to which the agreement relates. The Punjab Act can justly claim this an another improvement on the C.P. law for the benefit of creditors. The limit of six months was prescribed at the Select Committee stage to guard against unconscionable collusions between debtors and their friendly creditors resulting in an undue postponement of the recovery of the latters' dues with a view to injure others.

Bar of civil suits.

21. No civil court shall entertain—

(a) any suit—

(i) to question the validity of any procedure or the legality of any agreement made under this Act, or

(ii) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with section 17 from any person who, as a debtor, was party to such agreement, or

(iii) to recover any debt which has been deemed to have been duly discharged under sub-section (2) of section 13;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 20.

This section provides that in certain respects the decisions of a conciliation board are final. Civil courts have been debarred from entertaining certain (1) suits and (2) applications for execution.

(1) The following suits have been barred explicitly:—

(a) To question the validity of any procedure or the legality of any agreement made under this Act, or

(b) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with section 17 from any person who as a debtor, was party to such agreement, or

(c) to recover any debt which has been deemed to have been duly discharged under sub-section (2) of section 13.

(2) Civil courts are further prohibited from entertaining any application for the execution of a decree, the execution of which is suspended under sub-section 3 of section

20. The restriction applies only to decrees passed in suits brought:—

(i) By unsecured creditors for the recovery of debts in respect of which a certificate has been granted by the board under section 20 (1) of Act, or

(ii) by creditors for the recovery of debts incurred after the date of agreement under section 17 of the Act, or

Jurisdiction of Civil Courts.—Under the general law of the alnd, Civil Courts have plenary jurisdiction to entertain all kinds of suits unless their cognizance is barred under any statute. The bar so prescribed has to be strictly construed, and so long as a case is not brought within the four corners of such an enactment the jurisdiction of Civil Courts cannot be ousted. It is open to the public to so frame their suits as to take them outside the scope of the restrictive law. It has consequently been held by a Division Bench of the High Court, Lahore, that a suit filed in the civil court for a declaration that the debts shown by a debtor as due to certain creditors are baseless and fictitious, and for an injunction to restrain the alleged creditors from proving their debts before the Debt Conciliation Board or recovering them from the debtor is not expressly barred by section 21 (a) of the Act nor impliedly barred by section 9 of the Code of Civil Procedure, that neither of these reliefs involves an attack on the procedure of the Board or the legality of the agreement under section 17 in which the proceedings have culminated and is consequently not covered by the prohibition, and that section 21 does not debar the Civil Court from entertaining such relief. (Per Coldstream and Din Mohd. JJ. 39 P.L.R. 891).

The question however is whether the finding of the Civil Court that a particular debt is fictitious can prevail in the face of a contrary decision by a conciliation board. Evidently in view of the definition of a debtor given in section 7 (2) of the Act the board's decision must prevail because it is only the existence of a debt that confers on the person owing it the status of a debtor, and once a board declares a person to be a debtor, the finding cannot be questioned by any Civil Court. In our opinion, therefore, even though a suit of the nature decided by the High Court, Lahore, as noted above, may not be barred, civil courts should not grant such reliefs as these would be infructuous.

While considering the question of the mere tenability of such suits there is yet another point which cannot be lost sight of. Persons who filed the civil suit leading to the High Court's decision must have been the creditors of the debtor. They had every right of questioning before the board the existence and validity of the debts attacked by them. As such under the general rule that where law prescribes one specific remedy it denies the existence of all others, the jurisdiction of the civil courts would be barred. This however is a moot point, and does not seem to have been argued before the Hon'ble Court.

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

The decision of a board passed under this Act is final. No appeal or revision can be lodged against any such order or decision, but an application for review of its order can be made to the board under section 23.

23. A board may, on the application from any person interested, review any order passed by it and pass such order as it thinks fit : Power of board to review its order.

Provided that it shall not under this section pass an order reversing or modifying any order affecting any person's interest without giving such person an opportunity of being heard :

Provided, further, that no application for review shall be entertained if presented more than twelve months after the date of the order which the person interested seeks to have reviewed.

No remedy by way of appeal or review has been provided for under this Act, and an order passed by a board has been given finality. But there may be cases where a board has given a palpably incorrect decision. Evidently such cases had to be provided for. It has consequently been laid down that on being formally moved by any person interested in the case within one year of the date of any order, a board may review the order passed by it and may pass such order as it thinks fit. The board cannot suo motu do so. Furtherfore if the board wishes to modify its order it must give the other party an opportunity of being heard.

Appearance of party before board by agent or by legal practitioner.

24. In any proceedings under this part of the Act, any party may with the permission of the board be represented by an agent authorised in writing or by a legal practitioner.

This section provides that any party may, with the permission of the board, be represented by an agent authorised in writing or by a legal practitioner. The appearance of a legal practitioner is forbidden under the Punjab Alienation of Land Act. Under this Act, however, a legal practitioner may represent any party with the permission of the board. The Central Provinces Act does not permit representation through a legal practitioner.

Bar to new suits and applications and suspension of pending suits and applications.

25. When an application has been made to a board under section 9, no civil court shall entertain any new suit or other proceeding brought for the recovery of any debt for the settlement of which application has been made to the board and any suit or other proceeding pending before a civil court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under section 17.

In order to avoid multiplicity of proceedings before different tribunals, and the consequent danger of conflict in their findings it was necessary to make some provision on the lines of this section. Civil Courts are prohibited from entertaining any suit or other proceedings for the recovery of any debt for the settlement of which an application has been made to a board. Furthermore any suit or other proceedings pending before a civil court in respect of any debt for the settlement of which an application has been made to a board under section 9, must be suspended until the board has dismissed the application or an agreement has been made under section 17. These provisions apply to original as well as appellate courts on the civil side; and an insolvency court can claim no exemption.[7] Provisions contained in section 25 are mandatory in their character. The bar against new suits and proceedings and the suspension of pending ones will have to be in force until the board has finally disposed of the application, even though the section does not expressly say so, for it follows from the very nature of things as also from the provision for saving limitation made under section 26.

Extension of limitation.

26. The time spent in proceedings before a conciliation board and time during which a person is debarred from suing or executing his decree under the provisions of this Part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal.

This section is a necessary corrollary of its predecessor. Where legislature suspends the right of any person to claim through courts a redress of his rights it has to compensate him for this forced inactivity, so as to save his claim from being adversely affected by the law of limitation. This section lays down that in computing period of limitation allowed for any suit, or application for execution, the period during which

---

@ Chanan Dass versus Ghulam Mohd. A.I.R. 1937 Lahore 861=170 I.C. 33=39 P.L.R. 756.

a person was, under the last section, debarred from pursuing his remedy is to be excluded.

Members of boards deemed to be public servants.

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

A public servant as defined in section 21 of the Indian Penal Code not only enjoys certain privileges, not available to other members of the public, but is furthermore saddled with certain responsibilities as well. He is expected to render a much better account of himself in several respects as against the public. He has furthermore been afforded protection against the consequences of his official acts, etc. In the case of judicial officer this protection under the Judicial Officers Protection Act of 1857, is much wider. Since members of conciliation boards have, from the very nature of their duties, to perform very important judicial duties, it was necessary to confer on them at least the privileges and status of public servants.

Power to make rules.

28. (1) The Local Government may make any rules consistent with this Part of this Act to carry out the purposes thereof, and in particular and without prejudice to the generality of the foregoing power may make rules—

(a) prescribing the amount of debt for the purposes of section 8 (1) (c);

(b) prescribing the quorum for and regulating the procedure before a board;

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

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

(e) prescribing the allowances to be paid to *members of a board;*

(f) prescribing the place at which and the manner in which an agreement shall be registered;

(g) prescribing the form of certificate to be granted under sub-section (1) of section 20; and

(h) generally, for the purpose of carrying into effect the provisions of this Part of this Act.

(2) The *power conferred* by *this section* of *making rules is subject to the condition that the rules* be made after previous publication.

Rules.—Legislative enactments have, from the very nature of things, to be brief and concise. They only lay down the general policy and principle points of law. The *details of working out that law* have *naturally* to be *left* over to the rule making power, which under all enactments is conferred on one official agency or the other. But rules must not be repugnant to the provisions or objects of the Act; under which they are made, and to the extent of any repugnancy these will be illegal and ultra vires. If, therefore, *there is any conflict* between the statutory provisions of an Act and the rules *framed thereunder*, the latter must give way. Barring this, rules which *tend to give effect* to an enactment must be enforced as a part of the law *itself*. A reference to the different clauses of sub-section (1) shows, that while all matters enumerated in these relate to something required to be done under the Act, clause (f) speaks of registration of agreements made under section 17 (1) for which there is *no* provision in the Act. This clause seems to have persisted in this *section* as a result of an over-sight on the part of those responsible for scrutinizing it during and after the Select Committee stage. In the Central Provinces Act there is a provision for registration of agreements, and that provision was incorporated in the original draft of the Punjab bill under section 17. Later on this clause was materially amended as we find it now, but it appears that the marginal note of section 17 and clause (f) of sub-section (1) of section 28 were inadvertently allowed to stand. The provincial Government has however framed no rules under this clause, otherwise the legality of the same would have been questionable. We commend the above criticism to the attention of the legislature so that the defects may be removed.

Rules framed by the provincial Government are given in appendix A.

Penalty for breach of the rules.

29. In making any rule the Provincial Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

The Provincial Government have been empowered to provide in the rules for a fine of Rs. 50|- for any breach of the rules, and in case the breach is a continuing one, for a further fine which may extend to Rs. 10|- per day.

PART V

DAMDUPAT

Damdupat.

30. (1) In any suit brought after the commencement of this Act against a debtor as defined in section 7 for the recovery of a loan borrowed before the commencement of this Act, no court shall grant a decree in satisfaction both of principal and interest for a larger sum than twice the amount which the court finds to have been due at the commencement of this Act.

(2) In any suit brought against a debtor as defined in section 7 for the recovery of a loan borrowed after the commencement of this Act, no court shall pass a decree for a larger sum than twice the amount of the sum taken as principal.

That the problem of usury and measures necessary to relieve debtors of the severity of its incidence is as old as humanity itself can be guessed from the fact, that as early as the days of that celebrated Hindu Law Giver Manu, the need was felt for some sort of legislation with a view to regulating the grant of interest on loans in cash or kind. Unlike later codes of jurisprudence, with which we are conversant, Hindu Law did not recognize or countenance the incidence of the law of limitation. A suit by a creditor against his debtor for the recovery of his dues could under Hindu Law never be barred. Such being the case, no amount of regulating rates of interest could meet the requirements of that time, because even under ridiculously low rates the creditors' claim could, in the course of time swell into a huge amount. Manu therefore laid down the maximum limit beyond which a given sum could not earn any profit or interest. For a fuller discussion of this subject the reader is invited to refer to the introduction to this book. Suffice it to say that the rule of 'Damdupat' has come to mean that in no case can interest exceeding the amount of the principal originally advanced by the creditor to the debtor be claimed or allowed.

Scope of the Section.—The provisions of this section are not of universal application, as these are restricted to cases against "debtors" as defined in section 7 of the Act. This restricted application of the benevolent provisions of this section was the result of a desire of the legislature to leave dealings between traders and business people unaffected. The idea underlying this provision is

(1) In the case of loans advanced before this Act a creditor should, after the enforcement of the Act, not get more than double the sum in the case

of cash loans and more than double the sum representing the cash value of loans in kind which was due to him on the date the Act was enforced, and

(2) in the case of loans advanced after the Act comes into force, the creditor should not get more than double the sum originally advanced in the case of cash loans and more than double the sum representing the cash value of the loans in kind.

The language used is however not very happy, as it has failed to make the intention of the legislature clear beyond any doubt as the following will show:—

(1) The use of the words "no court shall grant a decree in satisfaction of principal and interest..." in sub-section (1) and "no court shall pass a decree...." in sub-section (2) seem to convey that the court is not to take into consideration payments made by a debtor prior to the institution of the suit. This means that even if a creditor has received through payments privately made to him after the date contemplated by the Act for the application of the rule of 'Damdupat,' sums aggregating many times the principal he can still claim a decree if otherwise available, to the extent of double the sums specified in the section. In practice, therefore, this law would place a premium on the recalcitrance of a dishonest debtor, while an honest one who may have continued to make payments as occasions arose would be put in a worse position. The enormity and monstrosity of the results of such an interpretation may be illustrated thus.

Suppose 'A' had advanced *a loan of* Rs. 100 *to* 'B' *in* the year 1925 and the debtor has made payments both before and after 19th April, 1935, the date on which the present Act came into force, the payments made after this date aggregating Rs. 8,400|- although his total claim on the date of the enforcement of the Act did not include Rs. 100|-. This means that if otherwise permissible the creditor can still get a decree for Rs. 200, thus raising his total receipts after the enforcement of the Act to Rs. 600. Surely this would be the very negation of the law of 'Damdupat.'

(2) In the case of loans advanced after the commencement of the Act the court is not to grant a decree in satisfaction both of principal and interest for an amount which, along with the payments made by the debtor to the creditor, exceed double the sum originally advanced or in the case of loans in kind double the cash value of the same on the date of the advance.

We however commend to the attention of the legislature the necessity of amending this section with a view to making its intention clear beyond any doubt.

PART VI

Deposit in Court

31. (1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor. Deposit in Court.

(2) The court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.

(3) From the date of such deposit interest shall cease to run on the sum so deposited.

The provisions made in this section are a very useful innovation. There are certain other provisions of law e.g., Order XXI Rule 1 and Order XXIV Rule 1 of the Code of Civil procedure, section 83 of the Transfer of Property Act, section 4 of the Redemption of Mortgages Act (Punjab) under which a debtor can deposit the amount owed by him in court. The present rule is however an innovation in the sense,

(1) that while in the case of the *majority* of other provisions the deposit must be in connection with some proceedings actually pending or contemplated in a civil court, the deposit referred to in this section can be independent of it; and

(2) that while in the case of all other provisions the deposit *must be of the full* amount due by the depositor, as least so far as his calculations go in the present case it need not be so, and it is *open to a debtor to deposit even a few annas out of a total debt running into several figures*.

The importance of this provision centres round the fact that a deposit of a sum of money by a debtor for payment to his creditor in full or partial satisfaction of his liability stops the *further accumulation* of interest to that extent. While dealing with this subject in his brilliant Commentary on this Act, Chaudhri Sir Chhotu Ram observes,

"How far debtors will take advantage of this section, is difficult to foretell. But a resort to this section will prevent a very serious form of mal-practice which is indulged in by creditors. It is common knowledge that many debtors make payments either in the shape of cash, or produce, or cattle; but these payments are, in many cases, not credited to their accounts. When a creditor comes into court these payments are naturally pleaded by *debtors*, but as a debtor cannot insist on obtaining a receipt for fear of giving an offence to his Sahukar and the Sahukar takes pretty good care not to issue any receipt and both resents and resists any demand for one unless all his debts are cleared by the debtor, a debtor's plea of payment is always disallowed. The *provisions of this section, if* availed of by debtors, will go a long way to mitigate this evil."

Power of Local Government to make rules.

32. (1) The *Provincial* Government may make rules for carrying into effect the provisions of this Part of this Act.

(2) In particular and without prejudice to

the generality of the foregoing powers such rules may provide—

(a) for determining the court into which the sum shall be deposited;

(b) the procedure for keeping accounts of such deposits and the manner in which notices are to be served on creditors and payments made to them.

(3) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

The following rules have been made under this section vide Punjab Government Notification No. 2461-J-36-16796, dated the 16th of May, 1936:—

I. These rules may be called the Punjab Relief of Indebtedness (deposit in court rules) 1935, and shall apply to all deposits to be made under section 31 of the Act.

II. In these rules the Act means the Punjab Relief of Indebtedness Act, 1934.

III. Sums less than one thousand rupees may be deposited in any stipendiary civil court having jurisdiction within the district in which the *debtor resides:*

Provided that where there is more than one such court in the same town, the deposit shall be made in the court exercising highest pecuniary jurisdiction.

IV. Sums of one thousand rupees or over shall be deposited only in the court of the Senior Subordinate Judge of the district in which the debtor resides.

V. Deposits may be made *either by postal* money order or by the debtor in person.

VI. All sums deposited shall be accounted for and dealt with according to the ordinary rules for the time being in force in the court, into which they are paid.

VII. Notices under sub-section (2) of section 31 of the Act shall be served upon the creditor by a registered letter, acknowledgment due, at the expense of the debtor.

PART VII

Redemption of Mortgages

Amendment of section 1 (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913.

33. In section 1, sub-section (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913, for the *figures and word "(30 acres)" the figures and* word "50 acres" shall be substituted, and in sub-section 3 (b) of the same section for the figures "1,000" the figures "5,000" shall be substituted.

Scope of the Section.—This section has amended the Punjab Redemption of Mortgages Act. The amended section reads as follows:—

"(3) It shall apply to only mortgages of land:—

(a) in which, whatever the mortgage-money the land mortgaged, after excluding the area of any share in the common land of the village or a sub-division of the village appertaining thereto and mortgaged therewith does not exceed in area 50 acres; or

(b) in which, whatever the area, the principal money secured under the mortgage does not exceed 5,000 rupees:

Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.

The Redemption of Mortgages Act provides a summary procedure for the redemption of mortgages of land with the object of curtailing the ruinous civil litigation. The scope of the Act, however, was restricted and experience had shown that it should be widened in order to make an inexpensive remedy available to cultivators. With this object in view the scope of the Act has been extended. For a detailed discussion the readers' attention is invited to the Commentary on the *Redemption of Mortgages Act*.

PART VIII

Miscellaneous amendments of the Civil Law

34. Notwithstanding anything to the contrary contained in any other law for the time being in force, no judgment debtor shall be liable to arrest for default in the payment of any money due under a decree unless the court is satisfied that the judgment-debtor has, without just cause, contumaciously refused to pay the amount of the decree, in whole or in part, within his capacity to make payment : Warrant of arrest.

Provided that the court shall before issuing a warrant of arrest, give an opportunity to the judgment-debtor to show cause against its issue :

Provided further that when a court has power under the law to order a temporary alienation of the land of a judgment-debtor in execution of a decree, the court shall not for the purpose of this section take into account the value of any such temporary alienation in considering the capacity of the judgment-debtor to pay : and

Provided, further, that save in so far as is otherwise provided in this section the court in considering the capacity of the judgment-debtor to pay shall take into consideration the value of the property of the judgment-debtor only to the extent to which a civil court can dispose of it under the law in execution of a decree.

Scope of the Section.

Here is another provision which besides being most appropriate is of far-reaching consequences. Section 51 (c) of the Code of Civil Procedure prescribes arrest, of a judgment-debtor and his detention in civil jail, as one of the coercive methods for the execution of decrees. While under Order XXI, Rule 30 of the Code of Civil Procedure simultaneous execution against the person and property of a judgment-debtor is permissible, Rule 21 allows courts a discretion to "refuse execution at the same time against the person and property of the judgment-debtor." But in practice this discretion has practically been taken away in view of the observations made by their lordships of the Privy Council in the well known case Court of Wards versus Maharaja Cumar Ramapat[7] that "the difficulties of a litigant in India begin when he has obtained a decree" which were interpretted by the High Court Lahore in the year 1926 to mean that a court would not be justified in refusing execution against the person of a judgment-debtor on the ground that the decree-holder should in the first instance proceed against his property. In consequence of these interpretations of law arrests of judgment-debtors became the order of the day, and Order XXI Rule 40 Code of the Civil Procedure became practically a dead letter.

The serious world-wide depression in trade, the marked and persistent drop in the prices of food stuffs, and the general poverty of the masses that followed in their wake imported a fresh sting into this coercive process, and in the majority of cases warrants of arrest issued by executing courts were regarded to have been actuated by a desire to victimize poor and indigent debtors. The arrest and detention of the sole male earning member of a family generally brings about the ruin of the dependents as well, and at times this circumstance was utilized for enacting unconscionable terms from poor debtors. In certain districts of the West (e.g. Muzzaffargarh, Mianwali) in order to escape arrest and detention in civil prison which meant starvation of the entire family, poor debtors had even to suffer the unimaginable and in fact inhuman and the pardonable ignominy of pawning their female folk with their creditors for the liquidation of their debts. In certain other districts of the province a strict and rigid enforcement of arrest laws was responsible for cases of violence against the persons and properties of decree-holders. The legislature could evidently not look at this state of affairs with equanimity, and thought it necessary to amend the law by making provisions contained in this section, which in view of the absolute and unqualified abolition of such coercive methods in certain other parts of the world can well be styled as a step in the right direction.

This section lays down that before ordering the arrest of a judgment-debtor a court has, after giving notice to the said debtor, to be satisfied that in spite of possessing the means to pay the whole or a portion of the decretal sum, he is "without just cause contumaciously" refusing to do so. The phrase "capacity to make payment" has been qualified in certain respects, and cannot be interpreted according to its ordinary dictionary meaning.

Notwithstanding anything to the contrary contained in any other law.—This means that the provisions made in this section are over-ride all other provisions on this subject made in any law for the time being in force, and not merely section 51 (c) of the Code of Civil Procedure.

Judgment-debtor.—It is important to note that the term 'judgment-debtor' which seems to have been used in its ordinary sense has no reference to the definition of debtor as given in section 7 (2) of the Act. Section 7 appears in part IV, and as such the definition given therein is to apply to that part only. The interpretation clause for the entire Act is contained in section 2 which does not define a judgment-debtor or a debtor. That the legislature did not intend the definitions given in section 7 to be read otherwise than for the purposes of Part IV is clear from the fact that for the purposes of section 30 which occurs in part V a special reference to this definition had to be made. Had the legislature intended this very definition to apply to the case of section 34 it would evidently have made a similar reference to it. Judgment-debtor, therefore, means any person who owes any money under an order of decree of a competent court. Section 2 (10) of the Code of Civil Procedure defines this term as "any person against whom a decree has been passed or an order capable of execution has been made." This definition will, therefore, apply to the present section, which purports to amend the Code of Civil Procedure for which this definition was drafted in the first instance.

No judgment-debtor shall be liable to arrest.—These words indicate that contrary to the interpretation placed on the relevant provisions of the Code of Civil Procedure, as discussed above, under *this law the general rule is that* a judgment-debtor is not to be arrested in execution of any decree or order of a Civil Court, and that an arrest would be an exception to be justified by circumstances the onus of proving which has been placed on the decree-holder.

The Court is satisfied.—This means that a mere allegation by a decree-holder that the conditions necessary for the issue of a warrant of arrest against a judgment-debtor *do exist in any case will not do.* He has besides making such an allegation to satisfy the court, after notice to the judgment-debtor who can lead evidence to prove the contrary, that his plea is correct. It should be borne in mind that where an application for execution does not make any such allegation, the Court cannot even issue a notice of arrest to the judgment-debtor, because in order to bring a case within the rule of an exception it must specifically be pleaded, which means that if there is no such plea the Court has no *jurisdiction to go into such a question.*

Conditions to be alleged and proved by the decree-holder.—A decree-holder wishing to bring his case within the exception of this rule must allege and prove to the satisfaction of the court,

(i) *that the judgment-debtor has the capacity* to pay the decretal sum in whole or in part;

(ii) that he has refused to make the payment;

(iii) that his refusal is without just cause; and

(iv) that it is contumacious.

It would be necessary to deal with these points separately.

Capacity to pay.—The word "capacity" has been hedged round certain restrictions and it cannot be construed according to its ordinary dictionary meaning. While assessing a judgment-debtor's capacity the undermentioned assets are under this section to be excluded:—

(a) The value of any temporary alienation of land, belonging to the judgment-debtor, permissible under the law;

(b) the value of the judgment-debtor's property which cannot be disposed of by a civil court in execution of a decree.

(a) Section 16 of the Punjab Alienation of Land Act prohibits the sale of land as defined therein in execution of a decree, but it allows temporary alienation of such land up to a period of 20 years. The value of this temporary alienation, i.e., the return in terms of money which an alienee can expect from such an alienation cannot be taken into consideration while assessing the "capacity to pay" of the owner of that land.

(b) Civil Courts while executing decrees can, under the law, not proceed against certain properties belonging to judgment-debtors. The proviso to section 60 of the Code of Civil Procedure which gives a list of such properties, reads as under,

"save in so far as is otherwise provided in this section."

This evidently has reference to the second proviso, under which the value of temporary alienation of land of a judgment-debtor permissible under the law is not to be taken into account while assessing his capacity to pay. But for the use of this phrase such value could not be excluded in view of the phrase "shall take into consideration the value."

Amendment of Section 60 (1) (c) of the Code of Civil procedure, 1908.

35. In section 60 (1) (c) of the Code of Civil Procedure, 1908, for the words "occupied by him" the following words shall be substituted :—

> "not let out on rent or lent to others or left vacant for a period of a year or more."

Section 60 of the Code of Civil Procedure enumerates certain properties belonging to judgment-debtors, in general which are immune from attachment or sale in execution of decrees. Clause (c) of Sub-section (1) gives special exemption to houses and other buildings belonging to agriculturist judgment-debtors. It reads :—

"Houses and other buildings (with the materials and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;"

The present section of the Punjab Relief of Indebted ness Act has effected a material change in this clause, which should now read as,

"Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant *thereto and necessary for their enjoyment) belonging to an* agriculturist and not let out on rent or let to others or left vacant for a period of a year or more."

This amendment has brought about three important changes in the law as under:—

(1) While under the section as it originally stood the onus of proving that the building was occupied by an agriculturist, as such, was on him, and *amendment shifts* the onus of proving that the house had been let out on rent or lent to any body else or had been left vacant for a period of a year or more is on the decree-holder;

(2) heretofore when a judgment-debtor owned more houses than one, he was allowed to claim exemption for one only. *In fact not infre-*

quently a judgment-debtor had to part with a portion of his only house on the ground that it was too big for his requirements. Now none of these pleas will be available to decree-holders, and so long as a house is "not let out on rent or lent to others or left vacant for a period of a year or more" at a stretch it will be immune from attachment or sale.

(3) In cases which fell under the clause as it originally stood it was necessary to prove that the judgment-debtor was in possession of the house as an agriculturist; i.e. he was using the house for agriculture or for purposes subservient to agriculture. Now this is not necessary to prove.

Agriculturist.—This term has not been defined by the Code of Civil Procedure or the present Act. The judicial pronouncements dealing with the clause under discussion have not laid down a uniform rule. But the general trend is to insist on the judgment-debtor's proving that he is an actual tiller of land.[8] This interpretation of the term agriculturist has to a great deal restricted the beneficial effect of the exemption. It would have been much better if the Punjab Legislature had defined the term for the purposes of this law. We strongly commend this course to the legislature.

For a period of a year or more.—This means one continuous period and not many disjointed intervals making up a year or more. Furthermore this clause qualifies all the three cases namely letting out a house on rent, lending it to others or allowing it to remain vacant. In each case the decree-holder has to establish the period of one year or more.

Case Law.

The effect of the amendment of Section 60 Civil Procedure Code by the Punjab Relief of Indebtedness Act, is that if a house is reserved for the personal occupation of

I.L.R. 41 Bombay 475; 49 Madras 227; 12 Lahore, 367.

judgment-debtor then it is saleable only if it has remained unoccupied for more than a year otherwise only a house occupied by the judgment debtor is exempt. Two houses belonging to K. were attached in execution of a decree against him. K. objected to the sale of both the houses on the ground that he was an agriculturist and the houses were occupied as such. The decree holder alleged that one house was *occupied by* K. *along with his son and mother and the other house was vacant. The parties arived at a compromise* under which the vacant house was to be released and the other house was to be sold and the Court ordered accordingly. Objection by K's son to attachment of the house on the ground that the house had been gifted to him by his father and was occupied by him as his sole property, and a suit for declaration of his title were dismissed. On amendment of Section 60 of the Code of Civil Procedure by the Punjab Relief of Indebtedness Act, during the execution proceedings, the judgment-debtor raised an objection to sale of the other house as well. Held, that Section 35, Punjab Relief of Indebtedness Act, did not govern the case on account of the compromise between the parties and it was not open to K to raise another objection to the sale of the house after he had compromised with the decree-holder. That if Section 35 governed the case, the house in dispute was not exempt from sale as it was not occupied personally by the *judgment-debtor* but by his son.

Is is respectfully submitted that two important points do not seem to have received due attention in this case. In the first instance the possession of the son should in the eye of law have been treated as that of the father, because the father would ordinarily be responsible, as is customary in the country, to provide residence for his son particularly when the circumstances did not make such an arrangement *impossible*. Secondly if at the time of the second objection by the judgment-debtor, the house had not been in the exclusive possession of the son for a year or more the exemption under the amended law could be successfully pleaded and, the mere fact that under the compromise which had been

9. Per Jai Lal, J., in Kartar Singh versus Khushi Mohammad, A.I.R. 1937, Lahore 171 I.C. 418.

entered into prior to the change in the law the judgment-debtor had agreed to allow the house to be proceeded against would not have availed for the benefit of the decree-holder. The section says *that neither shall a house covered* by it be attached nor sold, wich means that an objection can be raised at any time prior to sale, and the language being mandatory Courts are bound to give effect to it. In fact if a decree-holder fails to bring his case within the compass of the exemption the property must not be attached or sold.

The provisions of section 6, Punjab Relief of Indebtedness Act, apply only to part 3 and not to part 8. Section 35 is to be found in part 8, and a judgment-debtor whose property has been attached in execution of a decree against him, is entitled to raise an objection even in appeal, that the property attached is not liable to attachment and sale in view of the provisions of section 35; provided the objection is raised before the sale of the property has taken place. Where the court on such objection being raised refuses to apply the provisions of the Punjab Relief of Indebtedness Act, *it fails to exercise jurisdiction vested in it by law* and its order is open to revision.[10]

36. In order XXI, Rule 2, of the Code of Civil Procedure, 1908, sub-rule (3) shall be omitted. **Amendment of Order XXI, rule 2 of the Code of Civil Procedure, 1908.**

Rule 2 of Order XXI of the Code of Civil Procedure, reads:—

Rule 2.—Whether any money payable under a decree of any kind is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly."

(2) The judgment-debtor also may inform the court of such payment or adjustment and apply to the court to issue a *notice to the decree-holder to show cause, on* a date to be fixed by the court, why such payment or adjustment

10. Per Agha Haider. J.. Hira versus Ram Singh, 164 I.C. 225=9 P.L.R. 93 (2)=A.I.R. 1936 Lahore 574.

should not be regarded as certified; and if, after service of such notice the decree-holder fails to show cause why the payment or adjustment should not be regarded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment which has not been certified or recorded as afore-said, shall not be recognized by any court, executing the decree."

A perusal of this rule would show that although the duty of certifying payment towards or adjustment of a decree had been placed on the shoulders of the decree-holder, his failure to discharge this duty adversely affected the rights of the judgment-debtor. The judgment-debtors on account of their illiteracy could not in the majority of cases act under sub-section (2) of this rule, with the result that many times they were forced to make payments to decree-holders more than once. Cases are on record where decree-holders while admitting the receipt of payments declined to give credit for the same on the plea that the payments were not got certified within the period allowed, in such cases courts were helpless and had to order execution of decree afresh, leaving the judgment-debtors to their remedy by suits for damages. But these debtors could seldom avail of this remedy because of their inability to pay the court-fee and meet other expenses of such suits. The amendment made by the Punjab Legislature was most needed and now even if a payment or adjustment is not certified within 90 days it can be pleaded successfully.

Penalty for false claim of a principal sum.

37. Where, in a suit for the recovery of a loan, the court is satisfied that an entry relating to the loan has been made in any document showing the amount of the sum advanced to be in excess of that actually advanced plus legitimate expenses incurred, the court may, at its discretion, disallow the whole or any part of the sum claimed by the plaintiff.

This is a very important section as it incorporates a very wholesome principle intended to regulate dealings between money-lenders and their debtors. In several districts of the

Punjab money-lenders are in the habit of making entries of loans in excess of the sum advanced. The rates at which these additions are made range between one anna per rupee to four annas per rupee, and the different terms given to such charges are **Chilkana, Gandchhora,** *etc.* Since under Part III of this Act rate of interests permissible for loans had been fixed, the legislature rightly feared that the tendency to charge these surplus items would go up to compensate for and in proportion to the restrictions on higher rates of interest. It was therefore necessary to make some provision like the one contained in this section.

The United Provinces Agricurturists' Relief Act (section 35) makes such surplus charges a criminal offence. It says, "Any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to an agriculturist a sum larger than that actually lent,. . . . . shall be punishable for the first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with regard to the same or any other agriculturist, with fine which may extend to five hundred rupees."

The Punjab Act is therefore lenient, as it merely aims at depriving the guilty money-lender of the whole or part of his claim and allows courts a wide discretion in the matter, which if judicially exercised can minimize the danger of undue hardship.

It should be noted that Section 37 of the Punjab Relief of Indebtedness Act (VII of 1934) now provides a penalty for a false claim with respect to the principal amount advanced. The Court is empowered to disallow, at its discretion, the whole or any part of the sum claimed by the plaintiff if it is satisfied that a false entry had been made to show the sum advanced plus such legitimate expenses as may have been incurred. (Vide correction slip No. 189, dated the 16th May, 1938, Rules and Orders of the High Court, Volume I, Chapter I. N.).

APPENDIX A

PUNJAB DEBT CONCILIATION RULES

No: 29855.—With reference to Punjab Government notification No: 15943-Judicial, dated the 23rd April, 1935, and in exercise of the powers conferred by section 28 of the Punjab Relief of Indebtedness Act 1934, the Governor in Council is pleased to make the following rules:

Rules.—1. These rules my be called the Punjab Debt Conciliation Rules 1935.

2. In these rules:—

   (a) "ACT" means the Punjab Relief of Indebtedness Act, 1934.

   (b) "Board" means a Debt Conciliation Board established under the Act.

3. The chairman and members of the Board shall draw such salaries and travelling allowances as shall from time to time be prescribed by the Punjab Government. (Substituted by Punjab Government Notification No. 1339-E., dated the 10th March, 1938.)

4. A board shall have its office at such place as may be fixed by the local Government, and may hold its sittings at any place within its area of jurisdiction.

5. It may hold its sittings on all days except those which are allowed as local holidays or as holidays to all public offices in the province, but nothing in this rule shall operate to invalidate proceedings taken by a Board on a sanctioned holiday.

6. Not less than two thirds of the total membership of a Board must be present to form a quorum. In calculating the total membership for the purpose of this rule the Chairman is to be counted, as well as the members.

7. An application for a settlement betwen a debtor and his creditors shall be signed by the applicant and his pleader (if any) and shall be verified at the foot by the applicant, who shall specify by reference to the numbered paragraphs of the application what he verifies of his own knowledge and what he verifies upon information received and believed to be true. The verification shall be signed by the applicant and shall state the date on which and the place at which it was signed.

8. (1) Every application for settlement between a debtor and his creditors shall be presented by an applicant in person or sent by registered post to the Chairman or to a member of the Board or to any person authorised by the Deputy Commissioner in this behalf. On receipt of the application the Board shall order the relevant details to be entered in the Register of Applications for settlement of debts.

(2) Every application shall be accompanied by all such documents that will be necessary for the disposal of the proceedings before the board.

(3) A further and better statement of the nature of the claim or defence, or further and better particulars of any matters stated in any application, may be admitted by the Board upon such terms as to costs and otherwise as may be just.

9. If the Board does not dismiss the application, it shall send to all persons concerned, at the expense of the applicant, a notice by registered post (acknowledgement due,) issued under the provisions of section 12 (2) of the Act, of the date and place fixed for hearing of the application.

10. If the applicant is a debtor, and the Board does not dismiss the application, the Board shall as soon as convenient cause to be posted in a prominent place at the office of the Board a notice in form I attached to these rules. It shall similarly cause to be published, at the cost of the

applicant, the same notice in some vernacular newspaper, commonly read in the area in which the Board has jurisdiction, at least twice within one month.

11. If the applicant is a creditor:—

(i) the notice sent to the debtor under rule 8 may require him to submit to the Board, at least twenty five days before the date fixed for hearing the application, a written statement signed and verified by the debtor in the manner aforesaid containing:—

(a) the particulars of all debts owed by him together with the names and addresses of all his creditors;

(b) the particular of all his property, together with a specification of the value of such property and the place or places at which such property is to be found.

(ii) on receiving the written statement the Board shall send by registered post (acknowledgment due) a notice of the date and place fixed for hearing the application to all creditors mentioned by the debtor in his statement.

The cost of issuing these notices shall be recovered by the Board from the applicant in advance.

12. On the date fixed for hearing the application, the Board, after any other proceedings it may consider necessary, shall, unless it dismisses the application, publish in the manner prescribed in the next following rule a notice in accordance with section 13 of the Act calling upon every creditor of the debtor to submit within two months a statement to the Board of all debts owed to him by the debtor.

13. (i) The notice shall be in form II attached to these rules and shall be published as follows:—

(a) It shall be read out and explained in open session by the Chairman of the Board to all creditors who are present, and a memorandum shall be made that this has been done. The names of the creditors present shall also be recorded.

(b) A copy of the notice shall be affixed in some conspicuous part of the place where the Board is sitting.

(c) A copy of the notice shall be sent by registered post (acknowledgment due) to those creditors who have been named by the applicant or debtor not present before the applicant, but shall be recoverable, at the discretion of the Board, from a creditor who has had previous notice of the date fixed.

(ii) If the Board has reason to believe that the applicant has not disclosed the names of all creditors, it shall further cause the notice in from II to be published at the costs of the applicant in some vernacular newspaper commonly read in the area in which the Board has jurisdiction, at least twice within one month of the order.

14. A certificate granted under section 20 (2) of the Act by a Board to a debtor in respect of debts due from him to any creditor shall be in form III annexed to these rules, and shall be signed by the Chairman and members of the Board present and sealed with the seal of the Board. The certificate shall be prepared in triplicate; one copy shall be delivered to the debtor, one copy shall be sent to the Record room of the district in which the Board is working, to be filed in accordance with rules framed by the Punjab Government, and the third copy shall be attached to the record of the proceedings.

15. Every application for settlement made under section 9 of the Act and every application for review made under section 23 of the Act shall be stamped by the applicant with a court fee stamp of the value of eight annas.

16. (i) For every registered notice to be sent by the Board under the Act and these rules the person at whose expense it has to be sent shall pay

to the Board, before the issue of the notice, the sum of six annas, "or present a cover adequately stamped for the purpose of the despatch of the notices by registered post, acknowledgment due" (added by Punjab Government No. 2362-J-37-20364, dated the 17th May, 1937.)

(ii) If the applicant fails to pay the expense of a registered notice within a week, his application shall be dismissed in default. But he may, within one month of the dismissal, apply to have the dismissal set aside; and if he satisfies the Board that there was sufficient cause for his non-compliance with the order of payment, the Board shall set aside the dismissal upon such term as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the application.

17. The Chairman of the Board shall send quarterly returns of the work done by the Board to the Collector in form IV annexed to these rules.

18. The costs of and incident to all proceedings before the board shall be in the discretion of the board, and the Board shall at the time of every settlement under section 17 of the Act have full power to determine the amount to be paid as costs and the person by whom it is to be paid and to give all necessary directions for the purpose aforesaid.

19. Every Chairman of the Board on demand shall cause to be given a copy of any settlements made under section 17 of the Act, on payment of two annas, together with a certificate written at the foot of such copy that it is a true copy of such settlement, and such copies so certified shall be certified copies within the meaning of the Indian Evidence Act, 1872.

20. The following register shall be kept by a Board and entered up under the supervision of the Chairman on every day that the Board holds its sitting:—

(a) Register of applications for settlement of debts (form V).

(b) Register of miscellaneous applications (form VI).

(c) Register of receipts and disbursements (form VII).

(d) Pay roll register (form VIII).

"21. Whenever an application for a settlement under section 9 or for review under section 23 of the Punjab Relief of Indebtedness Act, 1934 has been made, the person making it may apply to the Debt Conciliation Board concerned, at any time up to the date of the final disposal of the proceedings, for the issue of an intimation to such Civil Court as may be named in the application, and the Board shall thereupon issue such intimation.

22. The intimation shall be in the form of a statement that an application has been made to the Board on a particular date and shall be accompanied by a copy of the application for settlement or for review so far as it relates to the debt or debts with which the Civil Court is concerned.

23. On the termination of any proceedings before the Board, the Board shall, of its own motion, send an intimation of the termination of such proceedings to every Civil Court to which an intimation has been sent under the foregoing rules stating the result of the proceedings and shall also send a similar intimation to any other Civil Court concerned, when so required by any of the parties.

24. No charge shall be made for the issue of an intimation, or for the preparation of any copies required in connection therewith." (Added by Punjab Government Notification No. 3438-E, dated the 24th June, 1938.)

FORM I

Form of notice under section 12 of the Punjab Relief of Indebtedness Act, 1934.

Rule 10 of the Punjab Debt Conciliation Rules, 1935.

Notice is hereby given that————, son of————caste————, of————tahsil————district————, has filed an application under section 9 of the aforesaid Act, and that the Board has fixed the————day of————19———at————for hearing to the application. All creditors of————aforesaid or other persons interested should appear in person before the Board on the date fixed.

Dated————the————day of————19—.

Chairman,
Debt Conciliation Board,
————District.

(Seal of the Board.)

FORM II

Form of notice under sub-section (1) of section 13 of the Punjab Relief of Indebtedness Act, 1934.

Rules 12 and 13 of the Punjab Debt Conciliation Rules, 1935.

1. Whereas————, son of————, caste————of————Tahsil————, District———— $\frac{\text{Debtor}}{\text{Creditor}}$ has submitted an application under section 9 of the aforesaid Act for the settlement of the debts of————, son of————, caste————of————tahsil————district————, and whereas the Board is of the opinion that it is desirable to attempt to affect a settlement between the said debtor and his creditor, $\frac{\text{you as one of the creditors}}{\text{all the creditors}}$ to whom the said debtor is indebted, are hereby required to submit the Board within two months of the date of publication of the notice, a statement in writing at the Board's office at——on————of all debts owed to $\frac{\text{you}}{\text{them}}$ by the said debtor. The Board will scrutinize this statement at————on————day————when you should appear before the Board.

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

3. Further proceedings in this case will take place at ————on the————day of————19——, when all creditors should appear before the Board.

Dated————the————day of————19—.

Chairman,
Debt Conciliation Board,
————District.

(Seal of the Board)

FORM III

Form of certificate of debts under sub-section (1) of section 20 of the Punjab Relief of Indebtedness Act, 1934.

Rule 14 of the Punjab Debt Conciliation Rules, 1935.

Whereas————, son of————caste————, of————, tahsil————, district————, a debtor and————, son of ————, caste————, of————, tahsil————, district ————, his creditor parties to application for settlement of debts No.————of 19—before this Board, have failed to come to any settlement of their dispute, and whereas———— debtor aforesaid has offered to pay————creditor aforesaid the sum of Rs.————in satisfaction of his claim of Rs.———— in monthly / quarterly / yearly instalments (with interest at———per cent per mensem / annum, and whereas the Board having regard to all the circumstances of the case, is of the opinion that this is a fair offer on the part of————which————ought reasonably to accept, and whereas the Board is satified that other creditors of the debtor to whom at least forty per cent of his total debts are owing have come to an amicable settlement with the debtor, now, therefore, we the members of the Board at——— hereby grant this certificate to————under our hand and seal this————day of————19————in exercise of the powers conferred on us by section 20 (1) of the aforesaid Act.

Dated————the————day of————19—.

————Chairman,

————
———— } Members,

Debt Conciliation Board,
————District.

(Seal of the Board)

FORM IV.

Return to Collector under rule 17 of the Punjab Debt Conciliation Rules 1935.

For quarter ending__________

1	2	3	4	5	6	7
Total number of applications made for settlement of debts.	Total number of applications dismissed without settlement.	Total number of cases in which complete settlement has been reached.	Total number of cases in which partial settlement has been reached.	Value of claims which have been compounded.	Amount for which claims mentioned in Col. 5 have been compounded.	Total number of certificates granted.

General remarks:—

Sd.__________

Dated__________

Chairman of Board at__________

FORM V.

Register of Applications for settlement of Debts

Debt Conciliation Board at__________

1	2	3	4	5	6	7	8	9
No. of application.	Date of application.	Name and address of debtor.	Names and addresses of creditors.	Date of disposal of application.	Result giving details of settlement, if any.	Names of creditors against whom applications have been granted.	No. and date of review application, if any.	Abstract of order on review.

General remarks :—

Sd.____________________

Date____________________

Chairman of Board at____________________

FORM VI.

Register of Miscellaneous Applications :

Debt Conciliation Board at ____________

1	2	3	4	5	6	7
No. of application.	Date of application.	Description of application.	Name and address of applicant.	Name and address of opposite party.	Date of disposal of application.	Abstract of decision.

FORM VII.

Register of Receipts and Disbursements.

(Showing balance in hand each day).

Debt conciliation Board at____________________

1	2	3	4	5	6
Date.	Particulars of receipts.	Amount.	Particulars of disbursements.	Amount.	Balance.
		Rs. A. P.		Rs. A. P.	

FORM VI.

Register of Miscellaneous Applications :

Debt Conciliation Board at ____________________

1	2	3	4	5	6	7
No. of application.	Date of application.	Description of application.	Name and address of applicant.	Name and address of opposite party.	Date of disposal of application.	Abstract of decision.

FORM VII.

Register of Receipts and Disbursements.

(Showing balance in hand each day).

Debt conciliation Board at____________________

1	2	3	4	5	6
Date.	Particulars of receipts.	Amount.	Particulars of disbursements.	Amount.	Balance.
		Rs. A. P.		Rs. A. P.	

FORM VIII

ESTABLISHMENT.

Pay-Roll Register.

Debt Conciliation Board at____________________

Month______________.

1	2	3	4	5	6	7	8
Serial No.	Name of incumbent.	Pay including special allowance, if any.	Deduction for leave or absence, if any.	Deduction for income-tax provident.	Net amount payable.	Remark.	Acquittance.

APPENDIX B
Selected Judgments

A.I.R. 1937 LAHORE 100

Jai Lal, J.

KARTAR SINGH and others—Decree-holders—Appellants.

Versus

KHUSHI MOHD.—*Judgment-debtor—Respondent.*

Civil Ex. Second Appeal No. 515 of 1936, decided on 13th October, 1936, from order of District Judge, Gujranwala, dated 25th February 1936.

Judgment.—The undisputed facts of the case are as follows: The appellant decree-holders in execution of his money decree attached two houses belonging to the judgment-debtor Khushi Mohammad. Khushi Mohd. objected to the sale of both the houses on the ground that he was an agriculturist and the houses were occupied by him as such. The decree holder made a statement that the judgment debtor was residing in a house with his son and his mother and that the other house which is described to be the house next to dharmsala was vacant. He, however, objected to the reelase of both the houses. After some evidence had been led by the parties on the objection of the judgment-debtor, the decree-holder made a statement that the house near the dharmsala may be released, but that the other house may be sold in execution of the decree. The judgment-debtor made a statement agreeing to the release of the house next to the dharmsala and then to the sale of the other house. He added that if his son be inconvenienced he would take proper steps himself. Thereupon the Court released the house next to the dharmsala and directed the sale of the other house. The son, however, raised an objection to the attachment and sale of this house on the ground that the same had been gifted to him by his father and was occupied by him as his sole property. This objection was disallowed and a suit was instituted by the son for a declaration of his title to this house. That suit was also dismissed.

The proceedings relating to the sale of this house were pending after the dismissal of the suit when the Punjab Relief of Indebtedness Act was passed and section 60 Civil Procedure Code, under which the previous objection of the judgment-debtor Khushi Mohd. had been made and compromised between the parties was amended by the substitution for the words 'occupied by him' by "not let out on rent or lent to others or left vacant for a period of a year or more." When this Act was passed the judgment-debtor raised an objection to the sale of the other house also. This objection was disallowed by the trial court but on appeal the learned District Judge has allowed it holding that by virtue of the amendment of section, 60 Civil Procedure Code the Court was not competent to sell the second house as well. The decree-holder has appealed to this court. Now in the first instance, it was not open to the judgment-debtor to raise an other objection to the sale of house after he had compromised the matter with the decree-holder as appears from the order of the executing court releasing this house on statements made by the decree-holder and the judgment-debtor agreeing to the release of the house next to the dharmsala and to the sale of the house in dispute. Further I am of the opinion that even if provisions of section 35, Punjab Relief of Indebtedness Act governed the sale of the house and therefore the previous compromise between the parties became ineffectual the section did not exempt the house in dispute from sale. By virtue of the amendment a house belonging to an agriculturist is exempt from attachment unless it is let out on rent or has been lent to others or has been left vacant for a period of a year or more. This means that if a house is reserved for the personal occupation of the judgment-debtor then it is saleable only if it has remained unoccupied for more than a year, otherwise only a house actually occupied by the judgment-debtor is exempt.

The house is dispute is not occupied personally by the judgment-debtor. It is occupied by his son who claimed it adversely to the judgment-debtor though his objection has been disallowed. The house therefore is not occupied by the judgment-debtor but must be deemed to have been lent by him to his son for occupation and therefore it is saleable. I hold therefore that section 35, Punjab Relief of Indebtedness Act, does not govern the present case on account of the compromise between the parties: if it does, then the house in dispute is not exempt from sale as it is not occupied by the judgment-debtor but by his son. I accept the appeal, set aside the order of the District Judge and restore that of the executing court with costs throughout.

Appeal allowed.

A. I. R. 1937 LAHORE 685.

Bhide, J.

ILACHI RAM—Plaintiff—Petitioner.

Versus

AMIR ALI and another—Defendants—Opposite Party.

Civil Revn. Petn. No. 71 of 1937. Decided on 28th April 1937 from decree of Small Cause Court Judge Amritsar dated 26th August 1936.

Order.—This petition for revision arises out of a suit for recovery of Rs. 275 on the basis of a promissory note which was executed by three persons named Nawab Din, Amir Ali, and Ghulam Qadir. Nawab Din made an application to the Debt Conciliation Board, Amritsar upon which he was discharged from the debt. The plaintiff thereupon instituted the present suit against Amir Ali and Ghulam Qadir, the other two executors of the Promissory note. They raised the plea that the debt having been discharged by the Debt Conciliation Board, the suit was not competent even against them by virtue of the provisions of section 13 (2), Punjab Relief of Indebtedness Act which lays down that the debt must be deemed to have been duly discharged for all purposes and all occasions. The learned Judge of the Small Cause Court upheld this plea and dismissed the suit. The plaintiff has prefered a petition for revision of this order. A preliminary objection is raised that a petition for revision of the said order has already been dismissed and a second petition is not competent, The learned counsel for the petitioner has cited 54 P.R. 1901, a Full Bench decision of the Punjab Chief Court according to which a second petition for revision would seem to lie when the first one was dismissed in default, as it was in the present case. A similar view was taken by a learned Judge of this Court in A.I.R. 1928 Lah. 550. I accordingly hold that the present petition is competent.

On merits I am unable to agree with the *construction* placed upon the provisions of section 13 Punjab Relief of Indebtedness Act by the Court below. The only person who had applied to the Debt Conciliation Board was Nawab Din. The present respondents were not parties to those proceedings and it seems to my mind clear that section 13 only deals with the discharge of liability of other presons who are not parties to the proceedings before the Board. The learned Judge of the Small Cause Court has, however, not decided some of the other objections raised by the respondents, e.g. as regards the compliance with the provisions of the Punjab Relief of Indebtedness Act and the case has therefore to be remanded. I therefore accept this petition for revision and setting aside the order of the learned Judge, remand the case for re-decision in the light of the above remarks. Costs will follow final decision. Parties to appear in the Court below on 17th May 1937.

Case remanded.

A.I.R. 1937 LAHORE 861

Addison and Din Mohammad, JJ.

CHANAN DAS—Creditor—Petitioner.

Versus

GHULAM MOHAMMAD, Debtor and others—Creditors—Respondents.

Civil Revision *Petn. No. 419 of 1936, decided on 16th* February 1937, from order of the District Judge, Jhang at Sargodha, dated 9th March, 1936.

Order.—Ghulam Mohd. applied to be adjudicated an insolvent. Subsequently he made an application under section 9, Punjab Relief of Indebtedness Act to the Board appointed for the area in which he resided or held land to effect a settlement between him and his creditors. This was brought to the notice of the Insolvency Judge before whom the insolvency application of Ghulam Mohd. was pending. Under section 25, Punjab Relief of Indebtedness Act, the Insolvency Judge suspended the proceedings pending before him. One of the creditors appealed to the District Judge against the order suspending the Insolvency proceedings and his appeal was dismissed. The same creditor then applied to this court on the revision side for an order setting aside the suspension of the proceedings in the Insolvency Court. It is this petition which is before us. The principal contention before us was that an Insolvency Court was not a Civil Court. It is obvious, however, that it is. Under the Insolvency Act it is the court of the District Judge which is the primary Insolvency Court, though provision is made for a Subordinate Judge to be made such a Court. The mere fact that there is a special Act for insolvency, does not mean that the Insolvency Court is not a Civil Court. All that the Insolvency Act does in this respect is to determine the Civil Court which shall bear insolvency petition. *Section 25 is as* follows:—

When an application has been made to a Board under section 9 no Civil court shall entertain any new suit or other proceeding brought for the recovery of any debt for the settlement of which application has been made to the Board, and any suit or other proceeding pending before a Civil Court in respect of any such debt shall be suspended until the Board has dismissed the application or an agreement has been made under section 17.

It is the second part of this section which applies to the case before us. The words "in respect of any such debt" mean in respect of any debt for the settlement of which application has been made to the Board. The Insolvency application comes within the meaning of "other proceeding pending before a Civil Court in respect of any such debt." Under section 25, therefore, of the Punjab Relief of Indebtedness Act the proceedings before the Insolvency

Court were properly suspended. For the reasons given we dismiss the petition. No order as to costs is necessary as the appeal has been heard ex-parte.

Petition dismissed.

A.I.R. 1938 LAHORE 126.

Addison and Din Mohammad, JJ.

MURLI DHAR—Judgment-debtor—Appellant.

Versus

Firm BASHESHAR LAL MOTI LAL through Joint Receivers, Decree-holder and others, Judgment-debtors and another—Respondents.

Exn. First Appeal No. 130 of 1937, decided on 9th November 1937, from order of Senior Sub-Judge, Hissar, dated 12th February 1937.

Judgment.—Addison, J. The decree-holder obtained, on the Original Side of the Calcutta High Court, a decree for a large sum of money against the judgment-debtor. This decree was transferred to the Court of the Senior Subordinate Judge, Hissar, in this province, for execution. The present execution application was made some time in 1933 and the judgment-debtor put in certain objections on the 27th July 1933. One of these objections was that the decree had been completely satisfied. Sub rule (3) of Order 21, Rule 2, Civil Procedure Code, 1908, was omitted so far as this province was concerned by section 36, Punjab Relief of Indebtedness Act 7 of 1934, which came into force on the 19th April, 1935, when the execution was still pending and the objections had not been decided. The judgment-debtor contended that the question of complete satisfaction must be decided by the executing Court in view of the repeal of the sub-rule referred to. The executing Court has decided that this is not so and has repelled the objection. It held that an outside payment could only be certified under the provisions of Sub-rule (2) of Order 21, Rule 2, that this had to be done within ninety days of the alleged payment under

Article 174, Limitation Act. Against this decision the judgment-debtor has appealed under section 47, Civil Procedure Code.

All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

It is clear, therefore, that it is the duty of the executing court to decide the question of an alleged payment towards the decree or discharge of the decree, and a separate suit does not lie for this purpose. Under Order 21, Rule 1, which is headed "Modes of paying money under decree," it is enacted that:

> All money payable under a decree shall be paid as follows, namely: (a) into the Court whose duty it is to execute the decree; or (b) out of Court to the decree-holder; or (c) otherwise as the Court which made the decree directs.

Then Order 21, Rule 2 deals with "payment out of Court to decree-holder." Sub-rule (1) is to the effect that:

> Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Sub-rule (2) is:

> The judgment-debtor also may inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause—why such payment or adjustment should not be recorded as certified; and if... the decree-holder fails to show cause.....the Court shall record the same accordingly.

Sub-rule (3), which has now been repealed, runs:—

> A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

The effect of these two Rules of Order 21 was that a *duty was thrown upon the decree-holder to certify* any payment out of Court while no such duty was placed on the judgment-debtor, but he was permitted, if he so cared, to apply to the Court, within ninety days of the date of the alleged payment or adjustment, to issue a notice to the decree-holder to show cause why the payment should not be certified. If he did not do so, sub-rule (3) enacted that a payment or adjustment not so certified or recorded should not be recognized by the Court executing the decree. This meant that if the judgment-debtor failed to take advantage of sub-rule (2) of Order 21, Rule 2, he was not allowed to plead payment or adjustment in the executing Court; and even if he had made payment, he had to make it again into Court. It was held, however, that in such cases he could institute a suit for return of the excess payment, which the executing Court was not allowed to go into by virtue of sub-rule (3).

This sub-rule has now been repealed so that as Order 21, Rules 1 and 2 now stand, the duty still remains upon the decree-holder to certify payments out of Court, while the judgment-debtor is permitted to apply to the Court within ninety days of the date of an alleged payment to issue a notice to the decree-holder to show cause why the payment should not be certified. If he does not take advantage of this concession, no penalty is now placed upon him such as was done by the repealed sub-rule (3). The penalty formerly was that he could not plead payment in the executing Court. That penalty having gone and as section 47 enacts that all questions relating to the discharge of the decree must be determined by the executing Court and not by a separate suit, it would now seem that the executing Court must go into the question, although the judgment-debtor has not taken advantage of the permission given to him by sub-rule (2) of Order 21, Rule 2, to apply to the Court to issue a notice to the decree-holder for certification. There seems to be no escape from this conclusion and we so decide. We have been referred to A.I.R. 1936 Lah. 842, a decision by a single Judge of this Court, but with all respect we are unable to agree with his decision.

It was contended, however, that as the decree was passed by the Calcutta High Court and as only sent for execution to this Province it must be executed according to the law in force in Calcutta. In this connection reliance was placed upon 36 Mad. 108. This authority, however, seems to us to have nothing to do with the present case. Section 40, Civil Procedure Code, which, as enacted for the first time in the Code of 1908, runs as follows:

> Where a decree is sent for execution in another Province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that Province.

This section is plainly worded and can mean only one thing; that the rules applicable to executions in the Punjab are the rules which apply in execution of decrees sent from the Calcutta High Court or anywhere outside the Province. Order 21, Rules 1 and 2, as amended by the Punjab Relief of Indebtedness Act, section 36, are the rules in force in this Province. In fact Order 21, Rule 1, is headed "Modes of paying money under decree," while section 40 is to the effect that the decree shall be executed in such manner as may be prescribed by rules in force in the Province to which the decree is transferred. It follows that now that Order 21, Rule 2 has been amended by the repealing of sub-rule (3) the amended Rule is the rule which must be applied in execution of decrees in the Punjab.

It was however contended that Section 36, Punjab Relief of Indebtedness Act, could not have a retrospective effect. It follows from what has already been said that the repealing of sub-rule, (3) is merely an alteration in the procedure. Before it was repealed, the executing Court was debarred from trying a certain question which fell under Section 47, Civil P.C., if a particular act was not done by the judgment-debtor within ninety days. But the judgment debtor stil. had his cause of action left by reason of the fact that he was debarred from raising the plea in the executing Court. *Now that sub-rule(3) has been repealed, the question* must be decided in the executing Court and not by a separate suit. Clearly therefore the enactment refers only to procedure. It is said at page 195 of Edn. 7 of Maxwell on the Interpretation of Statutes that:

Although to make a law punish that which, at the time when it was done, was not punishable, is contrary to sound principle, a law which merely alters the procedure may, with perfect propriety be made applicable to past as well as future transactions, and no secondary meaning is to be sought for an enactment of such a kind. No person has a vested right in any course of procedure*.... The general principle indeed seems to be that alterations in procedure are always retrospective, unless there be some good reason against it.

It is true that the objection of judgment-debtor had been raised before the Punjab Relief of Indebtedness Act, but it was still pending when the Act came into force and the procedure bar was removed. The question therefore is one which the executing Court must decide. We accept the appeal, set aside the order of the executing Court dated 12th February 1937, and direct it to hear on the merits the question of the alleged payment and satisfaction. We make no order as to costs.

Order set aside.

A.I.R. 1938 LAHORE 366.

Skemp, J.

BUDHU—Accused—Petitioner.

Versus

Emperor.

Criminal Revn. Petn. No. 1531 of 1937. Decided on 6th January 1938 from order of Senior Sub-Judge Hoshiarpur, dated 11th May, 1937.

Order.—This is a petition for revision against an order of the Conciliation Board, Garhshankar fining the petitioner Rs. 50|- for contempt of Court. The Board dealt with the matter themselves in accordance with Section 480 Criminal P.C. The petitioner appealed to the Senior Sub-Judge at Hoshiarpur, who held quite correctly that in view of Section 22, Punjab Relief of Indebtednes Act, no appeal lay. He has now come here in revision. Notice issued to the District Magistrate of Hoshiarpur who held that Crown representation was unnecessary and I have not had the advantage of hearing the Crown. The District Magistrate could not have thought that the matter was clear beyond doubt and the inference is that he did not think that the point was of any importance Mr. Agnihotri, who represents the petitioner, addressed to me a very interesting argument. His case is that the Conciliation Board is not a Court but rather resembles arbitrators and that *in any case proceeding before* the Board are not judicial proceedings.

On the first point he referred particularly to the commentary on Sections 14 and 16, Punjab Relief of Indebtness Act, in Khalifa Shujua-ud-Din and N. K. Iyer's Edition. At page 75, the learned authors express the opinion that it is nowhere provided that the Board is to be considered to be a court and that the members of the Board can be said to be arbitrators. I do not agree with this opinion. The first reason advanced by Mr. Agnihotri for holding that a Conciliation Board is not a Court in its name, the Board has the honour of sharing with their Lordships of the Judicial Committee of the Privy Council, who frequently refer to themselves as a Board. Section 8 of the Act provides for the setting up, constitution and duties of Debt Conciliation Boards Section 8 (1) (a) Provides that:—

The Local Government may for the purpose of amicable settlement between debtors and their creditors establish Debt Conciliation Boards.

Section 8 (1) (b) enables the Local Government to define the Local limits of the Board's jurisdiction, and (c) to determine the pecuniary limits of the jurisdiction. Local and pecuniary limits of jurisdiction suggest a Court. Section 16 provides that any Board may exercise all such powers connected with the summoning and examining of parties and witnesses......as are conferred on Civil Courts by the Code of Civil Procedure, and every proceeding before the Board shall be deemed a judicial proceeding.

It appears to me that this section settles the matter. The Board has the powers of a Civil Court with reference to the examination of the parties and witnesses and their proceedings are judicial proceedings. A body so empowered must be a Court.

Mr. Agnihotri and the learned authors of the commentary suggest that they are arbitrators, but this is not borne out by the porvisions relating arbitration in the Second Schedule to the Civil Procedure Code. Leaving aside arbitration without the intervention of the Court, where the parties choose their arbitrator, an arbitrator is appointed by the Court and the matter in deference is referred to the arbitrator by the Court (Paras. 2 and 3). By para 7, the Court shall issue processes to the parties and by para. 7 (2) if any one is guilty of contempt, it is the Court which shall punish the guilty person. I am of opinion that a Conciliation Board is a Court.

The next point taken is that the proceedings were not judicial proceedings, and various authorities were referred to, but the matter seems to me to be concluded by the statute itself which says (section 16) 'Every proceeding before the Board shall be deemed a judicial proceeding." Therefore, I think that the Board was acting within jurisdiction in passing an order of fine under section 228, Penal Code, and in adopting the procedure laid down in section 480, Criminal Penal Code.

The next question is whether the High Court has jurisdiction to deal with the matter on revision in view of section 22 of the Act which says, "No appeal or application for revision shall lie against any order passed by the Board," I think, however, that this section refers only to orders passed in pursuance of the Act. In this connection reference may be made to section 21, which bars civil suits to question the validity, or legality of any agreement made under the Act, and to section 23 which empowers the Board to review its own order. The present proceeding was under the Penal Code and the Criminal Procedure Code. Here I may refer to Maxwell's interpretation of Statutes, Edn. 7, P. 52.

> It is in the interpretation of general words and phrase that the principle of strictly adapting the meaning to the particular subject matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject matter. While expressing truly enough all that the Legislature intended, they frequently express more, in their literal meaning and natural force, and it is necessary to give them the meaning which best suits the scope and object of the statute without extending to ground foreign to the intention.
>
> They are to be construed as particular if the intention be particular, that is, they must be understood as used with reference to the subject matter in the mind of the Legislature and limited to it.

See also page 71

One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights, or depart from the general system of Law, without expressing its intention with irresistible clearness and to give any such effect to general words, simply because they have a meaning that would lead thereto when used in either their widest, their usual or their natural sense, would be to give them a meaning other than that which was actually intended. General words and phrase therefore, however, wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act and as not altering the Law beyond them.

Therefore I am of opinion that section 22 of the Act does not alter he Code of Criminal Procedure. Section 486 of that Code allows an appeal from an order under section 480 to the Court to which such decrees or orders are ordinarily appealable. As ordinarily there is no appeal, this section therefore has no application. There remains section 439 which enables the High Court to exercise any of the powers conferred on a Court of Appeal.

In the present instance I think the sentence is excessive. The petitioner had purchased the debt in question (the amount is not shown) and the decree was in his name. This led to a misunderstanding about his name and the petitioner was rude to the Board. Subsequently he recovered his temper and the order of the Board shows that at the intervention of a friend he apologized. The Board, however, insisted on an apology in writing, which the petitioner would not give. There on they passed the order in question under section 480. In my opinion, in view of the apology made at the time, the fine is excessive and I reduce it to one of Rs. 5/-. The balance, if paid, is to be refunded.

Order accordingly.

A.I.R. 1938 LAHORE 702.

Addison Ag. C.J. and Din Mohammad, J.

GOPAL DASS—Defendant—Petitioner.

Versus

Firm SETH KHUSHI RAM-BEHARI LAL, Plaintiff and others—Defendants—Respondents.

Civil Revn. No. 292 of 1938, decided on 15th June, 1938, from order of Senior Sub-Judge, Lyallpur, dated 24th February, 1938.

Judgment.—Din Mohammad, J. This case raises an important question of law under the Punjab Relief of Indebtedness Act, which has not so far been authoritatively decided by this Court. It often happens that applications under section 9 of the Act are made to a Debt Conciliation Board in relation to matters involved in pending suits and when the fact of such applications having been made is brought to the notice of the Civil Courts, they refuse to stay proceedings before them on the ground either that the application is not competent or that the applicant is not a debtor within the meaning of the Act. It is necessary therefore to consider the question at some length whether the Civil Courts are competent to do so. In the present case a suit for recovery of Rs. 31,000 was pending in the Court of the Senior Subordinate Judge, Lyallpur. During the pendency of that suit, one of the defendants, Gopal Das, a partner of the principal defendant which was a firm, made an application to the Debt Conciliation Board, stating among other things that his debt amounted to Rs. 5,000/-. It appears that the Board admitted this application and an intimation to that effect was forwarded to the Senior Subordinate Judge. The plaintiff objected that inasmuch as the amount of debt owed by the defendant firm, of which Gopal Das was a partner, exceeded Rs. 10,000|- which is the maximum limit of the pecuniary jurisdiction of Conciliation Board, the Senior Subordinate Judge was not bound to suspend the proceedings in his Court as required by section 25 of the Act. The Senior Subordinate Judge framed an issue on the point along with certain other issues with which we are not concerned, and holding that the amount of debt did exceed Rs. 10,000|-, refused to suspend the proceedings. The question therefore arises whether the action of the Subordinate Judge was in accordance with law.

The reply to the question propounded above turns upon the construction to be placed upon the wording of section 25, considered in the light of the other provisions made in the Act in relation the matters to be decided and the procedure to be adopted by the Board in connection with the applications submitted to it. Section 7 defines the terms "debt" and "debtor" and inter alia enacts that if any question arises in proceedings under the Act whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final. Section 8 deals with the setting up of the Debt Conciliation Boards. Section 9 enables a debtor or any of his creditors to apply to the Board appointed for the area in which the debtor resides or holds any land to effect a settlement between the debtor and his cerditors. A Proviso is attached to this Section which prohibits such application, if the debtor's debts exceed Rs. 10,000|-. Section 11 requires an applicant to mention among other things the particulars of all claims against him. Section 12 authorises the Board inter alia to dismiss the application if it does not consider it desirable to attempt to effect the settlement prayed for. Section 13 lays down the manner in which notices under the Act are to be issued and the statements by the creditors are to be submitted. Section 14 requires the creditors to produce all documents on which they rely. Section 15 empowers the Board to attempt an amicable settlement. Section 16 relates to the summoning and examining of the parties and witnesses and section 17 deals with registration of the agreement arrived at between the disputants and the dismissal of the application so far as it relates to those creditors who do not come to an amicable settlement. Section 18 enables the Board to dismiss an application for want of diligent prosecution. Section 19 bars a second application. Section 20 provides for those cases where a creditor refuses to agree to an amicable settlement; section 21 bars certain civil suits. Section 22 shuts out appeals and applications for revision against the order of the Board. Section 23 empowers the Board to review its own order. Section 24 provides for appearance of the parties before the Board and section 25 not only bars new suits and other proceedings in relation to those debts for the settlement of which an application has been made to the Board, but further enjoins that any suit or other proceeding before a Civil Court in respect of any such debt shall be suspended until the Board has dismissed the application or an agreement has been made under section 17, section 26 extends limitation by the time spent in proceedings before a Conciliation Board and the time during which a person is debarred from suing or executing his decree under the provisions of the Act.

It will thus appear that the whole scheme of the Act is intended to invest the Board alone with the right to adjudicate upon the claims made to it so long as they are pending before it, and not only expressly prohibits the institution of new suits or other proceedings in relation to the debts awaiting decision in the Board but also suspends all pending proceedings in connection therewith. In the face of such clear prohibition, it is not possible to argue that any other Court is competent to determine those matters which have been placed exclusively within the jurisdiction of the Board, nor can it be urged that so long as the Board has not determined those matters, any other court can continue the proceedings before it in relation to them. It is clear that the sole jurisdiction to determine whether a certain person is a debtor or not is by virtue of section 7 vested in the Board alone, and its decision thereon is final; and in our view the determination of this question involves everything which relates to the competenry of the application, including the amount of debt owed by the applicant. The Board is empowered to dismiss an application submitted to it under various sections of the Act and an application which exceeds the pecuniary limits of its jurisdiction is bound to be dismissed under the proviso to section 9. For an independent tribunal therefore to determine whether a certain application lies to the Board or not, would be clearly to encroach upon its jurisdiction and to run counter to the entire scheme propounded in the Act itself. It would further make the Act unworkable and defeat the object with which it has been enacted.

Supposing a debtor makes an application to the Debt Conciliation Board alleging that all claims against him do not exceed Rs. 10,000|-; the Board is prima facie bound to entertain the application especially when the applications made before it are presumed to be correct inasmuch as they are to be verified in the manner prescribed by the Local Government. On the presentation of the application, therefore, the Board is not in a position to hold that the application does not lie on the ground that it exceeds its jurisdiction. The natural result will be that the application will be admitted to hearing under section 12 of the Act and as soon as this is done, section 25 will at once come into play and bar all news suits in relation to those debts which are covered by the application and suspend all pending proceedings in connection therewith. If in the meantime a rival court is also authorised to adjudicate on those matters which are pending decision in the Conciliation Board, it would nullify all the purposes for which the Board has been set up. This might lead to certain fantastic and amazing results as stated by Costello Ag. C.J. in 41 C.W.N. 1363 at p. 1365, but with that aspect of the case, we are not concerned as we have to interpret the law as we find it and are not to emphasize the defect of legislation and to refuse to give effect to it on the ground that it might lead to certain absurd result.

A party loses nothing, if a suit is barred or a proceeding is suspended in the meantime, inasmuch as section 26 extends the period of limitation by the time spent in the Board. Obviously therefore it is the Board that is to determine whether it has jurisdiction or not in relation to an application put before it, and not an outside authority, be it a competent Civil Court, for he Board so long as it is functioning, cannot be forestalled in any manner. We are supported in this conclusion by several authorities from the Calcutta High Court where similar provisions of law have been interpreted in the manner suggested by us. Reference may be made in this connection to 41 C.W.N. 928, 41 C.W.N. 1363, 42 C.W.N. 173, 42 C.W.N. 411, 42 C.W.N. 481 and 42 C.W.N. 529. In 41 C.W.N. 928, a Division Bench held that when on an application made thereto under section 8, Bengal Agricultural Debtor Act, the Board has given notice thereof to the Court before which a proceeding in respect of a debt included in the application is pending, that proceeding must be stayed. In 41 C.W.N. 1363 a suit had been instituted for recovery of Rs. 26,000|- odd. During the pendency of that suit one of the defendants made an application to a Board set up under the provisions of the Bengal Agricultural Debtors Act, claiming that he was a debtor within the meaning of the Act, although the suit related to a sum exceeding the jurisdiction of the Board. On receiving the application, the Chairman of the Board sent a notice to the Subordinate Judge requiring stay of the suit pending in his court. The Subordinate Judge refused to consider himself bound by that notice on the ground inter alia that the applicant was not a debtor within the meaning of the Act. Costello, Ag. C/J. observed that:

> Although the alleged debt was as much as Rs. 26,000 yet it does not seem open to the Cour to decide or even consider whether the debtor comes within the Act or whether he does not; that question rests solely with the Board.

In 42 C.W.N. 173, it was held by a Division Bench that an Insolvency Court served with a notice under section 34, Bengal Agricultural Debtors Act, has no jurisdiction to decide whether a person is a debtor within the meaning of the Act. In 42 C.W.N. 411, Nasim Ali J. observed that the Civil Court had no jurisdiction to entertain questions which can be raised before the Board, for example, whether the debtor is a debtor within the meaning of the Act or whether he ordinarily resides within the local area for which the Board has been established. In the same volume at p. 481, Ameer Ali J. held that after a petition purporting to be one under section 8, Bengal Agricultural Debtors Act, has been filed to a Debt Conciliation Board and before the petition has been dismissed or an award made, the High Court cannot in interlocutory proceedings decide whether the petition was properly presented or entertained. At p. 529 in the same volume, Edgley J. held that a Civil Court receiving a notice under section 34, Bengal Agricultural Debtors Act, in respect of a debt for which several persons are jointly liable has no jurisdiction to inquire whether the application before the Board is a valid application under section 9 of the Act and to refuse to stay proceedings if it thinks that there is no valid application.

No authority to the contrary has been cited before us nor do we consider that there could be one. We accordingly accept this petition, set aside the order of the Subordinate Judge and direct the suspension of the proceedings pending in his Court under section 25, Punjab Relief of Indebtedness Act until such time as the application before the Board is dismissed or an agreement is arrived at in connection therewith. In view, however, of the difficult nature of the question involved, we leave the parties to bear their own costs before us

Petition accepted.

A.I.R. 1938 LAHORE 780.

Dalip Singh, J.

WARYAM SINGH—Plaintiff—Appellant.

Versus

PHERU and others—Defendants—Respondents.

Second Appeal No. 906 of 1937, decided on 3rd January 1938, from decree of District Judge, Hoshiarpur, dated 3rd April 1937.

Judgment.—In this case the plaintiff sued for the recovery of Rs. 1,700. The sole question arising in this appeal is whether the suit is barred by limitation or not. Both the courts below have held that the suit is barred by limitation though on totally different and, as far as I can understand, opposing grounds. The question how, ever turns on the interpretation of Section 26, Punjab Relief of Indebtedness Act which lays down that the time spent in proceedings before a Conciliation Board.......shall be excluded when *counting the period of limitation for any suit.*

The learned District Judge has held that as the persons against whom the plaintiff applied to the Debt Conciliation Board were not debtors at all but only legal representatives of the original debtor or Hamir Chand, therefore the application was incompetent and there was no justification for it and therefore the plaintiff was not entitled to the extension provided under Section 26. It appears to me however that in order to decide whether an application is or is not competent, and whether it comes or does not come within the jurisdiction of the Debt Conciliation Board, as determined by the provisions of the Act, a proceeding before the Conciliation Board is necessary and the mere fact that the decision of the Conciliation Board is that the application is incompetent or otherwise, cannot affect the question of the extension of limitation under Section 26. I would therefore hold that the plaintiff was entitled to the limitation provided by Section 26 of the Act and I would therefore accept the appeal and hold that the plaintiff's suit is within time. The appeal is therefore remanded under Order 41 Rule 23, C.P.C to the learned District *Judge to give a decision on the other* points arising in the appeal. The stamp on this appeal will be refunded and costs of this appeal will be costs in the cause. I have informed the learned counsel for the respondent that if this client chooses, he may apply for a letters Patent appeal as the point is entirely new.

Order accordingly.

A. I. R. 1938 LAHORE 515.

Addison and Din Mohammad, JJ.

PIR TAJ-UD-DIN and another—Judgment-debtors—Appellants.

Versus

KHAMBATTA and others—Decree-holders—Respondents.

First Appeal No. 434 of 1936, Decided on 23rd November 1937, from order of Sub-Judge, First Class, Lahore, D/- 17th November 1936.

Judgment.—Din Mohammad, J. This appeal has *arisen out of certain execution proceedings* taken against the appellants at the instance of the decree-holders, Messrs. Khambatta and Nasar. The executing Court issued orders for the arrest of Pir Taj-ud-Din, Bar-at-Law, and for the attachment of the pay of Lt. Jalal-ud-Din and it is against this order that the present appeal has been lodged. The material facts are these; on 26th September 1920, Pir Taj-ud-Din entered into an agreement with Col. Powell for the purchase of 13 houses and a vacant site for Rs. 208,000/-. In order to raise money for this transaction, Pir Taj-ud-Din arranged to sell nine out of the 13 houses mentioned above to various purchasers and further raised a loan of Rs. 20,000/- from Mr. Nasar and a similar amount from Mr. Khambatta. Out of the rest of the property one item he transferred to his wife, one to his daughter and a son Rafi-ud-Din, one in favour of his two sons Rashid-ud-Din and Jalal-ud-Din, and the remaining item of property he kept for himself. On 14th March 1921, Col. Powell executed a regular sale deed in favour of all the vendees mentioned above. As a result of this bargain, in addition to an item of property referred to above Rs. 20,000|- also fell to the share of Pir Taj-ud-Din which were deposited in the Punjab National Bank. Immediately after, two cases were launched by Messrs. Khambatta and Nasar against Pir Taj-ud-Din. One was a complaint for criminal breach of trust and the other a civil suit alleging partnership in the bargain in question. The criminal breach of trust case ultimately came to the High Court in its initial stages, and, on 21st January 1922, a compromise was effected between the parties setting all their disputes.

By that compromise, Pir Taj-ud-Din had to pay a lump sum of Rs. 53,500|- to Messrs. Khambatta and Nasar. Out of this sum, Rs. 10,000|- were to be paid on 1st February, 1922 and the balance on 1st March, 1923. The whole of this sum was charged on the four items of property which had been transferred in favour of Pir Taj-ud-Din and his relations. The decree-holders were entitled to take possession of these properties as mortgagees and they could bring the properties to sale if their dues were not paid on 1st March, 1923. It was further provided that if the sale proceeds of these properties fell short of the entire mortgage-money, a personal decree could be obtained by the decere-holders against the male defendants, thus excluding the wife and the daughter of Pir Taj-ud-Din. On 14th November, 1922, Messrs. Khambatta and Nasar effected a private partition of the rights that accrued to them under the decree, by which Mr. Nasar was to get Rs. 27,500|- and Mr. Khambatta Rs. 26,000|- Default having been made by Pir Taj-ud-Din, the properties under mortgage were put to sale and Rs. 38,000|- were realized. After paying the necessary commission and the miscellaneous expenses incurred in connection with the sale, Rs. 35,000|-odd were credited towards the decretal amount and the balance of Rs. 19,000|- remained undischarged, of which Rs. 9,000|- were due to Mr. Nasar and Rs. 10,000|- to Mr. Khambatta.

On 7th February 1925 Mr. Nasar obtained a transfer certificate from the Court which had passed the decree and started execution proceedings against Pir Taj-ud-Din at Lahore for the amount due to him. In the course of these proceedings, he realized Rs. 4,500|- on different occasions. In 1932 Mr. Khambatta also obtained a transfer certificate and presented an application for execution at Lahore on 22nd April 1932. He, however, did not produce the certificate before the transferee Court and the proceedings were consequently consigned to the record room on 1st July 1932. On 19th January 1933 he put in a fresh application for the same purpose. On 18th January, 1934 the present application for execution was put in by Mr. Khambatta, in column 9 of which the only judgment-debtor mentioned was Pir Taj-ud-Din and in column 10 of which a prayer was made for warrants of attachment and arrest against him alone. On 27th February 1934 a warrant of arrest was issued and on 27th March 1934, Pir Taj-ud-Din was arrested but released on furnishing security. On 27th April 1934, Pir Taj-ud-Din objected that he could not be arrested on account of poverty and that the application was time-barred. On 4th May, 1934 certain issues were framed. On 15th June, 1934, the parties agreed to refer the matter to arbitration. On 20th October, 1934, Mr. Nasar presented a fresh application for the arrest of Pir Taj-ud-Din, for the attachment of Mrs. Taj-ud-Din's property and for the attachment of Lieutenant Jalal-ud-Din's pay. On 24th October 1934 necessary orders were issued in pursuance of which Pir Taj-ud-Din was arrested once more, produced before the Court and released on security.

Against this order he made an appeal to this Court which came on before a Motion Bench on 4th April 1935 and execution proceedings were stayed meanwhile. In the meantime, the arbitrators having failed to make an award, the arbitration proceedings were terminated and on 23rd February 1935, Pir Taj-ud-Din made another application under Order 21, Rule 40 Civil P. C., stating that he was too poor to pay the decretal amount and that the application for execution was time-barred. The executing Court made an order calling upon Pir Taj-ud-Din to apply for insolvency, if he so chose, within thirty days. Pir Taj-ud-Din preferred an appeal from this order too. Both the appeals were disposed of by a learned Judge of this Court on 16th December

1935. By one order the executing Court was directed to set according to the provisions of Order 21, Rule 40, and inquire into the objections raised by Pir Taj-ud-Din and by another order a direction was issued to the executing Court not to proceed against Mrs. Taj-ud-Din and to investigate the objections of Lieutenant Jalal-ud-Din in accordance with law. On 29th February 1936, further objections were put in, which were ultimately decided on 17th November 1936 with the result stated above.

We first propose to deal with Pir Taj-ud-Din's objections. He seeks shelter under section 34 of Act 7 of 1934 and Order 21, Rule 40, read with section 51, Civil P.C. as amended by Act 21 of 1936, Act 7 of 1934 came into force on 19th April 1935, while the amending Act came into operation on 27th October, 1936. His contention is that as both provisions related to procedure, they had retrospective effect and that he was consequently entitled to claim protection as afforded by them inasmuch as both these Acts were in force before the final order of his arrest on 17th November 1936 was made. On behalf of the respondent it is urged that as Pir Taj-ud-Din had on more than one occasion been arrested before the coming into operation of these Acts and released on furnishing security, he could not avail himself of these provisions of law. We are, however, inclined to agree with the contention raised on behalf of Pir Taj-ud-Din, as it is well settled that no party has any vested right in procedure which must therefore be given effect to as soon as it comes into force. Under section 34 of Act 7 of 1934, no judgment-debtor is liable to arrest for default in the payment of any money due under a decree unless the Court is satisfied that the judgment-debtor has without just cause contumaciously refused to pay the amount of the decree in whole or in part within his capacity to make payment, and the Court is further bound to give an apportunity to the judgment-debtor to show cause against the issue of a warrant of arrest. Similarly, under Order 21, Rule 40 Civil P.C., as amended by Act 21 of 1936, the Court is bound to give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison; and under section 51 as amended by the same Act, the Court is enjoined not to order execution by detention in prison unless it is satisfied; (a) that the judgment-debtor with the object or effect of obstructing or delaying the execution of the decree (1) . . . (ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property or committed any other Act of bad faith in relation to his property; or (b) that the judgment-debtor has or has had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and refuse or neglects or has refused or neglected to pay the same; (c) . . . under sub-rule (3) of Rule 40 of Order 21, an order for the detention of the judgment-debtor in the civil prison can only be made subject to the provisions of section 51. Reading these provisions of law together it is obvious that at the time when the order of arrest was made, Pir Taj-ud-Din could *not* be arrested unless and until it was established by the decree-holder that he had after the institution of the suit dihhonsetly transferred, concealed or removed any part of his property or committed any other act of bad faith in relation to his property or that he had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and had refused or neglected to pay the same; or, in other words, as required by section 34 of Act 7 of 1934, without just cause, contumaciously refused to pay the amount of the decree in whole or in part within his capacity to make payment.

It is not denied that Pir Taj-ud-Din had no property at the time when the order of arrest was made nor is it denied that he had not dishonestly transferred or concealed or removed any part of his property or committed any other act of bad faith in relation to his property after the institution of the suit in which the decree was passed. The only argument that has been addressed to us in this connection is that the statements of the witnesses who had appeared to support the plea of his poverty are interested and that as he has been accepting briefs in certain cases, it should be presumed that he had since the date of the decree the means to pay the amount of the decree and that consequently his refusal to pay the decretal amount was without just cause and contumacious. In our opinion this is an erroneous view of looking at the matter. The onus under the new provisions of law lies upon the decree-holder to establish on the record that the judgment-debtor has the means to pay and if no such evidence is brought on the record and it is not apparent on the record otherwise that he has such means, no presumption adverse to the judgment-debtor can be drawn. On behalf of the decree-holders it is contended that as the onus had been wrongly placed on the judgment-debtor, they could not lead positive evidence to prove the financial condition of the judgment-debtor. We, however, consider that in view of the fact that Act 7 of 1934 was in force long before the proceedings were recorded in this case, the decree-holders had sufficient warning and should have proved their case in the manner contemplated by law. Taking the record as it stands at present, we have no hesitation in holding that there were no materials on the record justifying the rejection of the evidence adduced by the judgment-debtor as well as the order of his detention in the civil prison consequently made. Our conclusion, therefore, is that Pir Taj-ud-Din has no means to pay the decree nor is his refusal to pay the decretal amount contumacious and on this ground we set aside the order of the executing Court as passed against him and accept his appeal.

Coming now to Lieutenant Jalal-ud-Din's appeal against the order attaching his pay. The main contentions raised on his behalf are: (1) that he was a minor on the date when the decree was passed and consequently the decree being a nullity could not be executed against him; (2) that no proper application for execution had been made against him; and (3) in any circumstances the application of Mr. Khambatta is time barred having been made 12 years after the decree. In support of the contention of Lieutenant Jalal-ud-Din's minority, reliance is being placed on the statement on solumn affirmation made by Pir Taj-ud-Din according to which Lieutenant Jalal-ud-Din was born some time in December 1904. As against this there is no statement in rebuttal. It is therefore urged that the statement made by Pir Taj-ud-Din should be acted upon in these circumstances. A copy of the Punjab Government Gazette, dated 7th October 1921, has also been produced before us, at p. 377, Part III-A, of which Lieutenant Jalal-ud-Din's result in the Matriculation Examination was published and in which he is said to have been born in December 1906. It has been very frankly admitted by his counsel that "1906" is a misprint for "1904" as is apparent from the original certificate granted to him by the Punjab University, according to which his date of birth is 5th December 1904. We have no reason to doubt the testimony of Pir Taj-ud-Din in this respect supported as it is by the public records as mentioned above. We hold, therefore, that Lieutenant Jalal-ud-Din was a minor at the time when the decree was made.

The question now arises, what is the effect of his minority on the decree. It is urged on his behalf that the decree was a nullity having been made against a minor who was not properly represented and that being so, the decree could not be executed against him. Counsel for the respondents, on the other hand, has contended that the executing court could not go behind the decree and was bound to execute it as it stood irrespective of the alleged defect. Reliance in this connection has been mainly placed on 5 Lah. 54, where a Division Bench of this Court has held that an executing court has no jurisdiction to criticise or go behind a decree obtained against an unrepresented minor and that the annulment of the decree is not the function of an executing Court but with all respect we are compelled to remark that the correctness of the rule enunciated in that judgment is open to doubt. A decree obtained against an unrepresented minor is a nullity and if it is brought to the notice of an executing Court that the decree sought to be executed was obtained against a judgment-debtor when he was a minor and was not represented by guardian ad literm, it is necessary for it before it executes the decree to determine where there is a decree which can be executed. The rule that an executing Court can go behind a void decree was laid down in 53 Cal. 166 and was reaffirmed in A.I.R. 1929 Lah. 449 and we are in respectful agreement with these judgments. In 60 Cal. 670 their Lordships of the Privy Council remarked that a decree that is a nullity cannot be executed. Even in 31 All. 572, which has been relied upon in 5 Lah. 54, their Lordships held that an unrepresented minor is no party to the decree which may be passed against him in that condition. If this be so, how can a decree be executed against a person who is no party to it?

It is further urged in this connection that inasmuch as the minor was impleaded as a defendant along with his father as well as some other relation whose interest was joint with the minor, he was properly represented before the Court and his interests were sufficiently safeguarded by the other members of his family. Reference has been made to A.I.R. 1930 Pat. 521 and A.I.R. 1924 P.C. 50, but those cases are not to the point inasmuch as they relate to joint Hindu families and were decided on the score of Hindu law applicable to such families, while we are dealing with a case in which no question of joint family arises. We consequently hold that the decree could not be executed against Lieutenant Jalal-ud-Din. We are further inclined to hold that in Mr. Khambatta's case there was no proper application before the Court, on which action could be taken against Lieutenant Jalal-ud-Din. Order 21, Rule 11, contemplates that the application should be in writing and that it should contain certain particulars which are mentioned therein. No such application was ever presented against Lieutenant Jalal-ud-Din. The only occasion when a relief was sought against him was on 22nd February 1935 when Mr. Khambatta's counsel wrongly stated that a previous order dated 23rd February 1934 had been passed against Lieutenant Jalal-ud-Din and that the same order should be revived. Counsel for the respondents contends that Rule 17 of Order 21 condones the defect in this case but we are not disposed to agree with him. An application, to take effect under Order 21 should be presened in accordance with the provisions as laid down therein and unless the Court rejects the application or calls upon the decree-holder to amend it under Sub-rule (1) of Rule 17, there is no proper application before the Court.

On the point of limitation we consider that the judgment-debtors are on weak ground. Under section 48 (b), Civil P.C., *time runs* from the date of the decree sought to be executed or where the decree directs any payment of money to be made at a certain date, the date of the default in making the payment. As we read the decree, which is a composite decree and is unfortunately very unhappily worded, it can be reasonably argued on behalf of the decree-holders that 1st March 1923 was the last date fixed for the payment of the decree and calculating from that period the application of Mr. Khambatta and that of Mr. Nasar were both well within time. On the grounds mentioned above, however, we set aside the order of the executing Court in relation to Lieutenant Jalal-ud-Din too and accept his appeal. The appellants will get their costs from the respondents in all the Courts.

Appeals allowed.

A.I.R. 1938 LAHORE 685.

BHIDE, J.

Firm JHINDA RAM FATEH CHAND—Appellant.

Versus

MAHNI and others—Respondents.

Execution First Appeal No. 47 of 1938, decided on 2nd May 1938, from order of Sub-Judge, First Class, Chiniot, dated 15th December 1937.

Judgment.—This appeal arises out of an application for execution of an agreement recorded by the Debt Conciliation Board under section 17, Punjab Relief of Indebtedness Act. The material facts were that one Mahni had applied to the Board for settlement of his debts. Notices were issued to the creditors and thereafter an agreement was recorded by the Board to which not only the applicant Mahni but two other persons names Wali Dad, and Bhai Khan, his brothers, were parties. Neither Wali Dad nor Bhai Khan had made any application to the Board according to law. By virtue of the agreement certain property in question belonged but apparently the debts of Mahni, Wali Dad, Bhai Khan and Muhammad (who is dead), a cousin of Mahni, were taken into consideration and presumably the propetry belonging to these persons was involved. One of the creditors then proceeded to execute this agreement when an objection was raised on behalf of Mahni and others that the agreement could not be executed as a decree, as the Board had no jurisdiction to record the agreement under section 17 as Wali Dad and Bhai Khan had not made any application to the Board.

It was also contended that the agreement required registration as it related to a lease for a period of 12 years and secondly, even if it was to be considered as a decree falling under section 17 (2) (vi), Registration Act, it needed registration as the agreement included properties of persons who were not applicants before the Board. Section 21, Punjab Relief of Indebtedness Act, is relied on by the judgment-debtors; but that section only bars certain suits and does not appear to be in point. That section only debars a Civil Court from taking cognizance of certain classes of suits, and as at present advised I do not see why a Civil Court should not be able to take cognizance of a plea of the kind raised in this case, viz., lack of inherent jurisdiction in the Board to pass a certain order. But I consider it unnecessary to decide this point, for, it seems to me clear that the agreement in question required registration, as it amounted to a lease for 12 years. The learned counsel for the appellant tried to argue that it was a "mortgage" but the wording of the agreement appears to me to leave no doubt that it was tantamount to a lease as it purported to be (mustajiri) and as such it would fall under section 17 (1) (d), Registration Act. Section 17 (2) (vi), which exempts certain classes of decree from registration, applies only to documents falling under clauses (b) and (c) of section 17 and not to those falling under Clause (d) of that section.

Moreover, even under section 17 (2) (vi) the agreement would have required registration as it comprised property which was extraneous to the subject-matter of the application of Mahni, which alone was before the Board. It seems to me therefore that the agreement recorded by the Board cannot be received in evidence for want of registration. I, therefore uphold the decision of the Court below dismissing the application for execution of the said agreement on this ground, and dismiss the appeal. In view of all the circumstances I leave the parties to bear their costs in this Court.

Appeal dismissed.

The

Punjab Debtors' Protection Act, 1936.

Table of Contents

PREAMBLE

CHAPTER I—Preliminary

The Punjab Debtors' Protection Act, 1936
(No. IX of 1936 as amended by Act No. VII of 1938)

AN ACT TO PROVIDE FOR THE MORE EFFECTIVE PROTECTION OF DEBTORS IN THE PUNJAB.

Whereas it is expedient for the more effective protection of debtors to modify the existing law on certain points and to amend the law with respect to persons carrying on business as money-lenders; Preamble.

And whereas the previous sanction of the Governor-General under sub-section (3) of section 80-A of the Government of India Act and the previous sanction of the Governor under section 80-C of the said Act have been obtained;

It is hereby enacted as follows :—

CHAPTER I—PRELIMINARY

1. (1) This Act may be called the Punjab Debtors' Protection Act, 1936. Short title, extent and Commencement

(2) It extends to the Punjab.

(3) It shall come into force at once.

Object and Policy of the Act.—The sole object which prompted the legislature in placing this Act on the Statute book was to afford "more effective protection to debtors," and this object was sought to be achieved by amending the existing law in two respects, namely,

(a) affording immunity to certain kinds of properties from being proceeded against in execution proceedings, and

(b) altering certain principles which regulated proceedings in courts.

Rao Bahadur, Chaudhri (now Sir) Chhotu Ram, the author of this Act while moving the bill said, "The economic situation in the province continues to be gloomy, and no re-assuring factors of a reliable character seem to be in view. The poorer section of the community are heavily in debt and deserve to be afforded effective protection against the tricks of an undesirable type of the money-lenders now so commonly met in the profession as also against harsh working of the existing law in certain directions. To secure this dual object some further legislation is needed. The present bill is designed to meet this need."[1] The Act, therefore, aims at affording real protection to debtors who cannot liquidate their debts by laying down that,

(a) execution proceedings in connection with decrees for the payment of money when directed against the debtors' land as defined in section 3 (1) of the Act, are to be transferred to the Collector of the district, who is to decide whether any part of the land is to be given on temporary alienation, and if so for what period, not exceeding 20 years in the case of debtors who are members of agricultural tribes as notified under the Alienation of Land Act.[2]

(b) such portion of the land of the judgment-debtor is to be exempt from temporary alienation as may in the opinion of the Collector be sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.[3]

---

1. Statement of objects and reasons.
2. Section 4 of the Punjab Debtors' Protection Act.
3. Section 5 of the Punjab Debtors' Protection Act.

(c) ancestral immovable property is, except in certain cases, to be exempt from being proceeded *against in the execution of a decree or order* of a court relating to a debt-incurred by any one of the predecessors-in-interest of the holder of such property.[4]

(d) Standing crops other than cotton and sugarcane are not to be liable to attachment and sale in execution of a decree nor are standing trees apart from the land on which they stand to be liable to sale in execution of a decree or order of a court.[5]

(e) The period of limitation for the execution of decrees other than injunction decrees passed after the commencement of this Act against debtors as defined in the Punjab Relief of Indebtedness Act of 1934 has been reduced, except in cases where execution has been delayed on account of fraud or force by the debtor, from 12 years to 6 years.[6]

(f) The burden of proving that the consideration set out in any document evidencing a transaction of loan, etc., between. a money-lender and his debtor, actually passed has, except in two cases, been placed on the money-lender.[7]

The preamble shows that the Act is intended for the protection of all debtors irrespective of class or creed, but certain provisions e.g., sections 4, 5 and 10 have been enacted exclusively for the benefit of agriculturist debtors. It is an extremely beneficial measure intended among other matters to protect land belonging to judgment-debtors from passing into the hands of their creditors without leaving any means of subsistence for the former. The power vested in

4. Section 9 of the Punjab Debtors' Protection Act.
5. Section 10 of the Punjab Debtors' Protection Act.
6. Section 11 of the Punjab Debtors' Protection Act.
7. Section 12 of the Punjab Debtors' Protection Act.

Civil Courts for proceeding with execution cases in which the judgment-debtor's land is to be attached and alienated has been taken away, and Collectors have been empowered to deal with such cases, in the belief that they are in a better position to appreciate the economic condition of the agricultural classes, who form the back bone of the country, and would be better equipped to afford relief to them effectively. Previously no care was taken for leaving any thing for the maintenance of the judgment-debtor and his family when his land was transferred temporarily to his creditors in execution of their decrees. In fact cases are on record where debtors were deprived of their entire holdings in execution proceedings, thus forcing them to resort to other and many times most unhappy, unbecoming and even discreditable means of livelihood, and it was this evil which led the author of this Act to introduce this measure of such far reaching consequences.

As stated above while certain provisions of the Act seek to benefit all classes of debtors, there are others which have been enacted exclusively for the protection of agriculturist debtors. Even though such a restrictive legislation is to be strictly construed, it does not mean that the language must in any way be strained to reduce the sphere of its usefulness. In fact it is the duty of courts to administer such a beneficial measure in a generous and liberal spirit, and to see that its useful and beneficial provisions are not whittled down by any legal quibbles.

The Act is not retrospective in its operations but the procedural part relating to the transfer of execution proceedings to Collectors for arranging satisfaction of decrees is to apply to pending cases.

Commencement of the Act.—Section 1 sub-section (3) says the Act "shall come into force at once." It means that it became the law of the land immediately on receiving the assent of His Excellency the Governor-General. But evidently the assent had to be notified to the public, and in practice, therefore, it was the date of the notification [illegible] which the law came into force. The Act received the ass[illegible] of His Excellency the Governor of the Punjab on 16th April, 1936, and that of His Excellency the Governor-General of India on 30th May, 1936 and was first published in the Punjab Government Gazette on 6th June, 1936.

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

(1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom, or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the [Central Legislature.][8]

This definition has been bodily taken from the Punjab Regulation of Accounts Act, 1930. A "bank" means an establishment or office where transactions for the deposit of money take place. This is, however, a very much restricted interpretation of the term "bank," because a bank not only receives deposits but lends out money as well besides entering into several other kinds of money transactions.

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

---

8. Substituted for the words "Indian Legislature" by the Government of India (Adaptation of Indian Laws) Order, 1937.

The definition of the term "company" has also been taken from the Punjab Regulation of Accounts Act, 1930. "Company" has been defined in Halsbury's Laws of England exhaustively. It may not be possible to bring within the compass of a logical definition either a company or an association, or that which may in a certain sense be implied by either or both of these words; but these have been loosely described as the result of an arrangement by which parties intend to form a partnership, which is constantly changing, to-day consisting of certain members and to-morrow consisting of only some of these members along with others who have subsequently come in, so that there is a constant shifting of the partnership, through the determination of old alliances and the creation of new ones, with the intention that, so far as the partners by agreement between themselves bring about such a result, the new partnership shall succeed to the assets and be liable for the liabilities of the old partnership.

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

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

The definition of the term "court" includes insolvency Court. The word "include" as used in the definition indicates that the term sought to be defined means something more than what is actually conveyed in the definition. Outwardly the term "court" may have needed no definition because it is too common a word to stand in need of elucidation, but in order to bring the insolvency court within the purview of this Act it has been expressly laid that it shall include an insolvency court.

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

This definition of the term "interest" has been taken from the Punjab Regulation of Accounts Act of 1930. It can be divided into two parts, as it

(1) means the rate of interest; and

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

The definition explains that the excess, in whatever shape and form it is paid, is to be treated as interest. The second part of the definition carries the import of the term "interest" under its popular conception. It denotes that the *return made over and above what was actually lent by the* borrower to the lender is interest. Each case is to be determined on its own merits, and the criterion is that any return made, in whatever shape or form, over and above what was actually lent, by the borrower or any member of his family to the lender, is to be treated as interest.

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

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

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

(iii) a loan advanced by the Provincial Government or by any local body authorized by the Provincial Government;

(iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913;

(v) a loan advanced to a trader;

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

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

The definition of the term "loan" has been taken from the Punjab Regulation of Accounts Act. It means not only a loan of money but also a loan in kind. Courts have been empowered to find whether a particular transaction, in spite of a dubious phraseology used to couch its terms, is to be treated as a loan or not. The form given to a transaction is not to be the determining factor. If the transaction has all the features of a loan, it is to be treated as such although it is not expressly stated to be a loan. The definition is restricted as compared with the definition given in the Usurious Loans Act, 1918.

(7) "Money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include the legal representatives and the successor-in-interest, whether by inheritance, assignment or otherwise, of the person who advanced the loan.

The term "money-lender" has been defined as to mean a person who advances loans in the regular course of his business, and it includes his legal representatives and successors-in-interest whether by inheritance, assignment or otherwise. In the Punjab Regulation of Accounts Act, 1930, the term "creditor" has been used instead of money-lender although in substance both the terms point to the same result. The long and short is that a person who advances loans in the regular course of his business is to be treated as a money-lender.

The expression "money-lender" as defined in the English Money-lenders' Act, 1900, is "the person whose business is that of money-lending or who advertises or announces himself or holds himself out in any way carrying on that business." The criterion is whether he is willing to lend money to all and sundry. In order to be classed as a money-lender under this definition,

(a) a person should be advancing loans in money or in kind,

(b) in the regular course of his business; and

(c) at interest.

(8) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include—

(i) a whole sale or a retail merchant;

(ii) a commission agent;

(iii) a broker;

(iv) a manufacturer;

(v) a contractor;

(vi) a factory owner;

but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

This definition has been bodily taken from the Punjab Regulation of Accounts Act of 1930. A loan advanced to a trader will not be affected by section 12 of this Act, and the burden of proving the consideration will not lie on the money-lender, as the question of onus shall have to be determined in accordance with the rules of evidence contained in the Indian Evidence Act (Section 112).

CHAPTER II—EXECUTION OF DECREES

3. In this chapter unless there is anything repugnant in the subject or context,—

Definitions.

(1) "Land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land;

The definition of land has been taken from the Punjab Tenancy Act of 1887. The essence of the definition consists in the purpose for which the area is used. If it is agricultural or pastoral then it is land, but if it is used for *building purposes in a town or village then it cannot be* included within the definition of the term "land."

"Land" used for purposes subservient to agriculture includes the sites of structures such as protective "bunds", "chappers" etc., erected in fields for protection against weather, cattle sheds, threshing floors and the like having purpose subservient to agriculture.[9]

The definition of "land" under the Punjab Alienation of Land Act, 1900, is more comprehensive, and it may be quoted here for ready reference. It says, "Land means land which is not occupied as the site of buildings in town or village and is occupied or let for agricultural purpose or for purposes subservient to agriculture and for pasture and includes:—

9. Ellis Pre-emption Act, page 55.

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of sites or holdings;

(c) any dues or any fixed percentage of land revenue payable by the inferior land owner to superior land owner;

(d) a right to receive rent; and

(e) any right to water enjoyed by the owner or occupier of the land as such;

(f) any right of occupancy; and

(g) all trees standing on such land."

In short clauses (b) to (g) of this definition do not find place in the definition under the present Act.

It would be interesting to detail below the different pronouncements made by courts on this point.

WHAT IS LAND ?

(1) A well is "land."[10]

(2) A water course used for purpose of irrigation is "land."[11]

(3) Trees in the form of a garden grown on land in which the planter has a right of occupancy are "land."[12]

(4) Land on which a well is sunk for the purpose of irrigating agricultural land is "land."[13]

WHAT IS NOT LAND ?

(1) A grave yard is not "land."[14]

(2) Land occupied by tanks used for watering cattle and excavating earth for bricks is not land.[15]

10. 20 P.R. 1884.
11. 1 P.R. 1881.
12. 52 P.R. 1906.
13. 62 P.R. 1891.
14. 20 P.R. 1892.
15. 48 P.R. 1898.

(3) A site of a water mill is not land.[16]

(4) Land used for the manufacture of salt-peter is not "land."[17]

2. "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the Provincial Government[18] to exercise the powers of a Collector under this Chapter.

The term "Collector" does not only mean the Deputy Commissioner of the district but it also includes any officer specially empowered by the local government to exercise the powers of a collector under this chapter. It has been decided to empower all Revenue Assistants and Sub-Divisional Officers with the powers of a Collector under this chapter on the ground that the work to be done by collectors was previously done to sub-judges who did not hold any superior rank than Revenue Assistants or Sub-Divisional officers.

Temporary Alienation of Land in Execution of Decree for the Payment of Money.

4. (1) Notwithstanding anything contained in any other enactment for the time being in force, whenever a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the civil court the collector shall decide the period of alienation, which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the Provincial Government in exercise of the powers con-

16. 77 P.R. 1904.

17. A.I.R. 1923 Lahore 462.

18. Substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

ferred by section 4 of the Punjab Alienation of Land Act, 1900.

This section provides that when in a case relating to the execution of a decree for the payment of money a civil court orders the attachment of the judgment debtor's land, as defined under section 3 (1), with the object of alienating it temporarily for the satisfaction of the decree, the case must be transferred to the Collector who is then to proceed with it not as a ministerial officer of the court, but is to decide judicially whether the land or any portion thereof is to be alienated temporarily and if so on what terms.[19] Even before the Debtor's Protection Act came into force the attachment of land under the orders of a civil court had to be effected through the Collector[20] who was then required to suggest the nature of the temporary alienation to be ordered. But in doing so he acted merely as the ministerial officer of the Civil Court[1] which was not bound to accept his recommendation. Further more even though the suggestion made by the Collector had to be given due weight, the latter could not insist on his advice being accepted and had to execute the orders of the Civil Court even if opposed to his proposal and views. In actual practice courts generally did not pay much attention to the Collector's advice even though it obviously had the support of his executive experience of land laws, expert knowledge, and more intimate association with the condition of landowners. Furthermore though under the Financial Commissioner's standing order the Collector was, while offering suggestions for the alienation of land, required to make provision for the maintenance of the judgment debtor and his family the Civil Court was not bound by such ethical or humanitarian considerations, and had to enforce the terms of the decree irrespective of the consequences. At one time this state of affairs was responsible for friction between the two agencies, and the High Court had to issue instructions laying down

---

19. A.I.R. 1937 Lahore 716=39 P.L.R. 738.

20. Land Revenue Act, Section 141.

1. Sardarni Datar Kaur vs. Ram Rattan. 1 Lah. 192 (I.L.R.) F.B.

the true position of the Collector in relation to the Civil Court.

Civil Court.—The condition of the applicability of section 4 (1) is that the proceedings regarding the attachment of land with the object of its temporary alienation must originate in the Civil Court. Although under section 2 sub-section (2) of the Act 'Court' includes an Insolvency Court, yet it does not include an official receiver. The sale of an insolvent's property is an act of the official receiver, and not of the Insolvency Court, hence section 4 (1) does not apply to the lease of an insolvent's land when granted by an Official Receiver.[2] This led the legislature to amend the Act and Section 11-a of the Act meets this lacuna.

Cases Outside the Scope of the Act.—As already stated the definition of land under this Act is narrower than the one under the Alienation of Land Act. As such the procedure prescribed in section 4 (1) is to be followed only when the property to be proceeded against answers the restricted definition of land: such being the case if the decree holder proceeds against any of the items set out in clauses (b) to (g) of the definition of land under the Alienation of Land Act, e.g., share in the profits of sites or buildings, or right to receive rent or right of occupancy, the civil courts' jurisdiction will not be ousted and the proceedings are not to be sent to the Collector.

Mortgage Decrees.—According to its plain wording section 4 would apply only to those cases in which land has to be attached and then temporarily alienated. It is not applicable to the execution of a mortgage decree or a decree whereby a charge is created on land, as no attachment is necessary in such cases.[3]

In Execution of a Decree.—The words "in the execution of a decree" as used in the Act when construed judicially mean that this section has no application to cases under the Insolvency Act, and that a receiver appointed

---

2. Lal Khan and another versus Official Receiver Ferozepur. 18 Lahore 721=A.I.R. 1937 Lahore 446.

3. 40 P.L.R. 441.

under that Act can still proceed against the land of the insolvent without let or hindrance.[4] This position has been rectified by Section 11-a of the Act.

At what stage are the proceedings to be transferred to the Collector.—The words "whenever a civil court orders that land be attached and alienated temporarily" denote that the record of the case must be sent to the Collector as soon as the court orders the attachment of land, and not after attachment. The directions to the contrary contained in the High Court's Rules and Orders Volume I, Chapter 12-m paragraph 18 do not seem to be correct. We maintain that the Civil Court ceases to have further jurisdiction after the order of attachment.

What decrees are covered by this section?—It is not necessary that the decree must have been based on a loan as defined by the Act. It is enough that under the decree, money, in whatever connection, is required to be paid. Even the case of costs in a decree relating to land or other immovable property would be covered by the words "a decree for the payment of money," because costs if allowed are a part of the decree.

Procedure regarding submission of statements of income.—The practice, regarding the calculation of a statement of income, was that the Tahsildar used to direct the decree-holder to file a statement of the income of the land attached during the five preceding years. The patwaris used to demand excessive fees and with a view to check this malpractice, a correction slip to para. 3-48 (i) of the Punjab Land Records Manual was issued, which is reproduced below:—

"These extracts should be obtained by the Tahsildars themselves from the patwaris concerned after taking from the decree-holders a deposit equal to the estimated cost of the extracts."

5. Such portion of the judgment-debtor's land shall be exempted from temporary alienation as in the **Partial exemption of land.**

4. Partapa and another versus Bishna and others. 39 P.L.R. 738=A.I.R. 1937 Lahore 558.

opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person, is sufficient to provide for the maintenance of the judgment-debtor and his family who are, dependent on him.

This is one of the most important provisions of this Act. After execution proceedings have been transferred to the Collector and before he orders alienation of any part of the land sought to be proceeded against, he is to determine as to how much land would be necessary for the maintenance of the judgment-debtor and the members of his family who are dependent upon him. Only that portion of the judgment-debtor's land is to be proceeded against as is in excess of the area sufficient to provide for the maintenance of the judgment-debtor and the maintenance of such of the members of his family as are dependent on him. Before this Act courts were not bound to make any provision for the maintenance of the judgment-debtor and those dependent on him, and there was nothing in the law to empower them to refuse a decree-holder's request for proceeding against the entire area owned by his judgment-debtor. This acted very harshly and cases are on record where debtors were deprived of their entire holdings thus forcing a life of abject poverty on them. The legislature had finally to come to the debtor's rescue and the present section makes it obligatory on the Collector to leave sufficient land for the maintenance of the judgment-debtor and the dependent members of his family. It may happen many a time that the entire land of the judgment-debtor has *to be exempted if it is only sufficient to* provide for his maintenance. The procedure to be adopted by the Collector is to assess the total income of the judgment-debtor's land under attachment on the basis of the settlement out-turns, by taking the average yield of the past five years. *Similarly the judgment-debtor's* income from unattached land, if any, and other sources is to be worked out. A fair and equitable basis of maintenance is to be arrived at after taking all the circumstances into consideration. It is then to be seen how the total income from the land and other sources compares with the amount required for the maintenance of the judgment-debtor and such members of his family as are dependent on him. If the Collector arrives at the conclusion that the *total income is more than what the judgment-debtor requires* for maintenance, then such portion of the land is to be alienated temporarily as is in excess of the judgment-debtor's needs. The Collector has to take all sources of income of the judgment-debtor into consideration, but he has to ignore income which is dependent on the will of another person. It may be argued that the salary of a person may be said to be dependent on the will of the employer and it should not be included in the former's income. It cannot, however, be ignored that salary is given for services rendered, and is a matter of agreement and contract. It is possible that the employee may be turned out of employment any time, but this should be no consideration with the Collector when the debtor is actually in employment and in receipt of a salary which is in no way under cloud. Such a salary should be taken into account for the purpose of assessment of income.

Maintenance.—What would constitute as sufficient for the maintenance of the judgment debtor and his family, is a difficult question. The status of the family and the standard of living are also to be taken into consideration. No hard and fast rule can be laid down, and the matter is one of pure discretion with the Collector. What is necessity for one family may be a luxury for another, and vice versa.

Judgment-debtor and the dependent members of his family.—Besides the judgment-debtor himself, the Act provides *for the maintenance of those members of his family* who are dependent on him. A member of the judgment-debtor's family who is living separately and is in receipt of any income as such cannot be considered to be earning for or be dependent on the judgment-debtor and his income and expenses are not to be counted towards the income of the judgment-debtor or debited as his expenses.

Construed properly the section means that while the income of such members of the judgment-debtor's family as are mainly dependent on him is not to be included in the income of the judgment-debtor, the expenses of their maintenance are to be added to the expenses of the debtor. If any minor or otherwise dependent member of the family be the owner of any land, acquired from whatever source, the income of that land is not to be treated as the income of the debtor. Similarly if any such member be making any income by other means it must be included. This is the only interpretation of the language used by the legislature, because while talking of income the words used are "judgment-debtor's income from all sources" which can by no stretch of imagination include the income of other members of the family. In the matter of expenditure the language used, however, is "the maintenance of the judgment-debtor and the members of his family who are dependent on him." This may look rather unfair but courts have to give effect to the plain meaning of the language used by the legislature, and when the legislature uses two different expressions, an identical result cannot be aimed at.

Procedure regarding completion of execution proceedings.—Some controversy arose on the point of completion of execution proceedings. The High Court issued instructions to the effect that all acts necessary for the completion of the execution proceedings such as transference of possession, will be performed under the orders of the Collector. The Collector will also pass orders in regard to the release of land from attachment under section 5 of the Punjab Debtor's Protection Act (Correction Slip No. 179-R|XXIV-B. 6, dated the 24th January, 1938—Rule 26, Chapter 12-m Volume I, Rules and Orders).

Case Law.—Sections 4 and 5 of the Act relate to procedure and had, therefore, apparently to govern pending cases as well, although there is no specific provision for giving them retrospective effect. Even when land was attached before the Act came into force sections 4 and 5 would apply if further proceedings in the matter of ordering alienation are to be resorted to after the enforcement of the Act.[4]

4. Bishen Chand versus Bakhshish Singh and others. *18 Lah. 291=169 I.C. 656=10 R.L. 23=39 P.L.R. 109*=A.I.R. 1937 Lah. 52.

But an order made by an executing court, before the Act, granting an alienation, cannot be set aside by the appellate court under these provisions, even though the Act had come into force when the appeal was heard.[5] The last named case was a letter patent appeal and it reversed the decision of the Single Bench which laid down a contrary proposition.[6]

The rule to be deduced from these rulings is that all execution proceedings instituted after the 6th June, 1936 (the date of commencement of the Act) against land of judgment-debtors will be done by the Collector under sections 4 and 5 of the Act. In case, where the execution proceedings had been completed before the 6th June, 1936 and the land had been temporarily alienated, this Act will not apply. If attachment had only taken place before the 6th June, 1936 then the act will apply and further proceedings will be transferred to the Collector. The attachment by itself does not create a charge or bar upon the attached property, nor confers any title on the creditor. It only prevents and avoids any private alienation by the judgment-debtor. It may be stated that in the case of the execution proceedings having been completed before the 6th June, 1936, the appellate court cannot upset the order because this act had come into force in the meanwhile.

The general rule of jurisprudence is that when law is altered during the pendency of an action, and the rights of the parties are decided according to the law as it existed when the action was begun the decision must stand unless the new statute shows a clear intention to affect such rights. An appeal may for certain purposes be regarded as the continuation of the original proceedings; but an appellate court is not justified in setting aside the judgment of the trial court, which when delivered was not open to any objection, on a ground made available under the amended law.

Collector and Commissioner deemed to be acting judicially.

6. The Collector when acting under sections 4

5. Daulat Ram vs. Saidu Khan. 107 I.C. 224 Sub-section 2, 10 R.L. 86=39 P.L.R. 237=A.I.R. 1937 Lah. 496.

6. Sidha Ram versus Nur Mohammad and others. 39 P.L.R. 743=A.I.R. 1937 Lah. 506 and 1937 Lah. 740.

and 5 shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under sections 4 and 5 shall have a right of appeal to the Commissioner who when hearing appeal under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of Appeal.

The Collector and the Commissioner are to be deemed to be acting judicially when they take cognizance of execution proceedings as provided for in sections 4 and 5 of the Act. Before the enactment of the Punjab Debtors' Protection Act the Collector used to act as a ministerial officer of the civil court and had to make recommendations to it, and it was open to the latter to ignore his advice. It has now been provided that execution proceedings in money suits in which the debtors' land is to be attached and alienated are to be transferred to the Collector, who is to be guided by the procedure which would have been adopted by the civil court, in disposing of such proceedings, had the case not been taken away from it. This, however, does not mean that the Collector is to follow the technicalities of the law as contained in order 21 C.P.C. It is only in respect of the general rules of procedure that the Act seems to hint at. It cannot be denied that the language used by the legislature is not very apt, as it is likely to lead to misunderstanding.

"Acting judicially."—The words "acting judicially" do not necessarily mean that the Collector is bound to act in accordance with the provisions of the law applicable to the court from which the proceedings were transferred to him. The Collector has been given wide and exceptional powers under this Act. The legislature, it appears, had in view the general procedure laid down for the guidance of civil courts in the matter of hearing objections preferred by parties, and others claiming an independent title or interest, ordering the delivery of possession of the alienated area and the like. Collectors and Commissioners have in fact double functions to perform. They act judicially in some matters and administratively in others. The Act lays down that in dealing with the duties entrusted to them under it they are to be acting judicially. This means that they are to follow the principles which govern judicial officers in general in dealing with cases and not give arbitrary decisions.

Limitation for appeals.

7. The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be sixty days.

The time prescribed for an appeal is sixty days and the limitation is to run from the date of the order appealed against. The computation of the period of limitation shall be in accordance with the provisions of Indian Limitation Act.

Rules to be made after Previous Publication.

8. The Provincial Government may, subject to the conditions of previous publication, make rules for carrying into effect the provisions of sections 4, 5, 6 and 7 of this Chapter.

No rules have as yet been framed by the Provincial Government under this section.

Exemption of Ancestral Property from Liability.

9. When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors-in-interest :

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by a predecessor-in-interest, the court shall determine the liability of such land as if this section had not been passed.

Provided further, and subject to the foregoing proviso, that, in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable, only if all the following conditions are satisfied :—

First :—That, before such liability is determined, the judgment-debtor shall be given sufficient opportunity to show cause against such liability.

Second :—That such liability was permitted by the rule of custom applicable to the judgment-debtor immediately before the commencement of this Act, and nothing in this section shall prevent the judgment-debtor from proving the contrary.

Third :—That the decree-holder is liable to show to the satisfaction of the court, that, at the time the debt was originally incurred, that there was a subsisting judgment or order of a competent court, not in ex-parte proceedings, holding that such a custom was applicable to the sub-tribe in the tahsil to which the judgment-debtor belongs.

Fourth :—That the judgment-debtor is not able to show to the satisfaction of the court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court not in ex-parte proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree-holder.

Scope of the Section.—This section has incorporated and in fact expanded the principle laid down by the Chief Court in 4 P.R. 1913.[7] While this case laid down a proposition with regard to landed property only, the present Act has extended it to all immovable properties whether landed or otherwise.

7. Jagdish Singh and others versus B. Narain Singh and others).

The agnatic theory under the Customary Law in the Punjab of which this proposition is a corrollary, really speaking, owes its exposition to the genius of Sir Meredith Plowden, one of the luminaries in the realm of law who sat on the bench of the Chief Court Punjab. He came to the conclusion that the agricultural tribes in this province are, in the strict sense, followers of the agnatic theory, one characteristic of which is that ancestral property is regarded not as being inherited by the present holder from his father but from the common ancestor of the family. The main incidence of this theory is that the holder of the property for the time being is not regarded as an absolute owner. He holds it subject to the well recognized restrictions on the powers of disposal. He cannot, for instance, alienate it except for valid necessity. It must be conceded that under this rule, ancestral immovable property which is to pass to the heirs of the present holder should be immune from being proceeded against for the recovery of debts incurred by him in his personal capacity, unless the debts are specifically charged upon it. Therefore if any creditor wants to recover a loan advanced by him to a debtor by proceeding against his ancestral immovable property he should take care to have that amount charged upon such property. Equity and law aid the vigilant. If a person who owns property is not free to dispose it of as he likes during his life time, it would be unfair and unjust to allow that property to be alienated after his death for debts incurred by him. These propositions were laid down by the Full Bench ruling quoted above. It was held, that where a male proprietor governed by the rules of custom dies after contracting a just debt ancestral landed property in the hands of the next holder is not liable for the liquidation of such a debt, unless the debt has been expressly charged on that property. It was further held that a person who has obtained a simple money decree for such a debt against the debtor himself or against his successor in interest has no right to execute it against the ancestral land, once it has passed into the hands of the next holder under customary law. It would be clear from this ruling that debts not specifically charged upon ancestral landed property cannot be recovered by attachment of that property when that property has once passed into the hands of the next holder. Another case of a similar nature again came up before the Chief Court and the Full Bench which decided it held that though the proposition enunciated in the earlier case could not be disputed, it was open to the creditor in each case to prove that under a special custom prevailing among the tribe to which the debtor belongs, ancestral land could be made liable for the debts due by some earlier holder thereof.[8] This ruling gave an incentive to money-lenders to create evidence in favour of such a custom, and protracted trials of otherwise simple execution cases became the order of the day. Opportunity was furthermore seized by influential people at the time of settlements of land in some districts to create circumstances favourable to the application of this rule. The legislature had finally to clarify the issue by enacting the present section. It has dealt with three distinct cases where custom is the rule of decision namely,

(a) debts raised before the present Act came into force;

(b) debts raised after this Act came into force;

(c) debts charged on ancestral immovable property.

A few words with regard to each case may be necessary.

(a) Ancestral immovable property in the hands of a subsequent holder may be liable in respect of a debt incurred by some previous holder before the commencement of this Act only if the following conditions are satisfied:—

(i) that the judgment-debtor is given sufficient opportunity to show cause against such liability;

(ii) that such liability was permitted by rule of custom applicable to the judgment-debtor immediately before the commencement of this Act;

(iii) that the decree-holder shows to the satisfaction of the court that at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not having

8. Mst. Mikar and others V. Chajju Ram, 17 P.R. 1919. (F.B.)

been given in ex-parte proceedings, holding that such a custom was applicable to the sub-tribe in the tahsil to which the judgment-debtor belongs; and

(iv) that the judgment-debtor fails to show to the satisfaction of the court that at the time of the raising of the original debt there was a subsisting judgment or order of a competent court, not having been given in ex-parte proceedings, and subsequent to the judgment relied upon by the decree-holder holding to the contrary.

(b) Ancestral immovable property is not at all to be liable for the recovery of debts raised by some previous holder after the present Act comes into force, even though there may be a custom to the contrary.

(c) Where a debt raised by a previous holder of ancestral immovable property has been expressly charged on it, the court is to decide the case as if the present section had not been enacted no matter whether the debt was raised before or after the enforcement of the Act.

Custom—as rule of succession.—This section would apply in cases where the judgment-debtor's family is governed in matters of succession by custom only. It is well known that in the Punjab, custom is the primary rule of decision as almost all the agricultural tribes are governed by rules of custom in matters of succession. It is clear that this section would not apply when the judgment-debtor is governed by personal law (Hindu or Muslim law). The section lays down the principle that, a special custom to the effect that ancestral immovable property in the hands of a subsequent holder, cannot be pleaded.

Ancestral Property.—This section exempts from attachment ancestral immovable property in the hands of a subsequent holder and it cannot govern cases relating to movable property. The question, as to, what would constitute 'ancestral property,' has been the subject matter of various judicial pronouncements and since this term has not been defined in the act it would be worth while to give a summary of some of these decisions.

Ancestral property connotes as regards sons, property inherited from a direct male ancestor, and as regards Collaterals, property inherited from a common ancestor (93 P.R. 1901). Self-acquired land over which the owner had absolute powers to gift to his sons during his life-time is not ancestral qua the donee's sons (13 Lah. 165). Land taken in exchange for ancestral property becomes ancestral (63 I.C. 719). To prove the ancestral nature of land, it is necessary to prove that the common ancestor owned it. (107 I.C. 487).

Forum.—The question arises as to who will decide the objections against an attachment of ancestral immovable property. We maintain that the words 'whenever a civil court orders that land be attached and alienated temporarily' have only one meaning. The subsequent proceedings to the order of attachment are to be done by the Collector. The civil court has only to pass an order of attachment and simultaneously pass on the file to the Collector for further proceedings. The High Court Rules and Orders, however, direct that the attachment proceedings have to be completed in civil courts and it follows that civil courts will have to dispose of such objections. These instructions seem to go against the law and cannot have binding force.

Subsequent holder.—The term "subsequent holder" is synonymous with the term "next holder" as used in 4 P.R. 1913, but the latter was regarded as not a happy phraseology to be incorporated in a code of law and the former was preferred.

Case Law.—A decree on the strength of an unsecured debt incurred before the commencement of the Punjab Debtors' Protection Act, was obtained against A. After A's *death the decree-holder tried to attach ancestral immovable* property in the hands of his sons. Held, that as the land was not under attachment when the Act commenced, *its liability for the unsecured debts of A must be determined* according to the Punjab Debtors' Act.[9]

10. *Notwithstanding anything to the contrary* contained in any other enactment for the time being in force:— **Exemption of standing crops and trees from attachment or sale.**

(1) Standing crops, other than cotton and sugar-cane, shall not be liable to attachment or sale in the execution of a decree;

(2) Standing trees apart from the land on which they stand shall not be liable to sale in execution of a decree of an order of the court.

Before the enactment of this section standing crops were liable *to attachment in execution of money decrees. (Section* 60 C.P.C.) It has now been provided that standing crops other than cotton and sugar-cane shall not be liable to attachment or sale in execution of a decree. The two crops to which protection of this provision has been denied are called money crops, and so they have not been exempted. Similarly standing trees have been exempted from sale. Land is already exempt under section 16 of the Alienation of Land Act. But at times decree-holders proceeded against trees standing on land, on the plea that section 16 of the Alienation of Land Act did not cover their case. Really speaking trees when attached to the ground are land and in fact the amendment made in the definition under the Alienation of Land Act by the Punjab Act No. VII of 1936 has made it clear, but the legislature, it appears, wanted to be very explicit in this respect and incorporated a specific provision in the present Act.

Provisions of this Act are mandatory, and a court cannot, after the Act has come into force, direct the sale of trees apart *from the land on which they stand, even though the trees*

9. Babu Ram. vs. Mohammad Ali and other. A.I.R. 1937 Lahore 303.

may have been attached long before the Act came into force.[10]

Execution Barred in certain cases.

11. *Notwithstanding* anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of section 7 of the Punjab Relief of Indebtedness Act, 1934, and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from :—

(a) the date of the decree sought to be executed, or

(b) where the decree of any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within six years immediately before the date of the application; or

10. Telu vs. Jettu Mal Hari Parshad. 170 I.C. 338=10 R.L. 108=39 P.L.R. 243=A.I.R. 1937 Lahore 560.

(b) to limit or otherwise affect the operation of article 183 of the First Schedule to Indian Limitation Act, 1908.

Scope of the Section.—This section is similar to section 48 of the Civil Procedure Code with this difference that the words "six years" have been substituted in place of "twelve years." It has no reference to old decrees and applies only to decrees, other than injunction decrees, passed after the commencement of this Act against a debtor as defined in the Punjab Relief of Indebted-Act. This section fixes the maximum limit of *time for the execution of such decrees. It does not* prescribe the period within which each application for execution is to be made, and specifically excludes decrees granting injunctions. In such cases the period for execution continues to be twelve years.

Who is a Debtor.—Under the Punjab Relief of Indebtedness Act a debtor is defined as being " a person who owes a debt and—

(i) who both earns his livelihood mainly by agriculture, and is with a landholder, or tenant of agricultural land or a servant of a landowner, or of agricultural land, or

(ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture.

Provided that a member of a tribe, notified as agricultural tribe under the Punjab Alienation of Land Act, VIII of 1900, shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources *is greater than his income from agriculture.*

Explanation.—(i) A debtor shall not lose his status as such *through involuntary unemployment or on account of* incapacity, temporary or permanent by bodily infirmity, or, if he is or has been in service of His Majesty's Military or

Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

(ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.

(iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

11-A.—Notwithstanding anything contained in the Code of Civil Procedure, 1908, no decree for the payment of money shall be executed by the sale without attachment, or by the appointment of a receiver of land or the produce of land or an interest in land, which under any law for the time being in force, is exempt from attachment or sale."

3 Existing Receivers.

If any Court has appointed a receiver of property of which a receiver could not be appointed after the provisions of this Act came into force, such appointment shall terminate on the expiration of six months from the date on which this Act comes into force, unless terminated earlier by the Court which made the appointment.

Section 18 of the Colonization of Government Lands Act of 1912, prohibited the attachment or sale of any of the rights or interests vested in a Government tenant in Government land. But it was held by a Division Bench of the Lahore High Court[11] that this prohibition did not avail in the case of execution against these rights and interests by the appointment of a receiver under section 51 (d) Code of Civil Procedure. The legislature rightly feared that there was a lacuna in the law, because no exception could be taken to the view enunciated in this ruling in the face of clear language of the Act. It, however, felt the necessity of

11. Mohd. Sharif versus Mrs. Broughton and another. A.I.R. 1938 Lahore 458.

amending the law, and the Debtor's Protection (Amendment) Act, 1938 added Section 11-A to the present Act. Now, therefore, no decree for the payment of money can be executed by the sale without attachment or by the appointment of a receiver of land, its produce or other interest in land. It is however a most important point whether by using the words "land, the produce of land or an interest in land" the legislature has succeeded in sufficiently expanding the definition of land, as given in section 3 (1), so as to bring it in line with the definition as we find it in the Alienation of Land Act. It would perhaps have been advisable to say that for the purposes of section 11-A the definition of land as given in the Alienation of Land Act is to apply.

Existing Receivers.

Section 3 of the Punjab Debtor's Protection (Amendment) Act is really speaking in substance a proviso to section 11-A. The Act however does not say where is this particular section to be incorporated. It was necessary to make some provision in the case of receivers who had been appointed courts before this Act came into force, and this proviso in the form of section 3 was enacted. It says that after the Act comes into force no receiver appointed before this Act can function for more than six months. Of course the court can remove the receiver at any time within 6 months it likes. The period of six months seems to have been allowed to enable these receivers to wind up their business. It should be understood that during this respite the receivers are not to thwart the intentions of the legislature by going against the spirit of law.

This section came into force on the 12th January, 1939.

CHAPTER III—BURDEN OF PROOF

12. Notwithstanding any thing to the contrary contained in any other enactment for the time being in force, the burden of proving that any consideration alleged to have been paid by a money-lender actually

Burden of proof of consideration.

passed shall be on him, unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the Registering Officer acting under section 58 of the Indian Registration Act, 1908, as having been paid in his presence.

This section introduces a change of far-reaching consequence in the law relating to the burden of proof of consideration with regard to loans advanced by money-lenders. It has been provided that the burden of proving that any consideration alleged to have been paid by a money-lender to his debtor actually passed shall be on the former, except:—

(a) where the receipt of the consideration is acknowledged by the debtor in his own handwriting; or

(b) where its payment has been endorsed by the Registration Officer acting under clause (c) of sub-section (1) of Section 58 of the Indian Registration Act, 1908, as having been made in his presence.

The provisions of this section presuppose that the creditor is a money-lender as *defined in this Act. If he is not*, this section would not apply. No definition of the term "debtor" has been given in the Act, and as such the ordinary dictionary meaning must be accepted. In cases not covered by this section the burden of providing the non-receipt of consideration is to be on the debtor as heretofore. It may be mentioned that in cases where nothing is paid before the Registration Officer and the deed only recites an admission on the part of the debtor as having received the consideration, the burden of proving the passing of consideration shall be on the money-lender, but if the consideration is actually paid before the Registration Officer and this fact is incorporated in his endorsement, the onus will shift to the debtor.

Object of the Section.—This section has been included so as to help ignorant illiterate debtors. It is the usual experience of average people in this province that a person who cannot read or write generally puts his thumb impression on documents without any clear knowledge of its contents. In fact cases are on record where such thumb-impressions were proved to have been secured on incomplete documents, blank disjointed pieces of paper, blank **Bahi** leaves, or even blank stamp papers (stamp embossed thereon). For a long time, in view of the peculiar conditions prevailing in the Punjab so far as professional money-lenders and their illiterate debtors were concerned, courts placed the burden of proving consideration in such cases on money-lenders. But a Full Bench of the High Court Lahore reviewed this state of the law in the year 1925 and in order to bring it in conformity with section 10 of the Indian Evidence Act laid down that where the execution of an unregistered document is admitted or proved the onus of proving that the consideration set out therein did not pass to the person purporting to have received the same will be on the person alleging it.[12] A rigid application of this rule acted very harshly towards illiterate debtors. In the generality of cases coming before the courts the proof of a thumb-impression, even when the thumb-impression is not acknowledged by the debtor, is a very easy and simple affair. The admission or proof of the genuineness of thumb-impression even accompanied by a denial of the execution of the document bearing it was generally considered sufficient to hold the execution proved and to shift the onus of proving want of consideration on the debtor. The results were so appalling that the legislature had to come to the rescue of the debtors and enacted this section to safeguard the interests of illiterate borrowers against the "oppression of the technicalities of law divorced from the realities of life." The question of the burden of proving a fact in civil cases is of very great importance and has a far reaching effect. In cases between a money-lender and his debtor while the former is ordinarily in possession of his accounts book which can be very helpful in proving the passing of consideration, the

12. A.I.R. 1925 Lahore 471. (F.B.)

latter can merely rely on oral evidence which in the face of the document can have little value, and leaving the technicalities of law practical politics would support the policy underlying this section which was enacted to mitigate the evil which must have been responsible for the travesty of justice in many cases.

Another justification for this change in the law is to be found in the well known legal principle that the burden of proving a fact should be placed on the party best capable under the circumstances to discharge it.

Where a mortgage deed contains an acknowledgment of the receipt of the consideration in the handwriting of the mortgagor, it is a strong prima facie evidence that the consideration has been actually received, not only against the mortgagor but also against the purchaser of the equity of redemption at a court sale. The burden of proving that the transaction was without consideration is on the latter.[13]

APPENDIX

Selected Judgments

A.I.R. 1937 LAHORE 52.

Bhide, J.

BISHEN CHAND—Decree-holder...Appellant.

Versus

BAKHSHISH SINGH and another—Judgment-debtors.... Respondents.

Second appeal No. 659 of 1936, decided on 2nd November, 1936, from order of District Judge, Jullundur, dated the 3rd March, 1936.

Judgment.—The sole point for decision in this second appeal is whether an executing Court has power to reserve a certain portion of the land of a judgment-debtor for maintenance and refuse execution against it, when his land is not sufficient for the purpose.

The courts below have found that the land of the judgment-debtor, who is a Jat and a member of an agricultural tribe yields only an annual net income of Rs. 72|- and is not sufficient for the maintenance of himself and his family and they have, therefore, refused to execute the decree against the land. The fact that the land of the judgment-debtor is not sufficient for his maintenance is clear from the statement of the decree-holder himself in the trial Court. But it is contended on behalf of the decree-holder that there is no provision in law entitling the executing Court to refuse to execute a decree on this ground. The learned counsel for the respondent-judgment-debtor concedes that there was no such provision till the Punjab Act II of 1936. The Punjab Debtors' Protection Act 1936) was recently passed; but he contends that the present case will now be governed by the in the hands of a subsequent holder is liable for the unsecured debts of his predecessor-in-interest, only if certain conditions specified in the proviso are fulfilled. As the land is not under attachment now, its liability for the unsecured debts of Mehr Din must be determined according to the Debtors' Protection Act. In this view of the case, the petitioner must be given an opportunity to show that he can satisfy the conditions laid down in the proviso to section 9. His counsel therefore prays that the case be remanded to the executing Court for this purpose. Counsel for the respondents has no valid objection to raise against this course and this prayer must be granted. I accept this petition, set aside the orders of the Courts below and send the case back to the executing Court for decision in accordance with the provisions of Section 9 of the (Punjab) Act II of 1936. Both parties will be given opportunity to lead such evidence as they desire. In the peculiar circumstances of the case, I leave the parties to bear their own costs in all Courts.

Case remanded.

A.I.R. 1937 LAHORE 446.

Addison and Din Mohammad, JJ.

LAL KHAN and another—Insolvents. . . Appellants.

Versus

Official Receiver Ferozepur and others—Creditors. . . Respondents.

First appeal No. 280 of 1936, decided on 17th February, 1937.

Judgment.—Din Mohammad, J. A preliminary objection has been raised by the respondents that no appeal lies to this Court. It is urged that the order of the Additional District Judge complained against was passed on appeal under section 68, Provincial Insolvency Act, 1920, and that from such an order no appeal is provided for by section 75 of the same Act. Counsel for the appellants concedes this proposition, but, relying on the proviso to sub-section (1), section 75, Provincial Insolvency Act, has asked us to treat his petition of appeal as a petition for revision. That proviso reads as follows:—

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

We consider that the point involved in this case is an important point of law, and we have, therefore, decided to hear this petition as a petition for revision. This question involved in this petition turns upon the true interpretation to be placed on sub-section (1) section 4 Act II of 1936. That sub-section is couched in the following terms:—

Notwithstanding anything contained in any other enactment for the time being in force, whenever a Civil Court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money, the proceedings of such attachment and alienation shall be transferred to the Collector.

In the case of the appellants who were adjudicated insolvents the Official Receiver is conducting proceedings in relation to the temporary alienation of their land and the appellants contend that he has no jurisdiction to do so in view of the provision of law reproduced above. They further refer to clause (4) section 2, where "Court" is defined to include a Court acting in the exercise of insolvency jurisdiction. After hearing counsel on both sides we have come to the conclusion that the contention of the appellants must fail. Under section 28, Provincial Insolvency Act, as soon an order of adjudication is made, the property of an insolvent vests in the receiver, and to all intents and purposes he takes the place of the insolvent. Under section 59 Provincial Insolvency Act, the receiver is enjoined to realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose he is empowered to sell all or any part of the property of the insolvent.

This he is entitled to do without the leave of the Court, which under the same section is necessary in certain other matters. It is on this ground that it has been invariably held that a sale by a receiver of the property of an insolvent is not a sale "in execution of an order of a civil court." If any authority be needed for this proposition reference may be made to 49 All. 367,[1] 50 Mad. 135,[2] 9 Rang. 231[3] and 16 Lah. 173.[4]

In 49 All. 367 a Division Bench of the Allahabad High Court had observed as follows:—

We find it impossible to hold the view that a village custom which refers only to a voluntary sale by one co-sharer of his property can in any way apply to the case of an involuntary sale carried out against his wishes by a Court through a Collector or an official Assignee, or anybody else.

Their Lordships of the Privy Council in animadverting upon these remarks of the learned Judges said:

> With deference to the learned Judges, it seems to their lordships that this overlooks one of the fundamental principles of all arrangements for the realization and distribution of a bankrupt's property. In every system of law the term may vary, but in all, there is an official, be he called an assignee or trustee or any other name, and that official is by force of the statute invested in the bankrupt's property. But the property he takes is the property of the bankrupt exactly as it stood in his person, with all its advantages, and all its burdens. . . Just, therefore, as if the conveyance has been made to an individual, that individual would have had at once disadvantage

1. Sheobaran Singh vs. Kulsum-un-Nissa, A.I.R. 1927 P.C. 113=101, I.C. 368=54, I.A. 204=49, All. 367 (P.C.)

2. P.B. Sankaram vs. G. Narasimhalu, A.I.R. 1927 Mad. 1=99 I.C. 8=50 Mad. 135=51 M.L.J. 529 (F.B.)

3. Venkatachalam Chettyar vs. Merugesan Servai, A.I.R. 1931 Rang. 122=131 I.C. 732=9 Rang. 231 (S.B.)

4. Gurbakhsh Singh vs. Sardar Singh, A.I.R. 1935, Lah. 268=155 I.C. 693—37 P.L.R. 402=16 Lah. 173 (F.B.)

and the *privilege of the* custom of pre-emption, so the Official Assignee was in the same position and could only sell what he got.

In 50 Mad. 135 it was held by the majority of the Court that a sale by an Official Receiver in insolvency was not a transfer by operation of law or by, or in execution of, a decree or order of Court. The same principle was affirmed in 9 Rang. 231 and in 16 Lah. 173 which is based on the three judgments mentioned above.

These decisions do not directly touch the point at issue but they go a long way in establishing that the sale of an insolvent's property is an act of the receiver and not that of the Court. This being so the provision of law as contained in sub-section (1) section 4 does not help the appellants. The attachment and alienation of land must emanate from a civil Court before that sub-section comes into play; and although "Court" includes an insolvency Court, it does not include a receiver in insolvency. Counsel for the appellants has urged that the intention of the Legislature was to protect the debtors both in ordinary and in insolvency cases and that consequently the wording of section 4 should be taken to include sales by receivers. We, however, consider that we are not justified in so straining the language of an enactment as to import into its words which do not exist there. To do so would be repugnant to the recognised principles governing the interpretation of statutes. If anybody *considers that* the language of the law is defective, his remedy lies in appealing to the Legislature to amend the law and not in moving the Courts to stretch it. We accordingly hold that the order of the Additional District Judge dismissing the appeal against the Official Receiver's action in proceeding to farm out the insolvent's land and affirming that action is not open to any legal objection. With *these* remarks we dismiss the petition, but in view of the peculiar circumstances of the case we leave the parties to bear their own costs before us.

Appeal dismissed.

A.I.R. 1937 LAHORE 558.

Tek Chand, J.

PARTAPA and another—Insolvents. . . Petitioners.

Versus

BISHNA and others—Creditors. . . Opposite Parties.

Civil Revn. Petn. No. 828 of 1936, decided on 18th February, 1937, from order of District Judge, Ludhiana, dated 26th November, 1936.

Order.—On the 18th April, 1936, Partapa and Nahir Singh were adjudicated insolvents, on their own application, by the Insolvency Judge, Ludhiana. By the same order the learned Judge appointed two persons as Joint-receivers. On the 17th June, 1936 the receivers leased certain agricultural land of the insolvents for a period of 20 years. They realized the lease money from the lessees and asked the insolvents to hand over possession of the land to the lessees but they declined to do so. The insolvents also submitted an application that suitable maintenance be provided for them. The receivers forwarded the application to the Insolvency Judge, and also prayed that the insolvents be ordered to hand over possession of the leased land to the lessees. On the 29th June, 1936, the Insolvency Judge directed a warrant for delivery of possession of the land to issue. He also ordered that out of the lease money Rs. 50 be paid in lump sum to the insolvents by way of maintenance, after they had delivered possession of the land to lessees. From this order the insolvents appealed to the District Judge, contending that the receivers or the insolvency Court had no jurisdiction to lease the land for a period of 20 years, in view of section 4, Punjab Debtors' Protection Act II, of 1936 (which had come into force on the 6th June, 1936), according to which proceedings for temporary alienation should have been transferred to the Collector. They further urged that their application for maintenance should also have been forwarded to the Collector for consideration under section 5 of the Act. The learned District Judge held that sections 4 and 5 were inapplicable as these sections referred to proceedings before a "Civil Court" and an Insolvency Court was not a "Civil Court". He also held that the amount of maintenance granted by the Insolvency Judge was sufficient. He accordingly dismissed the appeal. The insolvents have come in revision, and it has been contended on their behalf, that in holding that the expression "Civil Court," as used in sections 4 and 5 does not include an Insolvency Court, the learned District Judge has misconstrued section 2 (4) of the Act, which expressly provides that:

In this act, unless there is anything repugnant in the subject or context, "Court" includes a Court acting in the exercise of insolvency jurisdiction.

Counsel for the respondent does not contest that the definition of "Court" in the Act is wide enough to cover an 'Insolvency Court,' but he urges that section 4 is inapplicable to this case for another reason. He points out that Chapter 2 of the Act of which sections 4 and 5 form part, is headed "Execution of decrees" and contends that the procedure laid down therein is not applicable to proceedings in insolvency. He further draws attention to section 4 itself, which reads as follows:—

> Notwithstanding anything contained in any other enactment for the time being in force, whenever, a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

The wording of the section is clear and explicit and lays down that proceedings for temporary alienation are to be transferred to the Collector in those cases in which land has been "attached" and is sought to be alienated temporarily "in the execution of a decree for the payment of money." It is conceded by counsel for the insolvents that in proceedings in insolvency, the land of the insolvents is not "attached" nor can it be said that temporary alienation of land effected, or sought to be effected, by the receiver is in "execution of a decree." The learned counsel frankly admitted that if the section, as worded, is to be given its plain meaning, its operation must be limited to cases of attachment and temporary alienation "in execution of money-decrees," and that the present case is not one of that description. He urged, however, that the words "in the execution of a decree" were superfluous, being against what he described the 'policy' of the Act, and that they should be ignored altogether in interpreting the section. Indeed, he boldly suggested that these words appear to have crept in the section inadvertently, as the 'real' intention of the Legislature was to transfer to the Collector all proceedings for temporary alienation fo land from civil courts not only in execution of money decrees but in all cases of whatever description, pending in civil courts. In support of this argument the learned counsel attempted to refer to the Statement of Objects and Reasons of the Bill, and the proceedings of the Legislative Council, but I did not allow him to do so. A court of law, whose duty it is to interpret a statute must take the statute as it finally emerged from the Legislature. It cannot take note of such extraneous considerations as suggested by the learned counsel, and assume that the 'real' intention of the Legislature was something quite contrary to what it expressed in plain language, or that it allowed words to "creep" into the statute "inadvertently." It is one of the cardinal canons of interpretation of statutes that where the wording of an enactment is clear, explicit and unambiguous, the court must give effect to it and it cannot gather the supposed intention of the Legislature from the debates, or even the Statement of Objects and Reasons. As observed by their Lordships of the Privy Council in the leading case in 6 Moore P. C. 1.[1] at page 9.

The construction of an Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the Legislature; we cannot aid the Legislature's defective phrasing of the Act; we cannot add and mend, and, by construction, make up the deficiencies

1. Crawford vs. Spooner, (1852) 6 Moore P.C. 1.

which are left there. If the Legislature did intend what it has not expressed clearly, much more, if the Legislature intended something very different; if the Legislature intended something pretty nearly opposite of what it said, it is not for the Judges to invent something which they do not meet with in the words of the text aiding their construction of the text always, of course, by the context; it is not for them to supply a meaning, for, in reality, it would be supplying it ....If a court of law were to do so, it would obviously be not to interpret the law but to make it.

In regard to the proceedings in the Council it is sufficient to refer to the oft-cited remarks of Farewell, J. in (1906) 2 K.B. 676[2] at page 716:

It was suggested that the view taken by us of the Act is not in accordance with the 'intention' of the House of Commons or with 'public understanding' of the effect of the Act; and reference was attempted to be made to the debates but we have only to deal with the construction of the Act as printed and published. That is the final word of the Legislature, as a whole, and the antecedent debates and subsequent statements of opinion or belief are not admissible.

The whole position is very well put in Maxwell on 'Interpretation of Statutes,' 7th Edn., p. 9.

Nothing could be more dangerous than to make such considerations the grounds for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such view, is in truth, not to construe the Act, but to alter it. But the business of the interpreter is not to improve the statute; it is to expound it. The question for him is not what the Legislature meant, but what its language means; i.e., what the Act has said that it meant. To give a construction contrary to, or different from, that which the words import or can possibly import, is not to interpret law but to make it; and the Judges are to remember that their office is jus dicere, not jus dare.

2. Rex vs. West Riding of Yorkshire County Council (1906) 2 K.B. 676=75 L.J.K.B. 933.

I must, therefore, hold that S. 4 is not applicable to this case and that the receivers had the power to lease the land for a period of 20 years, and the insolvency court was competent to issue a warrant for the dispossession of the insolvents. It was conceded that in this view of the case section 5 also was inapplicable and the prayer of the insolvents for maintenance could be decided by the Insolvency Court. Nothing was urged on the merits against the amounts fixed by the learned Judge. The petition for revision fails and is dismissed with costs.

Petition dismissed.

A.I.R. 1937 LAHORE 560

Tek Chand, J.

TELU—Judgment-debtor . . . Appellant

Versus

F. JETHU MAL HARI PARSHAD—Decree-holder . . . . . Respondent.

Judgment.—In execution of a money decree obtained by *the respondent against the appellant as the legal* representative of his father Chhaju, certain standing trees were attached. The judgment-debtor objected that the trees were not liable to attachment as they were 'ancestral' (having been inherited by Chhaju from father) and no charge had been created thereon by the deceased Chhaju in his lifetime. The execution Court upheld the objection and released the trees. On appeal the learned District Judge reversed this decision, holding that the judgment-debtor had not proved that he was governed by custom and, in the absence of such proof, he must be presumed to be governed by Hindu Law, under which the trees were liable to be sold for payment of an unsecured debt of the deceased father of the judgment-debtor. The judgment-debtor has come in second appeal and it has been urged on his behalf that the learned District Judge was in error in holding that the judgment-debtor was governed by Hindu law and not by custom. This, however, is a matter with which I cannot go in second appeal, without a certificate under section 41 (3), Punjab Courts Act.

The decision of the learned Judge, however, cannot be maintained for another reason. The order of the executing Court releasing the trees from attachment was passed on 16th May, 1936. From this order the decree-holder appealed to the District Judge on 13th June, 1936 and the appeal was not decided till 8th July 1936. In the meantime on 6th June, 1936, the Punjab Debtors' Protection Act (II of 1936) had come into force. Section 10 of that Act lays down that, notwithstanding anything to the contrary, contained in any other enactment for the time being in force, standing trees, apart from the land on which they stand, shall not be liable to sale in the execution of a decree or an order of a Court. The provisions of this section are mendatory and, therefore, on 8th July, 1936 the learned District Judge could not order the sale of trees in execution of a money decree. It is no doubt true that the trees had been attached long before the Act came into force, but the attachment did not create a charge or lien upon the attached property nor confer any title on the attaching creditor. It merely had the effect of preventing and avoiding private alienation by the judgment-debtor. I hold, therefore, that the order of the learned Judge dated 8th July, 1936 directing the sale of the trees in execution of the respondents' decree was contrary to section 10 and cannot be maintained. I accept the appeal, set aside the order of the learned District Judge and restore that of the Court of first instance. As the point was not raised before the learned District Judge by the judgment-debtor or his counsel, the parties shall bear their own costs in all Courts.

Appeal allowed.

A.I.R. 1937 LAHORE 740

Coldstream and Din Mohammad, JJ.

SIDHU RAM and others—Decree-holders. . .appellants.

Versus

NUR MOHD. and others—Judgment-debtors. . .Respondents

Letters Patent Appeal No. 52 of 1937, decided on 29th June, 1937, from judgment of Skemp, J., reported in A.I.R. 1937 Lah. 506.

Judgment.—Din Mohammad, Judge. In execution of a decree held by a Hindu joint-family consisting of Chandar Bhan and others against Nur Mohd. and others, a-temporary alienation of the judgment-debtors' lands was sanctioned by the executing Court in favour of the decree-holders on December 20, 1935. Against this order the judgment-debtors preferred an appeal to the District Judge, which, however, could not be heard until the 29th June 1936. In the meantime the Punjab Debtors' Protection Act, 1936 came into force. By the terms of section 4 of this Act, a civil court was enjoined to transfer the proceedings of attachment and alienation to the Collector whenever it made an order that the land be attached and alienated temporarily in the execution of a decree. By section 5 such portion of the judgment-debtor's land was exempted from temporary alienation as in the opinion of the Collector was required to provide for the maintenance of the judgment-debtor and the members of his family who were dependent on him. The District Judge relying upon these two provisions of law set aside the order of the executing Court and remanded the case for disposal in accordance with those provisions. From that order the decree-holders preferred an appeal to this Court which came on for hearing before Skemp, Judge. Relying on a judgment fo this Court reported in A.I.R. 1937 Lah. 52,[1] the learned Judge maintained the order of the District Judge and dismissed the appeal. Hence this letters Patent Appeal.

---

1. Bishen Chand vs. Bakhshish Singh, A.I.R. 1937 Lah. 52=169 I.C. 656=18 Lah. 291.

After hearing counsel on both sides at length, I have come to the conclusion that this appeal must succeed. It is true that enactments relating to procedure have a retrospective effect, if not expressly stated otherwise, but I am not convinced, in the first instance, that the exemption provided for in section 5 of the Act is a mere matter of procedure and secondly I am satisfied that, even if it were so, the stage at which the new provision of law was applied by the District Judge was not the stage at which it could be applied. I am aware of the fact that in the judgment relied upon by Skemp, Judge, Bhide, Judge has remarked that Ss. 4 and 5 relate to procedure only and that Skemp, Judge has agreed with him, but with all respect, I am disposed to think that the exemption contained in section 5 in so far as it creates a new right in favour of the judgment-debtor so as to protect a part of his land from his decree-holder or attaches a disability to a decree-holder in so far as to debar him from proceedings against a part of his judgment-debtors' land, deals with something more than a mere procedure. In my view, it brings into existence a right which the judgment-debtor can claim henceforth and as such the new provision of law creating that right cannot have a retrospective effect unless an express provision had been made therefor. There is abundant authority in support of the proposition that such enactments are not retrospective in their effect. Reference in this connection may be made to 58 All 63[2], A.I.R. 1930, All. 706[3], A.I.R. 1934 Lah. 1013[4], 139 I.C. 589[5] and 55 Cal. 67[6].

In 58 All. 63[2] a question arose whether a new proviso added to a section of the Agra Pre-emption Act governed

2. Haider Hussain vs. Puran Mad, A.I.R. 1935 All. 706=157 I.C. 157=58 All. 63=1935 A.L.J. 895 (F.B.)

3. Sheopujan Rai vs. Bishnath Rai, A.I.R. 1930 All. 706=128 I.C. 390=52 All. 886=1930 A.L.J. 842.

4. Ata-ur-Rahman vs. Income Tax Commissioner, Lahore A.I.R. 1934 Lah. 1013.

5. Gurmukhdas vs. Hassomal, A.I.R. 1932 Sind 71=139 I.C. 589=26 S.L.R. 204.

6. Nepra vs. Sajer Pramanik, A.I.R. 1927 Cal. 763=103 I.C. 662=55 Cal. 67.

pending cases. A majority of the Full Bench of the Allahabad High Court held that the proviso added to section 19, Agra Pre-emption Act by the Amending Act of 1929, which came into force after the deed of gift in favour of the defendant vendee, did not prevent him from defeating the plaintiff's claim by virtue of having obtained that deed of gift prior to the passing of the decree. The learned Judges further remarked that it was a well established rule of construction that a retrospective operation was not to be given to a statute so as to impair an existing right or obligation otherwise than as regards the matter of procedure, unless that effect could not be avoided without doing violence to the language of the enactment. If the new Act touched a right in existence at the passing of the Act, then it should not be held to be applicable to a pending action concerning that right. Reliance was placed on a quotation from Maxwell on the Interpretation of Statutes and on another from Craies on Statute Law. The first quotation runs as follows:

> In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

The latter quotation is as follows:

> In the absence of anything in an Act to show that it is to have a retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the act is passed.

In A.I.R. 1930, All. 706, a Division Bench of the Allahbad High Court observed that a new enactment or amendment of already existing enactment passed during the pendency of an action has not a retrospective effect unless either it expressly says so or it lays down a mere rule of procedure which it is the duty of Courts to follow.

In A.I.R. 1934 Lah. 1013, a Division Bench of this Court observed that provisions which touch a right in existence at the passing of the statute were not to be applied retrospectively in the absence of express enactment or necessary intendment. This quotation was taken from a judgment of their Lordships of the Privy Council as reported in A.I.R. 1927 P.C. 242[7]. In 139 I.C. 589 and 55 Cal. 67 similar principles were enunciated.

In my opinion the question that was involved in these execution proceedings was whether the decree-holder had or had not a right to proceed against the whole of the judgment-debtor's land without making any reservation for his maintenance or, in other words, whether a judgment-debtor could claim as a matter of right an exemption for a part of his land for his maintenance, and as this matter had been decided by the executing Court in December 1935, any change of law effected subsequent to that order could not alter the conditions as they existed at the time the order was made.

Even if it were possible to hold that this view of the matter is open to doubt and that the provisions contained in sections 4 and 5, Debtors' Protection Act, relate to a mere matter of procedure, I am further of opinion that it was not open to the District Judge to have reversed the order of the executing Court merely on the ground that since then a new enactment had been passed which effected a change in the existing law. As observed by their Lordships of the Privy Council in A.I.R. 1927 P.C. 242.[7]

> Provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights and as such they cannot have a retrospective effect unless it is clearly so provided. The only thing that is contended on behalf of the respondents is that as the matter was still pending in the Appellate Court, it had not been finally decided and that, therefore, it could be trated

7. Delhi Cloth and General Mills Co. Ltd. vs. Income-tax Commissioner, Delhi, A.I.R. 1927 P.C. 242=106 I.C. 156=54 I.A. 421=9 Lah. 284 (P.C.)

as a pending proceeding liable to be affected by any change made in the law. In my view, there is no force in this contention. An appeal may for certain purposes be a continuation of the original proceeding; but it cannot be reasonably urged that an appellate court will be justified in setting aside the judgment of a trial court which, when delivered, was not open to any objection on the ground on which the Appellate Court seeks to set it aside. In A.I.R. 1930 Lah. 1004[8], it was remarked by a Division Bench of this Court.

An alteration in procedure may have retrospective effect and while proof is a part of procedure, the stage of proof has been passed in the present case and it does not exist except under particular and special circumstances during appeal. In short a change in procedure cannot retrospectively affect a decided matter.

A similar question came before a Division Bench of the Madras High Court in a case reported in A.I.R. 1928 Mad. 1149[9] and the learned Judges had arrived at the same conclusion as has been arrived at by a Bench of this Court in the case referred to above. The following quotation is to the point:

The argument that because this appeal may be regarded for certain purposes as a continuation of the lower Court's proceedings and that we must, therefore, apply to it the amended procedure now in force, does not seem to us tenable. It would involve this result that on every alteration of processual law, all proceedings taken under the previous law within a period allowing of an appeal when the new law came into force, would be contrary to law. The mere statement

---

8. R. H. Skinner vs. V. Skinner, A.I.R. 1930 Lah. 1004=129 I.C. 6=12 Lah. 172=32 P.L.R. 110.

9. Satrucherla Sivaskandharaju vs. Maharaja of Jeypore. A.I.R. 1928 Mad. 1194=114 I.C. 823.

of this result is sufficient to demonstrate that the argument cannot be sustained.

I am in respectful agreement with the remarks, quoted above, and would hold that even if the exemption claimed in these proceedings were a mere matter of procedure, the order made by the executing Court at a time when no such exemption existed could not be held to be wrong on the subsequent enactment of that exemption. I would, therefore, allow this appeal, set aside the order of the learned Judge of this Court as well as that of the District Judge and restore the order of the executing Court. In view of the fact, however, that none of the authorities mentioned above was cited by counsel for the appellants and that he failed to present his case in a proper manner, I would not allow the appellants any costs against the respondents.

Coldstream, Judge—I agree.

Appeal allowed.

A.I.R. 1938 LAHORE 433.

Bhide, J.

FIRM JINDA RAM GURANDITTA MAL—Decree-holder—Appellant.

Versus

BUR SINGH—Judgment-debtor. . .Respondent

Second appeal No. 6 of 1938, decided on 7th March, 1938, from decision of District Judge, Lyallpur, D|-17th November, 1937.

Judgment.—The *sole point for decision in this case is* whether the proceedings for temporary alienation of the Land of the judgment debtor in execution proceedings ought to be transferred to the Collector under S. 4, Punjab Debtor's Protection Act (2 of 1936). The decree was one for payment of Rs. 1,850|- by certain instalments and directed that this amount would be a charge on certain property of the judgment debtor and that he would not be competent to alienate it by mortgage, sale, etc. As a result of this provision in the decree, no attachment of the said property in execution was necessary and this point is not disputed. S.4 of the Punjab Debtor's Protection Act runs as follows.

Notwithstanding anything contained in any other enactment for the time being in force whenever a Civil Court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

According to the plain wording of the section, it would apply only to those cases in which the land has to be attached and then temporarily alienated, in the present instance no attachment being necessary, it is contended on behalf of the appellant that section 4 will not apply. The learned counsel for the respondent on the other hand urges that the intention of the Legislature was that the provisions should apply to the execution proceedings in case of money decrees and he use of the word "attached" does not necessarily show that the section will not apply, when attachment is not necessary. The presumption, however, is that every word used by the legislature has a significance and it is possible that the wording in question was intended to exclude from the operation of the section mortgage decree or decrees of the kind passed in the present instance whereby a charge is created on the land. If property is already subjected to a mortgage or charge by the decree itself, the Legislature perhaps did not intend to interfere with the operations of the decrees and allow the Collector to exclude any portion of the property for the maintenance of the judgment debtor. The Courts have to interpret the language of an enactment as it stands. If the intention of the Legislature was different, it of course is open to it to make it clear by a suitable amendment of the Act. In view of the language of section 4, it seems to me that the section was not applicable to the execution of the decree in the present case. I accordingly set aside the order of the learned District Judge and direct the executing Court to proceed with the execution according to Law. In view of the fact that the point of law is not covered by any authority I leave the parties to bear their costs throughout.

Order set aside.

The
Punjab Registration of Money-Lenders' Act, 1938.

Table of Contents

The Punjab Registration of Money-Lenders' Act, 1938.

(Punjab Act No. III of 1938.)

[Received the assent of His Excellency the Governor on the 31st August, 1939, and was first published in the Punjab Gazette, Extraordinary, of the 2nd September, 1938.]

Whereas it is expedient to register money-lenders and to regulate their business in the manner hereinafter appearing, it is hereby enacted as follows :— Preamble

The preamble shows that the objects of this legislation are:—

(i) to register money-lenders practising in the province, and

(ii) to regulate their business.

Some years before the introduction of the reforms of 1937, a private Bill styled as the Money-Lenders' Bill was introduced in the Punjab Legislative Council, and was duly passed. But it failed to receive the assent of His Excellency the Governor who, however, promised to bring in a Government measure for securing the objects which Mir Maqbool Mahmud's bill had in view. Certain provisions of the Money-Lenders' Bill were, in a modified form, placed on the statute book under certain subsequent enactments. The present law covers the ground which was left untouched by these pieces of legislation, and its object as already stated is to regulate, in certain respects, the business of money-lending.

1. (1) This Act shall be called the Punjab Registration of Money-lenders' Act, 1938. Short title, extent and commencement

This act will come into force on the first day of July, 1939 (Vide P.G. Notification No. 3470-J-39|20108, dated the 5th June, 1939.)

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

Definitions.

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

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

(2) "Collector" means a Collector of the District or such other officer not below the rank of Assistant Collector first grade as may be specially empowered by the Provincial Government to discharge the functions of a Collector for the purposes of this Act.

(3) "Commissioner" means the Commissioner of the Division in which a money-lender is registered.

(4) "Company" means a Company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters

Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

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

(6) "Court" includes a court acting in the exercise of its insolvency jurisdiction.

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

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

(i) an advance in kind made 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 advance;

(ii) a deposit of money or other property in a Government Post Office Bank, or any other Bank, or with a Company, or with a Co-operative Society or with any employer as security from his employees;

Collector.—The term "Collector" includes an Assistant Collector of the 1st grade specially empowered by the Provincial Government to discharge the functions of the Collector under this Act. Collectors have multifarious duties to perform, and the legislature did not wish, where avoidable to saddle them with additional work under this Act. As such, a provision has been made under which Government can, where such a necessity arises, relieve the Collector of any District of the functions assigned to him under this Act, and to entrust the same to some Assistant Collector of the 1st grade.

Loan.—The definition of this term is slightly different from the definition given in section 2 (7) of the Punjab Regulation of Accounts Act. Under that Act the definition runs as below:—

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

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

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

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

(iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act;

(v) a loan advanced to a trader;

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

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

Most of the clauses of this definition have been drafted on the model of those appearing in the definition under the Punjab Regulation of Accounts Act, as the following will show:—

Clause (i) of the exemption does not find place in, and is an improvement on the definition under the Punjab Regulation of Accounts Act. This clause exempts from the purview of this definition any advance in kind which a landlord makes to his tenant for the purposes of husbandry, provided the market value of the return to be made by the latter does not exceed the market value of the advance.

Clause (ii) has been enlarged by the addition of the words "or with any employer as security from his employee," the object being to exclude such securities from the operations of this Act.

Clauses (iii), (v) and (vii) of this definition adopt verbatum clauses (ii) (iv) ad (vi) respectively of the relevant definition under the Regulation of Accounts Act.

Clause (iv) of the present definition has also been enlarged so as to include loans advanced by or to both the Central and Provincial Governments, or by or to local bodies under the authority of either of these Governments.

Clause (vi) has been altered so as to restrict the exemption in favour of loans advanced by a trader to a trader in the regular course of business in accordance with trade usage. Under the Regulation of Accounts Act a loan to a trader without any restrictions as to the position of the lender or the existence of trade usage has been exmeped.

Clause (vii) of the Regulation of Accounts Act does not find any place in the present definition.

Money-lender.—A money-lender is a person who lends money to others with the object of reaping some profit. Under this definition the legal representatives and the successors-in-interest of a money-lender whether through inheritance, assignment or otherwise are to be treated as money-lender, unless any one of them can bring his case within the three exemption of clauses (a) and (b) of sub-section (9).

It is not necessary that the money-lender should be an individual. A firm carrying on the business of money-lending would also fall within the ambit of this definition. In order to successfully claim exemption from being classed as a money-lender under this Act the legal representative or successor-in-interest of a deceased money-lender should show that he is merely realising the outstanding assets with the object of winding up the business of the deceased money-lender, and does not renew any existing loan nor advances any fresh loans. This means that the Act tries to safeguard the interests of those who have to step into the shoes of a deceased money-lender with the sole object of closing down the business.

Under sub-clause (b) exemption has been allowed to any person who is an assignee of a single loan from a money-lender, provided such an assignee is not the wife or husband of the assignor, nor is he descended from the grandfather of the assignor.

(10) The rules prescribed under this Act are to be found in appendix.

Suits and applications by money-lenders barred, unless money-lender is registered and licensed.

3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall, after the commencement of this Act, be dismissed, unless the money-lender—

(a) at the time of the institution of the suit or presentation of the application for execution; or

(b) at the time of decreeing the suit or deciding the application for execution—

(i) is registered; and

(ii) holds a valid license, in such form and manner as may be prescribed; or

(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(iv) if he is not already a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending: provided that in such a case, the suit or the application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of.

Notwithstanding anything contained in any other enactment for the time being in force.—This means that the provisions of this Act override the provisions of all other laws which may be applicable for the time being. Strictly speaking it was not necessary to say so because under the general rules of jurisprudence special laws always override general ones. However the legislature wanted to clear this point beyond any doubt and so this phraseology was used.

Conflict between the present provisions and earlier laws made by the Central legislature.—Under the Government of India Act 1935 three distinct lists of legislative subjects have been given. Subjects covered by list No. 1 can be legislated upon by the Federal Legislature only, while these enumerated in list No. 2 are within the exclusive jurisdiction of Provincial legislatures. With regard to list No. 3 styled as "Concurrent legislative list" power is given to both the

Federal and Provincial legislatures to legislate, subject to the provisions contained in section 107 which reads as under:—

"(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter:

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) If any provision of a law of a Federal State is repugnant to a Federal Law which extends to

> that State, the Federal law, whether passed before or after the law of the State shall prevail, and the law of the State shall, to the extent of the repugnancy, be void."

Money-lending falls within the second list, item 27 of which reads as "trade and commerce within the province; markets and fairs; money-lending and money-lenders." This means that the Provincial Legislature (Punjab Legislative Assembly) was competent to legislate with regard to the regulation of business of money-lenders in the Province, and as such if any law made by the Central Legislature prior to the enactment of this Act be repugnant to the provisions made herein, the former will have to give way.

Suits and execution applications.—This section equally affects suits for the recovery of loans, as defined in the Act, and applications for the execution of decrees relating to such loans, if such suits or applications are filed after the Act comes into force. In order to escape the penalties prescribed under this section the plaintiff in the suit or the decree-holder in the execution application, as the case may be, must show:—

(1) that prior to the institution of the suit or the making of the application for execution he had been registered as a money-lender and licensed as such in accordance with the rules framed under this Act, or

(2) that though not registered and licensed at the time of the institution of the suit or the making of the application for execution, he is so registered and licensed at the time of the disposal of the suit or the decision of the application for execution as the case may be, or

(3) that though registered but not licensed he has secured a certificate, under section 11, from the Commissioner with regard to the claim in suit or the decree under execution as the case may be, or

(4) that though not registered and licensed as set out above, he has applied for being registered and licensed in accordance with the provisions of this Act.

In the last mentioned case, that is, when the plaintiff or the decree-holder satisfies the court that his application for being registered and licensed is pending, the court is to stay its hands till the disposal of that application, which means that neither the suit nor the application for execution as the case may be, is to be decided till after the disposal of the application before the Deputy Commissioner.

This section, therefore, while prescribing certain restrictions on the institution of suits and the making of applications for execution, gives facilities to plaintiffs and decree-holders who are money-lenders to escape the penalty laid down in this section by complying with the provisions of law even during the pendency of their suits and execution petitions. Where a plaintiff or decree holder applies for registration, etc. during the pendency of his suit or execution application, the suit or the execution application, as the case may be, is not to be finally disposed of so long as the application for registration, etc, is not decided. If the latter application is rejected the suit or the application, as the case may be, must be thrown out. But if it is granted, the suit or the execution application has to be decided on merits.

Shall not be finally disposed of.—The use of this phrase with regard to an application for execution is not very happy, although it fits in very well in the case of a suit. Final disposal of an application for execution may be very unimportant and innocuous affair, as it generally amounts to the dismissal of the application after certification of full, partial or no satisfaction of the decree, while material orders may have to be and in fact are usually passed when the application is still pending. For instance attachment and sale of movable and immovable properties may be effected, and even possession may be delivered to the auction purchaser without finally disposing of the application, because something more sill remains to be done. Surely there would be no object in deferring the making of a final order of a merely formal nature when all the material steps aimed at by the decree-holder and affecting the realization of the decree have already been taken. What the legislature in fact wanted to lay down was that no material order affecting the recovery of the decretal debt should be made so long as the Collector does not dispose of the decree-holder's application for registration etc., as a money-lender. But the language used does not bring out this intention. We commend the question of amending the law suitably to the attention of the legislature.

4. Every money-lender may apply for registration of his name at the office of the Collector of the District; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs. 5. Registration of money-lenders.

Collector of the District.—The Act does not say to the Collector of which District is the application to be made. The money-lender may have his residence in one district and his place of business in another. Rules prescribed under section 13 of the Act, however, provide that a money-lender has primarily to make his application for registration to the Collector of the District where he has his residence. But if he has no residence in the Province, the application is to be made to the Collector within whose District he has his principal place of business. The phrase "Collector of the District" as used in this section would mean the Collector himself or such Assistant Collector of the first grade who has been gazetted as the Collector for the entire district. A Sub-Divisional Officer though an Assistant Collector of the first grade and gazetted as a Collector for his own Sub-Division cannot be called the Collector of the District, and an application under section 4 cannot be made to him. Had the legislature merely used the word "Collector" the result would have been different and any Assistant Collector of the first grade whether at the headquarters of the District or in charge of any Sub-Division, if empowered as a Collector under this Act, could entertain applications for registration. Now, however, all applications must be made to the Collector himself or such an Assistant Collector of the first grade as has been empowered for the entire District. Perhaps the legislature intended the record of registration, etc. to be maintained only at the headquarters of each district.

Particulars to be given.—The rules prescribe a form in which the application for registration is to be made. All the particulars required by that form to be set out must be given, and a fee of Rs. 5|- must be paid before the making of the application. The treasury receipt showing the deposit of Rs. 5|- should be attached to the application.

Licensing of money-lenders.

5. Every money-lender may apply to the Collector for a license which shall be granted for such period, in such form, and on such conditions, and on payment of such fees, as may be prescribed.

Explanation :—When an application for the renewal of a license has been received from a licensed money-lender before the expiry of his license, the existing license shall be deemed to continue in force until orders on the application have been issued.

This section deals with the grant of licenses to money-lenders, who have been registered under section 4. The Collector has no power to refuse to grant a license as the words "shall be granted" show. Of course he can impose conditions permissible under the rules framed under this Act.

Explanation.—It was necessary to make this provision in the Act, because an application for the renewal of a license may take sometime to be disposed of. The explanation says that when an application is made for the renewal of a license before its expiry the previous license is to be taken to be operative and in force so long as the application is not disposed of.

Where license may be cancelled.

6. A license may be cancelled by the Collector and shall not be renewed for such period as may be

specified by him, if after the commencement of this Act, a money-lender commits an act or is guilty of an *omission with reference to which he—*

(i) has been held by a Court to have contravened the provisions of section 3 of the Punjab Regulation of Accounts Act, in more than two suits; I of 1930.

(ii) has had his suit dismissed, in whole or in part, under section 37 of the Punjab Relief of Indebtedness Act; VII of 1934.

(iii) has had his suit dismissed with a finding that he has made dishonestly or fraudulently, a material alteration in any document relating to a loan;

(iv) had had his suit dismissed with a finding that it is fraudulent;

(v) has been found by a Court to have charged higher rates of interest than those prescribed under section 5 of the Punjab Relief of Indebtedness Act in more than one suit; VII of 1934.

(vi) has been found guilty by a Court of forgery or cheating in respect of a money-transaction :

Provided that the Collector shall not cancel a license until the prescribed period of appeal revision or review, as the case may be, has expired; or in case of appeal, revision or review, the appeal, revision or review has been finally decided.

Scope of the Section.—This section deals with the cancellation of licenses under the Act, and for refusing to renew the same. Collectors have been given the power to cancel licenses in cases falling within the ambit of this section.

They can furthermore, for similar reasons, refuse to renew licenses which have expired by lapse of time. The object of this Act as already stated was two-fold, as besides registration of money-lenders it aims at regulating their business.

After the commencement of this Act.—All the acts of omission and commission which entail the cancellation of a license *must have occurred after this Act comes into* force, and any such act relating to a period prior to the enforcement of the Act cannot be looked into in this connection. A Collector can take action under this section in the following circumstaces:—

(i) Where a court has found in more than two cases that after this Act came into force, a money-lender had failed to maintain accounts and furnish statements thereof to his debtors as required by section 3 of the Punjab Regulation of Accounts Act. Under that section a money-lender is required to maintain separate accounts for each debtor in a prescribed form, and to submit statements thereof half-yearly in accordance with rules. Section 4 of that Act prescribes certain penalties for the money-lender's failure to comply with any of these provisions. The present section seeks to supplement those penalties and renders the license of the money-lender liable to cancellation. But in order to invoke the help of this clause the money-lender must be proved to have suffered adverse findings from courts in more than two cases. The legislature seems to have endeavoured to restrict the imposition of this penalty to cases where the money-lender is proved to have purposely disregarded the provisions of the Regulation of Accounts Act and does not aim at penalising mere accidental omissions in one or two cases.

(ii) Section 37 of the Punjab Relief of Indebtedness Act deals with the disallowance of the whole or any part of the sum claimed by a plaintiff on the basis of a loan, when it is proved that the plaintiff had made an entry relating to that loan "showing the amount of the sum advanced to be in excess of that actually advanced plus legitimate expenses incurred" in that connection. The present section renders the plaintiff money-lender's license liable to cancellation when any such finding is given by a court.

(iii), (iv) and (vi). These three clauses deal with different kinds of frauds that may be committed by money-lenders in relation to their dealings with their debtors. In each case the money-lender is exposed to the penalty of the cancellation of his license.

(v) This clause penalises the charging of interest by money-lenders in excess of the rates allowed under section 5 of the Punjab Relief of Indebtedness Act, but the penalty will be attracted only when such excessive charge has been made in more than one suit.

This section therefore aims at ensuring the due observance of different provisions made in certain other enactments for the protection of debtors. But the penalty proposed by the present Act is not to be enforced except in cases in which courts have given specific findings. The proviso to this section furnishes an additional guarantee of the fact that it will be only after the money-lender has exhausted his remedies for getting the order of the Court of the first instance set aside through appeal, revision or review that the penalty of cancellation of the license is to be imposed.

Proviso.—This proviso says *that the Collector is not to* cancel a license so long as the period of appeal, revision or review against the order of a court in question *is not over, or* so long as any appeal, revision or review, is filed by the money-lender, is not disposed of.

7. (1) The Collector may take proceedings **suo motu** or on the application of any person interested for the cancellation of a money-lender's license : When Collector may act.

Provided that no license shall be cancelled without giving the money-lender a notice in such form as may be prescribed.

(2) The Collector may during the period of limitation for an appeal, either of his own motion or on the application of a party interested, review his own order, provided no appeal is pending with the Commissioner.

Since the object of the Act is to insist on money-lenders' complying with the provisions contained therein, this section authorises the Collector to 'suo-motu' initiate proceedings with a view to finding out if any action under section 6 is necessary. As soon as the Collector comes to know that there is reason to believe that action under section 6 is necessary he should start proceedings under *section 7 by* issuing a notice to the money-lender concerned, to show cause why his license should not be cancelled. Where an application for renewal of a license has been made the Collector can 'suo motu' refuse to grant the application for any of the reasons enumerated under section 6. In each case the Collector has to state for what period the license is to remain cancelled or its renewal is to be refused.

Any person interested in the cancellation of a money-lender's license may also move the Collector under this section. The idea underlying is that since the Collector may not be able to get information about the matters referred to in section 6 he may be moved in this connection by any member of the public or for the matter of that by any official. The word "interest" as used in section 7 does not mean any monetary or fiduciary interest. All Government agencies and all members of the public, would in the eye of law be interested in bringing evasions of law to the notice of the authorities, and as such any body even without any pecuniary or fiduciary interest in the matter may give information to the Collector.

Procedure to be followed.—The fundamental principle of law is that no one should be hit unawares, and as such the proviso to sub-section (1) lays down that no license is to be cancelled so long as the money-lender concerned has not been served with a notice in such form as may be prescribed under the rules.

(For form of notice and for the manner in which it is to be served please see Appendix-A).

Review.—The Collector has been given the power of reviewing his own order 'suo motu', or on the application of the party interested in this respect. This power of review has, however, been circumscribed by the condition that limitation for appeal should not have expired, and no appeal should be pending with the Commissioner when the review order is made. The section does not contemplate mere initiation of review proceedings within the above mentioned period, and the passing of final order after it has elapsed. The proceedings must be started and closed within this period. If an appeal has already been disposed of, the power of review will not be available, because under the law the order of the Collector shall, in that case, be considered to have merged in that of the Commissioner, and for obvious reasons the Collector would not be competent to review the order of his superior officer. It follows, however, that no order can be reviewed without giving an opportunity to the other party of being heard in the matter.

During the period of limitation for an appeal.—A reference to section 11 (1) shows that the appeal must be filed within 30 days to be counted from the date of the order. See commentary under section 11 under the heading "Appeal."

8. The name of a money-lender whose license has been cancelled under section 6, shall be struck off the register maintained at the office of the Collector for the registration of money-lenders : Effect of cancellation of license.

Provided that a license shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off the register during the period an appeal or an application for review or an application under section 11 is pending.

This section lays down that when the license of a money-lender has been cancelled, his name is to be removed from the register maintained in the office of the Collector for registration of money-lenders. But this is not to be done so long as the period of appeal against the order of the Collector has not expired, or any application for review made to the Collector under section 7 (2) or any application made to the Commissioner under section 11 (4) is not disposed of. The object of this proviso is that the striking off of the name of the money-lender concerned should be deferred till his remedies, for getting the order set aside or altered, are barred. Had this provision not been made cases would have arisen in which in view of the orders passed on appeal, review etc., entries scored off in registers would have necessitated reinstatement.

Fresh Registration.—If in consequence of the provisions made under section 8 a money-lender's name is struck off the register he will have to seek fresh registration when the period for which the license is cancelled expires, and the procedure laid down under section 4 shall once again have to be followed.

9. Nothing in this Act shall apply to suits or applications for execution pending—

(a) at the time of the commencement of this Act; or

(b) on the date of the cancellation of the license of the money-lenders if before his current license is granted or renewed, a Court has not given any such finding as would render him liable to have his license cancelled under the provisions of section 6 of this Act.

Scope of the Section.—This section deals with cases which are to remain unaffected by the law as promulgated under the Act. No law can be given retrospective effect without there being a specific provision to this purpose, because rights and liabilities which may have, accrued or, been incurred prior to the enactment of any law cannot ordinarily be adversely affected. Where the legislature proposes to give retrospective effect to any law it has to say so in clear terms. Under sub-clause (a) of this section suits and applications for execution pending at the time when this Act comes into force are not to be affected by these provisions.

Clause (b) deals with suits and applications for execution filed after the Act comes into force, and pending on the date when a license is cancelled. It says that the provisions of this Act are not to apply to such suits and applications provided prior to the grant of the license which has been cancelled no court had given a finding against the money-lender exposing him to the penalty prescribed under section 6. The object underlying this concession seems to be that no money-lender should suffer, unless he is a habitual offender so far as the acts and omissions enumerated under section 6 are concerned. If he is not habitual offender the cancellation of his license is not to adversely affect his suits and applications for execution of decrees pending on the date of the cancellation.

Language defective.—If the object of the legislature, as stated above, was to give protection only to such money-lenders as are not habitual offenders in the matter of the acts and omissions enumerated under section 6, it is respectfully submitted, that the language used leaves a serious lacuna. A money-lender may not have been hit by any order passed against him prior to the grant of his current license, but he may have after the grant of the license and prior to his detection resulting in the cancellation of the license, committed innumerable acts of omission and commission covered by section 6. While one single act committed prior to the grant of the license would deprive the money-lender concerned of the benefits of this saving clause, any number of similar acts on his part subsequent to the grant of the license and prior to the detection leading to the cancellation of the same would not result in his losing this concession. It is not necessary that every finding under section 6 must come to the notice of the Collector or be followed by any action on his part. A large number of cases may have gone un-noticed but none of these would deprive the money-lender of the concession allowed under clause (b), if he can prove that none of these related to the period prior to the grant of his current license. This point seems to have been overlooked and deserves the attention of the legislature.

Further registration and licensing of money-lender after expiry of period for which license was cancelled.

10. A money-lender may, after the termination of the period for which his license has been cancelled, apply for registration and for the grant of a license, to the Collector who shall, on his furnishing such particulars as may be prescribed, register his name on payment of a fee of Rs. 5; and shall grant him a license for such period, in such form and subject to such conditions and on payment of such fees, as may be prescribed.

This section deals with cases in which a money-lender whose license had been cancelled again applies to the Collector for the registration of his name, and for the grant of a fresh license to him. No such application is to be entertained till after the period for which the license had been cancelled has expired. After the expiry of this period the money-lender is to make an application for registration, as contemplated by section 4, and for the grant of a license as contemplated by section 5; and the Collector is to pass orders on these applications in accordance with the rules made under the Act.

The language of this section shows that the Collector has no option in registering the money-lender and in granting a license to him, if the period for which the license had been cancelled has expired. He is however, competent to impose such conditions and charge such fees as may have been prescribed by the rules.

11. (1) An appeal shall lie to the Commissioner against the order of the Collector under section 6 cancelling a license provided that the appeal shall be instituted withih 30 days of the order appealed against, not including the period requisite for obtaining copies of such order. Appeals, reviews, and certificates.

(2) If the money-lender or the appellant is not present at the time of announcement of the original or the appellate order, the order shall be communicated to him in such manner as may be prescribed.

(3) The Commissioner may, in dismissing an appeal grant to the money-lender a certificate specifying the loans in respect of which a suit may be instituted by him or the decrees in respect of which an application for execution may be presented.

(4) A money-lender without appealing against an order of the Collector under section 6, may within 30 days of the Collector's order cancelling his license, apply to the Commissioner for a certificate of the nature specified in sub-clause (3).

(5) The Commissioner may, either on his own motion, or on the application of a party interested, review his own order at any time within 30 days of the communication of his appellate order to the money-lender concerned.

Appeal.—This section prescribes remedies open to a money-lender whose license has been cancelled by the Collector under section 6. He may appeal to the Commissioner within 30 days, to be counted from the date on which the order of the Collector is made. The period which may have been spent in getting a copy of such an order is to be excluded. A reference to the words "within 30 days of the order appealed against" shows that even though the order may have been passed in the absence of the money-lender and had in consequence thereof been communicated to him under sub-section (2), limitation must be counted from the date of the order. This interpretation is supported by the language used in sub-section (5) of this section, under which the period of 30 days for review by the Commissioner of his own order is to be counted from the date when the order is communicated to the money-lender concerned. An order may under sub-clause (2) be not communicated to the money-lender concerned till after the limitation for appeal has expired, thus depriving him of his right of appeal which would naturally be very harsh. It should have been stated clearly that in the case of orders communicated under sub-section (2) limitation is to run from the date on which the money-lender is served with the court's order.

Commissioner's certificate.—Sub-section (3) lays down that even though a Commissioner may not be inclined to interfere with the order of the Collector cancelling a license, he may, in fit cases, protect the money-lender concerned against the consequences that would ordinarily flow from such an order, by issuing a certificate, enabling him to file suits or applications for execution for the recovery of loans and decrees respectively to be specified in the certificate. This provision seems to have been necessitated by the desire of the legislature not to hit any money-lender unnecessarily hard. A money-lender may, on account of some act of omission or commission, have attracted the provisions of section 6 of the Act, but the result of an order passed under that section may in some cases be out of proportion to the gravity of the money-lender's guilt. Furthermore the Commissioner may also find it not possible to interfere with the order of the Collector on merits. But he may still think that the cancellation of the license would cause such loss to the money-lender as would not be commensurate with his guilt. He can under these circumstances issue a certificate enabling the money-lender concerned to recover loans or realise decrees specified in the certificate.

Sub-section (iv) allows a money-lender whose license has been cancelled to apply to the Commissioner within 30 days of the Collector's order for the grant of a certificate as stated above. But when he has preferred an appeal against the order of the Collector he cannot make any application under this sub-section, though the Commissioner's power to grant a certificate 'suo motu' would stand unaffected.

Caution.—Since the grant of a certificate under this section pre-supposes the existence of circumstances favourable to the money-lender, it follows that before issuing the certoficate the Commissioner should make an enquiry into those circumstances, and with this object it would be necessary for him to allow the debtor concerned an opportunity of opposing the grant of the certificate. The form in which a certificate is to be issued is set out in the rules given in Appendix.

Review by the Commissioner.—Just as the Collector has been given the power of review, the Commissioner has been allowed to review his own order 'suo-motu', or on the application of any interested party. But the order of review must be passed within 30 days, to be counted from the time the order sought to be reviewed is communicated to the money-lender concerned. This means that the Commissioner cannot pass any order after 30 days even though the proceedings for review may have been started within this period. (See also, the commentary under section 7 under the heading "Review").

Interested party.—This means that the money-lender or any of his debtors who is adversely affected by the Commissioner's order may move for a review of the same. Since section 7 (1) of the Act authorizes any person interested in the cancellation of a money-lender's license to move the Collector, it follows that such a person though having no direct interest in the matter may move the Commissioner for review. Any member of the public, not necessarily the debor of a money-lender, may be interested in bringing an unscrupulous money-lender to book, and this interest would be enough to arm him with the necessary qualifications of an "interested party."

Language defective.—The plain meaning of sub-section (5) is that 30 days period is to be counted from the time the appellate order is communicated to the money-lender concerned. This means that no matter whether the order is communicated to any other party to the proceedings before the Commissioner or not, the application for review must be made within 30 days of the communication of the order to the money-lender concerned. Surely, parties other than the money-lender concerned should have been allowed 30 days from the date of the communication of the order to them. This requires the attention of the legislature.

Lacuna in the law.—This section, as the words "against the order of the Collector under section 6 cancelling a license" show, is restricted to cases involving the cancellation of licenses. But where the Collector refuses to renew a license this section would not apply, because cancelling a license and refusing to renew a license cannot mean one and the same thing. The former contemplates the subsistance of a valid license, while the latter denotes a license which has expired. Surely both cases should have been treated on par. The help of the explanation to section 5 cannot be evoked to bridge over this difficutly, because the provision made in that explanation ensures for a limited purpose only, namely, the licensee's right to file and prosecute cases in courts. Without stretching the law as it stands no right of appeal exists against an order refusing to renew a license.

Exemption.

12. The Provincial Government may, by notification, exempt any person or class of persons from the operation of this Act or from any of the provisions thereof.

The Provincial Government has been given the power of exempting any person or class of persons from the operation of or any of the provisions of this Act. No exemptions have so far been allowed.

13. (1) Subject to previous publication the Provincial Government may make rules, for carrying into effect the provisions of this Act. Rule-making power.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may specify.

(a) the place where a money-lender shall apply for registration for obtaining a license, the district or districts in which a money-lender who operates in more than one district shall be required to register, and the area in which a license shall be valid;

(b) the scale of fees payable for the issue or renewal of a license of a money-lender;

(c) the form of a license; and the conditions under which a license shall be issued; and

(d) the particulars which a money-lender shall supply at the time of being registered.

Evidently the Act could not deal with all matters of detail in connection with its objects. Different sections of this Act lay down the main provisions of the law, while the working out of the details has been left to rules to be framed by the Provincial Government. The rules framed under this authority are given in the Appendix A.

For carrying into effect the provisions of this Act.— The question may arise as to whether the rule-making power carries with it the power to prescribe penalties or to suggest some procedure not directly hinted at in the Act. Although under several Acts in the past rule-making power, granted in more or less identical terms, has been utilized for imposing penalties or prescribing procedure not specifically hinted at in the Act, yet the weight of authority seems to be against the exercise of any such power in the matter of the framing of rules. It has been suggested that the rule-making power cannot be relied upon for removing defects in the law or for prescribing penalties ad procedure, and that rules must be restricted to more or less domestic purposes for enforcing the provisions of the Act.

Corrigenda

Rules under Punjab Registration of Moneylenders' Act, 1938 have been finally published and alterations, as compared with the draft rules, are pointed out below.

In rule 1 (2) on Page 29, for the word 'be' substitute 'is'.

In rule 3, the words 'or for the grant or renewal of a license' be deleted.

In rule 4, add 'for registration,' after an application.

In rule 5, delete words 'shall be accompanied...... or sub-treasury, and.'

In rule 6, substitute for 'the moneylender's name to be registered' the "the applicant to deposit in the Government treasury a sum representing the fee prescribed in section 4 of the Act."

add also

"(2) After the applicant has deposited the fee in the Government treasury and produced the receipt therefor the collector shall direct the moneylenders' name to be registered."

For sub rule 9 (2), insert "(2) The provisions of rule (3) above in regard to varification and to the payment of court-fee shall be equally applicable to application for the grant or renewal of license under the preceding sub-rule" and renumber sub-rule (2) as sub-rule (3).

In rule 13, insert 'and has produced the treasury receipt therefor' after 'Government treasury.'

Add a proviso to rule 14, "Provided that the Collector may for sufficient reasons condone a delay not exceeding one month on payment of a penalty of two rupees.

Add sub-rule (2) to rule 19 as below.

"(2) Intimation of all orders referred to in the preceding sub-rule shall also be given by the authority making the order to the District Judge of every district in which the license is operative with the request that the substance of the order be communicated to all the subordinate civil courts."

In rule 20 (4) substitute 'procedure' for proceedings.'

Insert a new rule 21 and renumber Rules 21, 22 as 22, 23.

"21. Every application under sub-section (2) of section 7 or sub-section (4) or sub-section (5) of section 11 of the Act shall bear a court-fee stamp as laid down in Articles 1 (b) or 1 (c), as the case may be, in Schedule II of the Court Fees Act, 1870."

Insert after 'section 6' in rule 22 "or sub-section (2) of section 7."

Appendix

The Provincial Government have framed the following rules and although final publication has yet to take place, they are being published as there is no likelihood of any material alteration.

No. 654-J.39|7630—The following draft of rules which the Governor of the Punjab proposes to make under section 13 of the Punjab Registration of Money-lenders Act, 1938, is published for the information of persons likely to be affected thereby. The draft will be taken into consideration on or after the 15th April, 1939, together with any objections or suggestions which may be received with respect to it before that date:—

DRAFT RULES

1. (1) These rules may be cited as the Punjab Registration of Money-lenders Rules, 1939.

(2) In these rules, unless there be anything repugnant in the context, "Act" means the Punjab Registration of Money-lenders Act, 1938.

2. Applications for registration under section 4 of the Act shall be made, in the annexed form A, to the Collector of the district where the applicant has his residence, or, if he has no residence in the Punjab, where he has his principal place of business in the province.

3. Applications for registration, or for the grant or renewal of a licence, shall bear the requisite court fee prescribed under Article I (b) of Schedule II of the Court Fees Act, 1870, and shall be signed and verified by the applicant in the manner provided in Order VI Rules 14 and 15 of the First Schedule to the Code of Civil Procedure for plaints in suits.

4. An application on behalf of a firm shall be signed by all the persons constituting the firm or their representatives duly empowered, or in the case of a minor by the person representing him in the business: Provided that no application shall be entertained which does not bear the personal signature of at least one member of the applicant firm.

5. Every application for registration shall be accompanied by a receipt showing that the fee prescribed under section 4 of the Act has been deposited in the Government treasury or sub-treasury, and shall be presented by the applicant personally or through a duly authorised agent: Provided that where there are more applicants than one any one of them may present it.

6. The Collector shall, if the application for registration is in order (or if it is not in order after getting the necessary corrections made therein), and if he finds after making such enquiries as he considers necessary that the grant of the application will not offend against any order made under section 6 of the Act, direct the money-lender's name to be registered.

7. On registration of the applicant's name under the preceding rule the Collector shall issue a certificate to him in form B annexed.

8. No licence shall be granted under section 5 unless the applicant has been registered under section 4 of the Act.

9. (1) Applications for the grant or renewal of licenses shall be made to the Collector mentioned in rule 2 above in form C annexed.

(2) In the case of a firm any adult member, or the guardian of a minor member, may make application for a licence on behalf of the firm.

10. Every application for the issue or renewal of a licence shall be accompanied by an affidavit stating whether any court has since the making of the last application (if any) made any order in relation to the applicant in regard to any of the matters mentioned in section 6 of the Act.

11. After making such enquiries as he thinks necessary, the Collector shall, if he finds that there is nothing to debar the grant or renewal of the licence, direct the applicant to deposit in the Government treasury a sum representing the fee prescibed in rule 12.

12. The fees payable for the grant or renewal of licences shall be as under:—

For the district in which the money-lender is first registered.	Five rupees a year.
For every other district to which the validity of the licence may be extended.	Two rupees a year, subject to a maximum of fifteen rupees a year, including the initial fee) for the whole province.

13. After the applicant has deposited the prescribed fee in the Government treasury the Collector shall issue a licence to the applicant in form D annexed.

14. Application for the renewal of a licence shall be made not less than one month before its expiry.

15. A licence may be issued or renewed for a period not exceeding three years at one time, on pre-payment by the applicant of the full fees for the period.

16. Licences shall ordinarily be made valid for the district of issue only, but it shall be open to the Collector, after making such inquiries as he considers necessary from the Collector of any other district, to extend the validity of a licence so as to include the area of that district.

17. Notices issued under the proviso to sub-section (1) of section 7 of the Act shall be in form E annexed, and shall be served in accordance with the procedure laid down in Order V of the First Schedule to the Code of Civil Procedure for the service of a summons.

18. As soon as any order is made by the Collector for the cancellation of a licence the money-lender shall surren-

der the same, and the Collector shall endorse thereon the word "Cancelled" in red ink under his signature, with the date of so doing.

19. The cancellation of a licence by a Collector under section 6 of the Act shall be published in the "Punjab Government Gazette," and any order made in appeal or review for the restoration of a license shall be published in the same way.

20. (1) Every appeal against an order of a Collector under section 6 of the Act shall be preferred in the form of a memorandum stamped as required under Article I (c) in Schedule II to the Court Fees Act, 1870, and shall be accompanied by an attested copy of the order appealed against.

(2) As soon as an appeal is filed the Commissioner shall cause notice of the same to be given to the Collector against whose order it is directed, and shall invite him to make such comments as he may consider necessary in connection with the grounds of appeal.

(3) Notice of the appeal shall also be served on any other person who may have moved the Collector under sub-section (1) of section 7 of the Act or who may have otherwise appeared as a party before him.

(4) In all other respects the proceedings in hearing appeals under the Act shall be governed by the provisions of the Punjab Tenancy Act, 1887, and the rules made thereunder for the hearing of appeals against the orders of revenue officers, so far as they can be made applicable.

21. If an original order under section 6 or an appellate order under section 11 of the Act is announced in the absence of the money-lender, it shall be communicated to him by registered post (acknowledgment due).

22. When a certificate is granted by a Commissioner to a moneylender under sub-section (3) of section 11, it shall be in form F annexed to these rules.

A.

APPLICATION FOR REGISTRATION OF A MONEY-LENDER.
(Section 4 of the Punjab Registration of Money-lenders Act, 1938.)

In the office of the Collector of ____________________

Tahsil ______ (Here give the name of the tehsil in which the town or village where the money-lender resides or has his principal place of business, is situate.)

Town / Village ______ (Here give the name of the town or the village where the money-lender resides or has his principal place of business.)

(a) Name of the applicant, with parentage, caste, residence and address in full.	
(b) In cases where the applicant is a firm, the names of all the persons constituting it, with parentage, caste, residence and address in full of each.	
(c) In cases where the applicant is a firm, whether it is a Hindu joint family firm or otherwise constituted, and whether it has been registered under the *Indian Partnership Act*, 1932.	
(d) Name or style under which the applicant carries on his money-lending business.	
(e) Names of the districts within which the applicant has his business on the date of the application.	
(f) Names of the districts to which the applicant wishes in future to conduct his business.	
(g) Location of the applicant's principal place of business, with full particulars thereof and the name, parentage, caste and address of the person in charge.	
(h) Has the applicant any office at any other station ? If so give complete particulars; with the name, parentage, caste and address of the person in charge of each.	
(i) What is the extent of the total business of the applicant on the date of the application ?	
(j) For how long has the applicant carried on the business of money-lending ?	
(k) Whether any application for registration had previously been made by the applicant; or where the applicant is a firm, by any one or more of its members singly or jointly *inter se* or with any other person under any name If so, when, where and with what result ?	
(l) (i) In case the applicant had previously been registered and licensed, give full particulars of the licence.	
(ii) State whether any licence granted previously to the applicant (or where the applicant is a firm, to any one or more of its members singly or jointly *inter se* or with any other person) has been cancelled. If so, full particulars should be given, including the date, name of the officer and the terms of the order cancelling the licence.	
(m) Whether money-lending is the sole business of the applicant or whether he is engaged in any other business, profession or calling.	

Certified that all the facts set out in the application are true to my knowledge except paragraphs———which are true to my belief based on information supplied by____________________

Signature of the person making the verification with date and place of so doing.

(Signature of the applicant with date.)

B.

MONEY-LENDERS' REGISTRATION CERTIFICATE.

(Section 4 of the Punjab Registration of Money-lenders Act, 1938.)

District ______________.

Tahsil ______________.

Register No. ______________.

Certified that ______________, son/daughter/wife of ______________.

____

the firm ______________

caste ______________, resident of ______________

______________, with $\frac{\text{his/her}}{\text{its}}$

principal place of business at ______________ has been registered as a money-lender under section 4 of the Punjab Registration of Money-lenders Act, 1938, on the ______________ day of ______________, 19 .

*The registered firm is constituted by—

1. ______________, son of ______________,
   caste ______________, resident of ______________.
2. ______________, son of ______________,
   caste ______________, resident of ______________.
3. ______________, son of ______________,
   caste ______________, resident of ______________.
4. ______________, son of ______________,
   caste ______________, resident of ______________.
5. ______________, son of ______________,
   caste ______________, resident of ______________.
6. ______________, son of ______________.
   caste ______________, resident of ______________.

(Seal of the Collector.)

Signed ______________.

Collector,

District ______________.

---

*Where the money-lender is a single individual cross out this portion.

C.

APPLICATION FOR THE $\dfrac{\text{GRANT}}{\text{RENEWAL}}$ OF A MONEY-LENDER'S LICENCE.

(Section 5 of the Punjab Registration of Money-lenders Act, 1938.)

IN THE OFFICE OF THE COLLECTOR, ____ ___ ____________.

TAHSIL ________________.

$\dfrac{\text{TOWN}}{\text{VILLAGE}}$ ________________, $\dfrac{\text{POST OFFICE}}{\text{POLICE STATION}}$ ________________.

The applicant submits as follows :—

(1) That he is a registered money-lender in the district, the necessary particulars being,

Tahsil________________.

$\dfrac{\text{Town}}{\text{Village}}$ ________________; $\dfrac{\text{Post Office}}{\text{Police Station}}$ ________________.

Register No.____________.

(2) That since the $\dfrac{\text{commencement of the Act}}{\text{application for the grant of}}$ previous licence, dated ________________no court has given any finding against the applicant with regard to acts or omissions of the kind referred to in section 6 of the act, with the following exceptions :—

(1) ________________________________.

(2) ________________________________.

(3) That on the date of this application his total business does not exceed Rs. ______________as principal.

(4) That he prays that $\dfrac{\text{he may be granted a licence}}{\text{his licence which expires on ______________}}$

$\dfrac{\text{______________}}{\text{may be renewed}}$ $\dfrac{\text{for the calendar year}}{\text{for three calendar years ______}}$ to________

on the prescribed terms in regard to fee and otherwise.

Verified that all the facts set out in the application are true to my knowledge except paragraphs ____________which are true to my belief based on the information supplied by________________

(Signature of the person making the verification, with date and place ______________.)

Signed________________.

Dated ________________.

D.

MONEY-LENDER'S LICENCE.

(Section 5 of the Punjab Registration of Money-lenders Act, 1938.)

DISTRICT ____________________.

TAHSIL ____________________.

TOWN / VILLAGE ________________, POST OFFICE / POLICE STATION ____________

LICENCE No. ____________.

This licence has been granted to ________________ to practice as a money-lender on the following terms :—

(*a*) The licence will be valid up to ________________.

(*b*) It shall entitle the licensee to carry on the business of money-lending within the area of ________________.

(*c*) The licensee shall report to the Collector issuing this licence any finding which any court may during its currency give against him for acts or omissions of the kind described in section 6 of the Act.

(*d*) The licensee shall surrender the licence when ordered to do so by the Collector granting it or by any Court.

Signed ________________.

Collector.

Dated ________________

(Seal of the Collector.)

D.

RENEWALS.

This licence has on payment of proper fees been renewed as under:—

From ______________ to ______________.

____

(Signature of the Officer granting renewal).

Date ______________.

E.

NOTICE TO A MONEY-LENDER.

(Section 7 (1) of the Punjab Registration of Money-lenders Act, 1938.)

In the office of the Collector,__________________________District.

Notice under section 7 of the Punjab Registration of Money-lenders Act, 1938.

To_________________(Here give the name and full particulars of the money-lender, whether an individual or a firm, and in case of a firm, give the name and full particulars of the manager in addition).

Whereas it has come to my notice that in the $\frac{\text{case}}{\text{cases}}$ noted overleaf a finding adverse to you, calling for action under section 6 of the Punjab Registration of Money-lenders Act, 1938, has been given by the court therein mentioned you are hereby called upon to appear before me personally or through a duly authorized agent or lawyer on_____________at___________ and show cause why your licence should not be cancelled for such period as may be considered proper by me.

Further take notice that if you fail to appear at the appointed time and place, the case will be heard and disposed of in your absence.

Signed_____________________

Collector,

___________________District.

*Date*________________

(Seal of Collector's Office).

(REVERSE.)

Particulars of Case.

Name of the Court.	Names of parties.	Date of decision.	Nature of the adverse finding

F.

COMMISSIONER'S CERTIFICATE.

(Under sub-section (3) of section 11 of the Punjab Registration of Money-lenders Act, 1938.)

Certified that ____________* son of __________ caste __________ resident of ____________ Tahsil ____________ District ____________ whose appeal No. __________ of 19 . against the order of the Collector ________ dated ______________ has to-day been dismissed, has been allowed to prosecute if already filed or to file and prosecute suits for the recovery of the undermentioned loans and applications for the execution of the undermentioned decrees :—

LOANS.

1. Loan of Rs. , dated __________, raised by * __________ son of __________, of $\frac{\text{village}}{\text{town}}$ __________, Tahsil __________, district __________
2. __________
3. __________, etc.

DECREES.

1. Decree No. __________, dated __________, from the court f __________ for Rs. ______, against * __________, son of __________, of $\frac{\text{village}}{\text{town}}$ __________ tahsil __________, district __________.
2. __________;
3. __________, etc.

Signed __________

Commissioner.

__________ Division.

Dated __________.

(Seal of the Commissioner).

NOTE.—*In case of a firm give its name and cross out blanks not relevant.

REGISTER I.

PROPOSED REGISTER OF MONEY-LENDERS.

(Sections 4 and 5 of the Punjab Registration of Money-lenders' Act, 1938.)

District ________________

Tahsil ________________

REGISTRATION.							LICENCE.				CANCELLATIONS.		APPEALS AND REVIEWS.	
Serial No.	Name of village or town where the money-lender resides or has his principal place of business, with full address.	Name, parentage, caste and full address of the money-lender.*	Full particulars (address,) of the places where the money-lender has his branches.	Date of present registration.	Date and other particulars (number, place, district, etc.,) of, previous registration if any.	Signature of the Collector, with date.	No. and date of the licence granted under section 5 of the Act.	Date of each renewal, with period for which granted.	Date of expiry of the licence.	Fee paid for the licence and its renewals with date of each payment and signature of the Collector.	Date and other particulars of order cancelling the licence.	Singature of the Collector, with date.	Result of appeal or review with date and brief particulars of the order, and the name of the officer.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

*In case of a firm give the name of the firm, together with the names of all its members at the time of registration.

The
Punjab Restitution of Mortgaged Lands Act, 1938.

The Punjab Restitution of Mortgaged Lands Act, (No. IV of 1938.)

[Received the assent of H.E. the Governor of the Punjab on 1-9-1938 and was first published in the Punjab Gazette Extraordinary of the 6th September, 1938.]

An Act to provide for the restitution of lands on which a mortgage subsists, which was effected prior to 8th June. 1901.]

Whereas it is expedient to provide for the restitution of certain mortgaged lands in the manner hereinafter appearing, it is enacted as follows:— Preamble.

Object of the Act.—The object of this Act, as the preamble shows, is to restore to its owner, if necessary on payment of compensation to be assessed by the Collector, agricultural land which had been mortgaged prior to 8th June, 1901, if the mortgage subsists on the date of the petition to be made under section 4. This piece of legislation is a corollary of the law of **Damdupat** which after having partially been accepted formed the subject of legislation under section 30 of the Punjab Relief of Indebtedness Act, 1934, in the matter of unsecured loans. The law of **Damdupat** as explained at pages 57-59 of the commentary on the said Act, rules that a creditor can in no case recover from his debtor more than double the amount of the sum originally advanced by him, as loan. The Punjab Legislature while applying this rule, though in a qualified form in certain respects, to the case of unsecured loans could find no justification for allowing secured loans to be differently treated, for the simple reason, that other things being equal a secured creditor, from tthe very nature of things, enjoys certain advantages, of far reaching consequences, over an unsecured one.

Every now and then courts have been called upon to decide cases which in view of the existing law, which could not be ignored, led to appalling results. It would be unnecessary to give the details of many such cases. But one case which is very recent, having been decided by the High Court, Lahore on the 7th February, 1939, i.e., after the present law had been passed by the legislature may with advantage be cited as justification for the provisions made in this Act.

On 26th October, 1883, one Lal Khan of village Tamman (District Attock) mortgaged 7488 kanals and 9 marlas of land (out of which, as found by the court, an area of 1200 kanals was under cultivation, the annual land revenue payable for the land as stated by the plaintiff himself being Rs. 294|-) with one Bhagwan Dass for Rs. 910|-, out of which while a sum of Rs. 283|- only was received by him in cash the balance of Rs. 627|- (including a good deal of interest) represented a previous liability. Since the mortgage was with possession, it was stipulated that a sum of Rs. 310|- only would carry interest at the rate of Rs. 1|9|- per cent per month, the interest on the rest having been treated as a set-off against the usufruct of the land. On the application, under the Punjab Redemption of mortgages Act, 1913, of the successor-in-interest of the mortgagor, (the original mortgagor having died) the Collector ordered redemption on payment of Rs. 910|- holding that so far as the interest was concerned the mortgagee had sufficiently recouped himself by the usufruct of the land. The successors-in-interest of the mortgagee (the original mortgagee having also died) felt dissatisfied by this order and filed a suit in the civil court for a declaration that the land could not be redeemed without the payment of the principal sum (Rs. 910|-) and interest on Rs. 310|- at the rate of 9 per cent per annum from the date of the mortgage up-to-date. It may be noted that the plaintiffs had under a mistaken belief that section 6 of the Punjab Relief of Indebtedness Act, 1934, was applicable to the facts of their claim charged interest at the rate of 9 per cent per annum instead of 18¾ per cent as stipulated in the mortgage deed. Really speaking section 6 of the Punjab Relief of Indebtedness Act could not apply to this case, because the mortgage having been effected long before the Usurious Loans Act, 1918, was enforced, the plaintiffs could have claimed full interest at the stipulated rate which would have amounted to Rs. 80,000|- or thereabout. The trial court found that the plaintiffs' claim was just—having already been underrated, as stated above, and gave a declaration as sought for saying that the land should not be redeemed so long as Rs. 910|- principal and interest on Rs. 310|- at the rate charged by the plaintiffs which amounted to Rs. 32,180|- was not paid. The defendant mortgagor appealed to the High Court. In view of the clear stipulation contained in the mortgage deed and the law applicable to the case, the appeal had to fail. The Hon'ble Judges (Sir James Addison and Mr. Justice Ram Lal) delivered a brief judgment in the following terms:—

"The suit has been correctly decided, and the decision illustrates the necessity of Legislation to end transaction of this unconscionable type. We, therefore dismiss this appeal but direct that parties will bear their own costs throughout."[2]

This one case would show that there was ample justification for the legislature to place this law on the statute book.

Scope of the Act.—The object of the present Act, therefore, is to allow restitution of mortgaged lands which have benefited their mortgagees to the extent permissible under the law of **Damdupat,** or at least approaching it. Before the provisions of this Act can be applied to any case the following three conditions must, however, be fulfilled :—

(i) the mortgage must have been effected before the 8th June, 1901.

(ii) the mortgage must be subsisting at the time when the petition under section 4 of the Act is made; and

(iii) the property effected by the mortgage must be agricultural land.

(1) (Ghulam Shah versus Gurdit Singh and another R.F.A. 364 of 1938 decided on 7.2.1939).

If any one of these three conditions is not fulfilled in any particular case, this Act would not apply.

Agricultural land.—Cases may arise where a plot of land though agricultural at the time of the creation of the mortgage has since ceased to be so. The Act will apply to such land, because it is the nature at the time of the creation of the mortgage that has primarily to be looked to. Such being the case any subsequent change in the nature of such land would not affect so far as the applicability of the provisions of this Act is concerned.

Izadi rehn.—The question arises whether an **Izadî-rehn** (additional charge) created on an existing mortgage is to be treated as a fresh mortgage, or a mere appendage to the original one, and how is it to be affected by this Act? Under the law relating to mortgages an additional charge, as the very term connotes, means some additional loan on an existing security. The language of section 7, however, restricts the application of the Act to the sum "originally advanced under the mortgage" and since an additional charge is not a mortgage it cannot be covered by this phrase. For detailed discussion see the commentary under section 7 under the heading "amount of principal sum originally advanced under the mortgage."

Short title, extent and commencement.

1. (1) This Act shall be called the Punjab Restitution of Mortgaged Lands Act, 1938.

(2) It shall apply to the Punjab.

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

Application of Act to subsisting mortgages effected prior to 8th June 1901.

2. Notwithstanding anything contained in any enactment for the time being in force, this Act shall apply to any subsisting mortgages of land, which were effected prior to 8th June, 1901.

Explanation.—A mortgage shall be deemed to subsist notwithstanding a decree or order for its redemption having been passed provided redemption

(2) The Act came into force on the 15th May 1939, (vide P.G. Notification 2653-R, dated the 12th April, 1939.)

has not taken place before the commencement of this Act.

Notwithstanding anything contained in any other enactment.—These words have been used evidently to get over the conflict that would otherwise have arisen between the provisions of this Act and those contained in any other law, e.g., the Transfer of Property Act (Sections 67 and 68) and the Code of Civil Procedure (Order 34 Rules 2 to 5). Under both the above mentioned laws a mortgagee has the right of getting a mortgage foreclosed or of bringing the mortgaged property to sale for the recovery of the mortgage debt unless this remedy is specifically barred under any provision of law, e.g. section 16 of the Punjab Alienation of Land Act. The present section, however, overrides the provisions made in the Transfer of Property Act and the Code of Civil Procedure.

Conflict of laws.—It may perhaps be argued that any provincial law which comes into conflict with the central law —The Transfer of Property Act and the Code of Civil Procedure, both having admittedly been placed on the statute book through the medium of the Central Assembly—must be held to be void and ineffectual. But this argument cannot prevail, because under the Government of India Act, 1935, both "land" and "money-lending" are included in List No. 2 —Provincial Legislative List—Items 21 and 27 of which read as under:—

> "21—Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove."

> "27—Trade and commerce within the Province; markets and fairs; money-lending and money-lenders."

Such being the case it was within the competence of the Punjab Legislative Assembly to enact a law of the type covered by this Act, and it cannot be attacked on the plea of its being ultravires the legislature.

Subsisting mortgage.—The Act does not define a subsisting mortgage, and as such it will be for the Collectors who have been invested with several functions under this law to decide in each individual case whether the mortgage set up by the mortgagor subsists or not.

A mortgage subsists as long as the equity of redemption is in tact. The latter may be extinguished in two ways, namely by

(1) the act of the parties, and

(2) the operation of law.

(1) The phrase "act of the parties" would include,

(a) Redemption of the mortgage by the mortgagor under section 60 of the Transfer of Property Act, and Order XXXIV Rules 4 and 5 of the Code of Civil Procedure.

(b) Foreclosure at the instance of the mortgagor under section 67 of the Transfer of Property Act and Order XXXIV Rules 2 and 3 of the *Code of Civil Procedure.*

(c) Exercise of the right of sale by the mortgagor under sections 67 and 69 of the Transfer of Property Act. Section 69 does not apply to the Punjab.

(d) Merger of mortgagee rights into the right of the equity of redemption, through assignment, release or sale.

(2) The following would fall under the phrase "operation of law":—

(a) Limitation, as laid down under Article 148 of the Indian Limitation Act.

(b) Adverse possession gainst the mortgagor.

(c) Attachment and sale of the equity of redemption.

If a mortgage is not hit by any of these it subsists. But if it is hit by any one of these it will be taken to have been extinguished.

While section 58 of the Transfer of Property Act defines a mortgage, sections 60 and 67 speak of the rights of redemption and foreclosure respectively as under:—

Section 58.—"(a) A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money and the instrument (if any) by which the transfer is effected is called the mortgage-deed.

(b) *Where, without delivering possession of the mortgaged property*, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) Where the mortgagor ostensibly sells the mortgaged property,

on condition that on default of payment of the 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.

(d) Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(f) Where a person in any of the following towns namely, the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab, and any other town which the Governor-General-in-Council may, by notification in the Gazette of India, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufrutuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

Section 60.—"At any time after the principal money has become due, the mortgagor has a right, on payment of or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortagagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

Section 67.—"In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed:—

(a) to authorize any mortgagee, other than a mortgagee by conditional sale or a mortgagor under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or a usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property to institute a suit for foreclosure; or

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property unless, the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage."

This means that a mortgagee can sue to get a mortgage foreclosed at any time after the mortgage-money has become payable to him if no decree for redemption has been passed, or the mortgage-money has not been deposited in court for him.

Limitation.—The period of redempion of a mortgage as fixed by Article 148 of the Indian Limitation Act is 60 years, to be counted from the date when the right to redeem accrues. But a mortgagor can keep his right alive for a longer period by entering into a stipulation that the mortgage debt would become payable at a distant date, in which case the sixty years' period would be counted from the date so fixed. Then again the period of limitation prescribed under Article 148 may be enlarged to any extent by the mortgagee's making acknowledgments under section 19 of the Indian Limitation Act regarding the existence of the mortgage.

Section 19 of the Indian Limitation Act reads:—

"19. (1) Where before the expiration of the period prescribed for a suit or application in respect of any property of right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature or the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yetcome, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right."

A reference to the above language shows that in order to be effective an acknowledgment,

(i) must be made before the period of limitation has run out;

(ii) must be in writing; and

(iii) must bear the signature, which includes the thumb impression, of the mortgagee.

If all these conditions are fulfilled, the acknowledgment would be valid, and would give a fresh lease of life to the mortgage in question. If this be not so, the acknowledgment would be ineffectual.

Entries in revenue records.—The question, however, arises whether an entry in revenue records which carries with it a presumption of correctness can by itself enlarge the period allowed under Article 148, or help in determining the subsistence or otherwise of any mortgage. Such entries do not ordinarily amount to acknowledgments as discussed above. But if in any case an entry does fulfil these conditions there would be nothing to militate against its validity as an acknowledgment. During certain settlement operations in the Punjab enquiries into the subsistence or otherwise of mortgages were made and statements (form H under rule 86 of the rules framed under section 46 of the Land Revenue Act) were prepared in this connection. These statements if signed by the mortgagees concerned would be taken to have complied with the requirements of section 19, and would consequently be available for extending the period of limitation under the Indian Limitation Act. Section 20 of the Indian Limitation Act has reference to debts and legacies, and as such it does not deal with cases covered by Article 148. Collectors should in deciding the question of the subsistence or otherwise of a mortgage, pay special attention to the requirements of section 19 of the Indian Limitation Act, because a determination of this question under the Act is very essential, since under section 28 of the Indian Limitation Act the expiry of the period prescribed under Article 148 extinguishes not merely the remedy but even the right with regard to possession of any immovable property.

Mortgage effected prior to 8th June, 1901.—As already stated the provisions of this Act do not apply to mortgages effected after the 8th June, 1901. The question arises as to why this particular date has been suggested for the purposes of this Act. It appears that the legislature selected this date so that in each case the mortgagee should have been in possession for at least 37 years, because this period, it has been argued, would normally allow the mortgagee to reap benefits, the money value of which would double the principal sum originally advanced as loan.

Explanation.—Although the term "subsisting mortgage" has not been specifically defined, the explanation seeks to make it clear that the mere passing of a redemption order by a competent authority would not affect the subsistence of any mortgage, if the payment of the decretal debt has not been made prior to the enforcement of this Act. This means that even where a competent court has passed a decree ordering the redemption of any mortgage on payment of any sum of money or otherwise, the mortgage will be considered to be subsisting if prior to the enforcement of this Act the actual redemption after payment of the mortgage debt has not taken place. Any redemption allowed after the Act comes into force under the circumstances contemplated by this explanation would not be valid and would not take the case outside the scope of this Act.

Any subsisting mortgages of land.—The use of the word "any" seems to be inappropriate. It should have been replaced by the word "all" because the phrase "any subsisting mortgages of land" besides being grammatically unsound conveys that the legislature wanted to qualify the applicability of the Act by imposing conditions not patent so far as the language goes. However, the word "any" should be construed as being synonymous with "all".

3. (1) The expression "land" means land which is *not occupied as the site of any building in a town or* village and is occupied or let for agricultural purposes or *for purposes subservient to agriculture* or for pasture, and includes—

(a) the sites of buildings and other structures on such land;

(b) a share in the profits of an estate or holding;

(c) any dues or any fixed percentage of the land revenue payable by an inferior landowner to a superior landowner;

(d) a right to receive rent;

(e) any right to water enjoyed by the owner or occupier of land as such;

(f) any right of occupancy; and

(g) all trees standing on such land.

(2) The expression "Collector" means the Collector of the district in which the mortgaged property or any part thereof is situated, and shall include an Assistant Collector of the 1st grade specially empowered by the provincial Government to perform the duties of the Collector for the purposes of this Act.

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

(4) "Mortgagor" or "mortgagee" respectively shall include the assignee and the representative-in-interest of such "mortgagor" or "mortgagee" as the case may be.

Land.—The definition of the term "land" has been bodily taken from the Punjab Alienation of Land Act. It is more comprehensive than the definition given in section 4 (1) of the Punjab Tenancy Act, inasmuch as, though up to the end of clause (a) it is common to both, clauses (b) to (g) do not find place in the latter Act. The rationale of the definition is, whether the land in question is agricultural or not. If it is agricultural, it would be covered by this definition, no matter whether it is situated in a town or village, or is surrounded by fields or residential houses. But a plot of land not used for agricultural purposes would *not* be *covered by this definition* even though it may be assessed to land-revenue,[3] because the definition expressly excludes land "occupied as a site of any building in a town or a village" from its *purview*. Agricultural land when included in an 'abadi', by being actually built upon, though ceasing to be agricultural, may continue to be assessed to land-revenue but this fact would not enable it to retain its agricultural nature.

Occupied or let for agricultural purposes.—This shows *that if the main purposes for which any plot is being used be* agricultural, it would be treated as land within this definition, and the mere fact that in the ordinary course of things, or on account of scarcity or excess of moisture it has been allowed *to lie uncultivated for some time, would not take it outside* the scope of this definition.

Purposes subservient to agriculture.—This means that land though not reserved for purely agricultural purposes may still answer the definition given in this section if it is being used for purposes subservient to agriculture. As such, land on which 'Khurlies', *cow-sheds*, '*bhusa-stacks*', *etc.*, are set up would be covered by this term,[4] because all these uses are subservient to agriculture.

The following have been *held to be* land within this definitions as given in the Alienation of land Act :—

(i) Rights of a usufructuary mortgagee of land [6 Punjab Record 1903 (Revenue), and (111 P.R. 1890).

(ii) Land occupied as a fruit garden unless such land be the court-yard or the compound of a house. *11 P.R. 1890)*.

(iii) Land occupied by a well sunk for irrigating agricultural land. *(40 P.R. 1893)*.

3. A.I.R. 1929 Lahore 164.

4. 12 P.R. 1907.

The following have been held not to be land:—

(i) Land occupied by a water-mill. (77 P.R. 1904).

(ii) Land reserved as a grave-yard. (4 P.R. 1893; 20 P.R. 1892).

(iii) Land occupied by a tank used for watering cattle and excavating earth for making bricks, etc. (48 P.R. 1898).

Clause (a).—Agriculturists have generally to set up sheds for tethering cattle, and for resting themselves during off hours, and to erect 'bunds' for the protection of their lands against floods, etc., as without these it is difficult to efficiently carry on the vocation of agriculture. It was consequently necessary to retain this clause, because, but for the provision made herein the words "not occupied as a site of any building in a town or village," as we find these in the first paragraph of the definition, would have created difficulties in the case of such sheds, 'bunds', etc. required for agricultural purposes. Now, however, the sites of buildings and structures built on agricultural land intended for purposes of agriculture would be covered by this definition.

Clause (b).—This clause refers to incorporeal rights permanently owned by the proprietors of land, and not any part of the crops harvested from it.[5]

Clause (c).—This means that whatever payment in cash or kind a superior land owner gets from an inferior land owner is to be treated as land whether its quantom is fixed in terms of land revenue or otherwise.[6]

Clause (d).—The words " a right to receive rent" seem *to convey that the rent must not have fallen due. It must* be something which is to fall due in future.[7]

5. 14 P.R. 1905; 5 Lahore 385, 54 I.C. 262, and I.L.R. 1 Lahore 567.

6. 61 P.R. 1876.

7. 13 P.R. 1915.

Clause (e).—This relates to the right which the owner or occupier of agricultural land possesses in his capacity as such owner or occupier to receive water for that land.[8]

Sub-Section (2) Collector.—By making a provision under which any Assistant Collector of the first grade may be specially empowered by the Provincial Government to *perform the duties of the Collector under this Act*, the legislature has enabled the Provincial Government, in fit cases, to relieve Collectors of the additional burden that the working of this Act could have imposed on them.

(3), **Rules prescribed.**—The rules prescribed under this Act are given in Appendix.

(4) **Mortgagor or mortgagee.**—These include the assignees and the representatives-in-interest of the mortgagors and mortgagees. It was necessary to include assignees and representatives-in-interest of mortgagors and mortgagees because in the generality of cases the original mortgagors and mortgagees must long have died, and the rights available to them can now be enforced only by persons who would in the eye of law be treated as their *assignees or representatives-in-interest. An assignee* is a person in whose favour certain rights have been transferred by the person owning them, while the term "representative-in-interest" connotes a person who by operation of law or otherwise has stepped into the shoes of the man whose representative he claims to be. In each case it will have to be decided as a matter of fact whether any person is or is not the representative-in-interest of the mortgagor or the mortgagee. It is not necessary that the representative-in-interest should be one individual, as the term would include a group of persons as well. Section 91 of the Transfer of Property Act gives a list of the persons who, besides the mortgagor, can redeem a mortgage. It says

"(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any

8. 11 P.R. 1898.

interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

But all these persons cannot claim to be representatives-in-interest of a mortgagor under the present section.

Petition for restitution.

4. A mortgagor to whose land the provisions of this Act apply, may at any time present a petition to the Collector praying for restitution of possession of the land mortgaged. The petition shall be duly verified in the manner prescribed for such petitions.

The section contemplates an application by the mortgagor wishing to take advantage of the provisions of this Act, and so long as an application is not made by him the machinery of law is not to be put into motion. Evidently the application must be made at a time when the mortgage sought to be effected is still subsisting. An application made after the lapse of limitation—60 years under Article 148 of the Indian Limitation Act—would not be entertainable unless the mortgage has been kept alive by some acknowledgment as discussed under the term "subsisting mortgage" under section 2 above. The mere enactment of this law cannot enure for the benefit of any mortgagor to extend the period of limitation with regard to a mortgage which though subsisting at the time of the enforcement of the Act is barred by limitation when the application under section 4 is made, because it is the date of the presentation of the application for restitution which is to be the deciding factor and not the date of the enforcement of the Act.

Who may make a petition.—*If there are more co-mortgagors than one, any one or more of them may make the* petition as contemplated by this section. But the petition must relate to the entire area covered by the mortgage, and the petitioning mortgagor or mortgagors cannot confine it to his or their share in the land only. Just as under section 60 of the Transfer of Property Act there can be no partial redemption, except in cases where the mortgagee has himself been responsible for the splitting up of the mortgage e.g., by purchasing a portion of the equity of redemption himself, similarly there can be no partial restitution under this Act. The petitioner must be prepared to pay the amount of the compensation that may be assessed by the Collector for the entire area. He cannot claim restitution of a part of the land on payment of a proportionate share of the compensation.

Section 91 of the Transfer of Property Act allows the following to redeem a mortgage:—

"(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

The present section does not extend the right of claiming *restitution of land to all these, and when read in the light of* the definition of mortgagor given in section 3 (4), it would restrict the exercise of this right to only an assignee and representative-in-interest of the mortgagor.

The application must be made in the form prescribed by the rules vide Appendix.

Procedure for dealing with petition for restitution.

5. On receipt of such petition the Collector, after such enquiries as may be prescribed, shall record an order in writing with reasons stating whether the mortgage in question is one to which this Act applies.

After the receipt of the application under section 4 the Collector is first to find out whether the mortgage set up by the applicant is covered by the Act, and in order to do so he is empowered to hold whatever enquiries may be prescribed. Evidently, as the rules framed by the Provincial Government contemplate, the enquiry under this section should deal with the following points:—

(i) Whether the mortgage was effected before 8th June, 1901?

(ii) Whether the mortgage relates to land as defined in section 3 (1)?

(iii) Whether the mortgage subsisted at the time of the application by the mortgagor? and

(iv) Whether the person making the application was competent to set the law in motion?

In making this enquiry it would be necessary for the Collector to summon the mortgagee, and if he be not occupying the land, the person in possession thereof, and to require them and the petitioner to lead whatever evidence may be relevant to the above points, inasmuch as many facts contemplated by this enquiry may not be patent on the face of revenue records, and some evidence, oral or documentary, may be necessary to elucidate the same.

Petition when to be dismissed.

6. If the Collector finds that the mortgage is one to which this Act does not apply, he shall dismiss the petition.

If the Collector comes to the finding that the mortgage set up by the petitioner is not covered by the Act, i.e., if the mortgage does not relate to agricultural land, or was effected after 8th June, 1901, or if it did not subsist at the time of the application, or if the person making the application be not competent to do so, the petition for restitution is to be dismissed. If he Collector comes to the finding that the mortgage is covered by the Act, then he is to proceed as laid down in section 7. It may be noted that besides the bar of limitation discussed above, a mortgage may not be subsisting because of its having been already redeemed or foreclosed in accordance with law, and in that case too the application under section 4 must be dismissed.

7. (1) If the Collector finds that the mortgage is one to which this Act applies, he shall, notwithstanding anything contained in any other enactment for the time being in force, in cases where he finds that the value of the benefits enjoyed by the mortgage, while in possession, equal or exceed twice the amount of the principal sum originally advanced under the mortgage, order in writing:— Power of Collector to declare and enforce orders, in favour of mortgagor, and to grant compensation to mortgagee in certain cases.

(a) that the mortgage be extinguished, and

(b) where the mortgagee is still in possession, that the mortgagor be put into possession, of the mortgaged land as against the mortgagee and that the title deeds, if any, be restored to the mortgagor.

(2) If in cases to which this Act applies, the Collector finds that, the value of the benefits enjoyed by the mortgagee while in possession is less than twice the amount of the principal sum originally advanced and some payment is still due to the mortgagee according to the terms of the mortgage, the Collector, shall by order in writing, and not withstanding anything contained in any other enactment for the time being in force, direct that the land be restored to the mortgagor and he be put into possession subject, however, to the payment of compensation by the mortgagor to the mortgagee at rates not exceeding the following scales:—

(i) Thirty times the land revenue assessed on the land at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding thirty years but not exceeding forty years;

(ii) fifteen times the land revenue assessed on the land revenue at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding forty years but not exceeding fifty years;

(iii) five times the land revenue assessed on the land at the time when it was mortgaged if the mortgagee has been in possession for a period exceeding fifty years.

Explanation.—The Collector shall for the purposes of this section compute the period of possession from the date on which the mortgagee entered into possession, to the date of the presentation of the petition under section 4.

If the Collector finds that the mortgage is one to which the Act applies, he is to proceed to assess the money-value of the benefits received by the mortgagee, while in possession of the mortgaged area.

Notwithstanding anything contained in any other enactment.—This means that any law which goes against the provisions of this section is to be disregarded, because all special laws override all general laws. But for the acceptance and enunciation of this principle conflict was bound to arise between the provisions of this section and the law contained in sections 67 and 68 of the Transfer of Property Act. This conflict has now been obviated by the use of this clause.

Rule of Damdupat.—As already stated the genesis of the principle underlying this legislation is the rule of **damdupat** and in order to bring the incidence of this particular rule into operation the Collector has to find out whether the mortgagee, while in possession, has or has not received benefits the value of which amounts to or exceeds double the amount of the principal sum originally advanced as loan under the mortgage. If the mortgagee has already received benefits to the above mentioned extent, the land is to revert to the mortgagor without any further payment, and the Collector is to pass an order as contemplated by Sub-clauses (a) and (b) of sub-section (1) of the present section. The effect of such an order would be to extinguish the mortgage and to entitle the mortgagor to regain possession of the land against the mortgagee. The Collector is therefore to take steps to put the mortgagor in possession, and to restore to him title deeds, if any, relating to the land in question.

Amount of principal sum originally advanced under the mortgage.—The question arises whether the amount of an additional or further charge created in connection with an existing mortgage is to be treated as an addition to the principal sum advanced under the mortgage, or not.

The transfer of interest in immovable property is a necessary ingredient of a mortgage and since a further "charge" as defined *in section 100 of the* Transfer of Property Act effects no such transfer of interest. it can by no stretch of imagination be treated as a mortgage, because the legislature is supposed to have used words and phrases in the light of the *interpretations placed on them under the existing* law.[9] The present section, however, speaks of the "principal sum originally advanced under the mortgage." As such any further charge created in connection with a mortgage covered by the Act will be beyond the scope of this section. The phrase "principal sum originally advanced" seems to have been used to denote the principal sum exclusive of interest that may be due under the terms of the mortgage in contradistinction to the term "mortgage money" as used in section 58 (a) of the Transfer of Propery Act.

This means that the Collector is to confine his attention to the principal sum advanced under the mortgage and is to ignore *any further charge that may have been created* subse-

9. Sher Singh vs. Daya Ram, I.L.R. 13 Lahore 660.

quently, leaving the mortgagee to whatever remedies may be open to him under the law.

Where the Collector finds that the money-value of the benefits *received by the mortgagee as assessed* under sub-section (1) falls short of twice the amount of the principal sum originally advanced under the mortgage, and that under the terms of the mortgage some payment is still due to the mortgagee, he is to proceed to assess the amount of compensation under the three clauses of this sub-section. It is not in every case that double the amount of the principal sum originally advanced would be held to be payable to or claimable by a mortgagee. There may be cases in which under the terms of the mortgage the total amount to which the mortgagee during the period of his possession would be entitled, falls short of double the amount originally advanced, for instance, the rate of interest stipulated may be so low that the principal and interest accruing thereon when taken together do not amount to double the amount of the principal. The sum to be determined in this connection is not necessarily to be the amount which along with the money-value of the benefits already received by the mortgagee would make up twice the amount of the sum of the principal debt. The Collector is in each case to fix a sum which according to the length of the mortgage is not to exceed a certain multiple of the land-revenue as was payable for the land at the time of the creation of the mortgage. Thus if the mortgage was created more than 30 but less than 40 years before the date on which the application under section 4 is made, the compensation to be allowed to the mortgagee is not to exceed 30 times the land revenue assessed on the land at the time of the mortgage, but if the mortgage has been in existence for more than 40 but less than 50 years before the date of the application, the multiple of land revenue is to be 15; and if the mortgage has been in existence for a period exceeding 50 years, the multiple of land revenue falls to 5 only. The words "not exceeding" denote that in no case are these limits to be exceeded, although it would be permissible to allow a lesser sum. But in order to be fair to both parties such a figure, subject to these limits, should be selected as would work out results most favourable to the mortgagee.

Nothwithstanding anything contained in any other enactment.—Here again the legislature wanted to be very clear that the special provision made in this section must override all other provisions of a relevant nature under any other law applicable to the facts of any particular case, e.g., section 76 of the Transfer of Property Act.

Certain cases not covered by the section.—A strict interpretation of the language used in section 7 would exclude from its operation certain cases which are likely to come into prominence when the provisions of this Act are put into operation. Two such cases may be mentioned here:—

(i) It has already been stated under the heading "amount of principal sum originally advanced under the mortgage" that this section does not take notice of any further charge that may have been created after the mortgage and that the Collector is not to take the same into consideration while assessing compensation. This may act rather harshly so far as the mortgagee is concerned, because his remedy for enforcing payment of the amount of the further charge may have become unenforcible on account of the bar of limitation—Article 132 of the Indian Limitation Act prescribing 12 years for a suit to recover such a sum.

(ii) The other case, namely, that of a transferee of mortgagee rights may equally be hard. To illustrate this point a hypothetical case may be set out. On 1st January, 1891, A mortgaged his land for Rs. 5,000 with B. In the year 1934 the mortgagor brought a suit for redemption in which the High Court held that in view of the terms of the mortgage he was entitled to redeem the mortgage on payment of Rs. 70,000|-. A could not make this payment and B transferred his mortgagee rights in favour of C for a sum of Rs. 50,000|-, thus allowing the latter a remission of Rs. 20,000|-. When moved by an application under section 4 of the Act, the Collector assesses the benefits already received by the mortgagee to be more than double the amount of the principal sum originally advanced. This means that he will allow the restitution of the mortgage without any compensation to C, who as stated had invested a big sum on the strength of the decree of the High Court. What is to be the remedy of C? The Act makes no provision for such a case, for while the original mortgagee had in a case like this received much more than he could get under this Act, it is the transferee, who while acting on the strength of the High Court's decree, is ultimately to suffer. But the law as laid down must be enforced, because the agency created for giving effect to any law cannot import considerations of propriety or fairness into its decisions, which may have the effect of thwarting the very object of the law-maker. Parties aggrieved by the order of any Collector can have such redress as may be admissible under the law.

Accretion to mortgaged area.—Any accretion to the mortgaged area which may have come into the hands of the mortgagee must also revert to the mortgagor along with the area originally mortgaged: vide Section 70 of the Transfer of Property Act.

Compensation for improvements.—The Act *does not* take into consideration the case of compensation due to a mortgagee for improvements effected by him in accordance with the terms of the mortgage in his favour. A mortgagee may under the terms of a mortgage have the right of effecting improvements on land, and of adding the amount so spent by him to the principal sum originally advanced, which is then to be repaid at the time of redemption. But evidently this additional amount would not be styled as "originally advanced," and as such strictly speaking the Collector would not be competent to take it into consideration while assessing compensation under this section. But a separate suit for the recovery of compensation in this connection would be barred by section 12 of the Act, which means that the mortgagee will, have no remedy to look to. Please read the commentary under the next heading.

Compensation for waste committed by the mortgagee.—Section 76 of the Transfer of Property Act imposes certain duties on a mortgagee in possession of immovable property, and he is to be accountable to the mortgagor for any damage to property that may be occasioned by his failure to perform any one or more of these duties. The section further lays down that the money value of this loss is to be debited to the mortgagee when accounts between him and the mortgagor about the mortgaged property are taken, i.e., when redemption is allowed. Although the Transfer of Property Act does not in its entirety apply to the Punjab, yet its principles do apply, and pleas by mortgagors countenanced by Section 76 are generally raised and decided by Civil Courts in suits for redemption and sale. It is not necessary that all the terms of a contract must be expressly mentioned. Rights created and duties imposed by law are presumed to be impliedly incorporated in all contracts, and have got to be enforced in a manner as if these were specifically stipulated. This means that all the conditions mentioned in section 76 of the Transfer of Property Act are to be presumed to form part of every mortgage transaction, and must be given effect to.

The question is whether the language used in section 7 of the present Act authorises a Collector to go into these questions. We are of the opinion that the phrases "twice the amount of the principal sum originally advanced" and "notwithstanding anything contained in any other enactment for the time being in force" preclude such a state of affairs and tend clearly to restrict the decision by the Collector to the simple question whether, shorn of all other considerations, the mortgagee while in possession of land has or has not received benefits therefrom, the money-value of which equals or exceeds double the amount of the principal sum originally advanced by him to the mortgagor. All other pleas must consequently be ignored leaving the parties to have the same decided in the ordinary way. But section 12 of the Act would not permit, a separate suit, because under that section civil courts have been precluded from entertaining any claim to enforce any right under a mortgage declared extinguished under this Act. A claim to compensation for improvement or deterioration of land would be nothing but enforcement of a right under the mortgage. It seems to us that this point was missed by the legislature and we commend an amendment of the law in this respect. Either the Collector should have the authority to decide these questions or the first part of section 12 should be suitably amended to enable parties to a mortgage transaction to have these questions settled through the Civil Court.

Effect of order of restitution, when compensation is payable.

8. If the Collector finds that any sum is due to the mortgagee by way of compensation under sub-section (2) of section 7, he shall require the mortgagor to deposit the amount, in such manner as shall be prescribed; and on deposit of the amount, he shall declare the rights of the mortgagee extinguished and require the mortgagee to deliver possession of the land to the mortgagor together with all documents of title relating to the land.

After assessment of compensation under Section 7 the Collector is to call upon the mortgagor to deposit the amount, so assessed, in the Government treasury as required by rules framed by the Provincial Government, and on being satisfied that this has been done, he is to pass an order that the mortgage stands extinguished, and that the mortgagee is to deliver possession of the land to the mortgagor and also return to him all documents of title, etc. So long as the amount of compensation is not deposited as required by this section, the Collector cannot pass any order extinguishing the mortgage or requiring the delivery of possession of land and the return of documents of title, etc., to the mortgagor. Evidently it would be in the interest of the mortgagor to deposit the amount of compensation within the period allowed by the Collector. It would be open to the Collector to specify a period for the amount of compensation to be deposited, and to extend this period when so necessitated by circumstances, because the Act does not interdict such a procedure, expressly or even by implication.

Who may deposit the amount of compensation.— Any one of the petitioners may deposit the entire sum assessed by the Collector in case his co-petitioners do not agree to it or for any other cause are unable to do so. Under section 92 of the Transfer of Property Act the petitioner making the deposit will in such a case be in the position of a mortgagee so far as the other co-mortgagors are concerned If all the mortgagors have not joined in the making of the petition under section 4, then too the petitioning mortgagor is to be subrogated for the mortgagee.

Delivery of possession.—The Collector would be entitled to take all necessary steps for restoring possession of the mortgaged land to the mortgagor as laid down in the following section.

9. The Collector may after declaring the rights of the mortgagee extinguished, eject the mortgagee and order delivery of possession of the mortgaged land to the mortgagor. In case of resistance the Collector may exercise all the powers conferred on a civil court by rules 97 and 98 of Order XXI of the Code of Civil Procedure. **Powers of the Collector to eject mortgagee.**

It was necessary to make some provision with regard to the ejectment of the mortgagee from, and the delivery of possession of the mortgaged land to, the mortgagor, after the declaration about the extinction of the mortgage. This section lays down that in the matter of delivery of possession, etc., the Collector is to exercise all powers conferred on a Civil Court by rules 97 and 98 of Order XXI of the Code of Civil Procedure. These rules read as under:—

"97—(1) Where the holder of a decree for the possession of immovable property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigation the matter and shall summon the party against whom the application is made to appear and answer the same."

"98—Where the Court is satisfied that the resistance or obstruction was occasional without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days."

The mortgagor entitled to possession under the orders of the Collector is naturally to be treated as the holder of a decree for possession of land.

The Collector may exercise all the powers.—Does this phrase mean that in case of resistance to delivery of possession the mortgagor is to follow maticulously the procedure set out in rule 97 quoted above, or do these words merely give an additional power to the Collector to enquire into the claim of the person resisting the delivery of possession? In the case of a decree for possession of immovable property from a Civil Court the decree-holder if resisted has the following remedies, namely,

(i) an application under rule 97 which must be made within 30 days of the resistance; or

(ii) a regular suit for possession on the strength of the earlier decree; or

(iii) according to the High Courts of Madras and Patna an application for the issue of a fresh warrant of possession. The High Court of Allahabad, however, does not permit this, while the High Court of Bombay though allowing the issue of a fresh warrant has ruled that if the resistance is offered by the same person and in the same capacity, the application must be held to be barred under Act 167 of the Limitation Act.

If the application under rule 97 is made and lost, the decree-holder must file a suit under rule 103 of Order XXI of the Code of Civil Procedure within one year, vide Article 11 (a) of Schedule I of the Indian Limitation Act, 1908. If the decree-holder fails to file a suit within this period his remedies for all times are barred, and he cannot fall back on the ordinary period of 12 years for a regular suit.

It is submitted that these technicalities of law would not apply to the case of a mortgagor in whose favour an order for possession has been made by the Collector, because while rule 97 quoted above talks of the right of the decree-holder to make an application complaining of the resistance offered to the delivery of possession, section 9 of the present Act merely authorizes the Collector to take such steps as may be permissible under rules 97 and 98 already quoted. It does not necessarily require the mortgagor concerned to complain of any resistance, although there would be no bar to his doing so. The Collector can and should 'suo-motu' take action under these provisions. Of course if the mortgagor wants to file a suit for the recovery of possession of the land on the strength of the Collector's order, there would be nothing to stand in his way.

10. Any person aggrieved by an order of the Collector under this Act may appeal, Appeals

(a) to the Commissioner;

(b) to the Financial Commissioner from an order made on appeal by the Commissioner.

This section allows an appeal against the order of the Collector to the Commissioner, and against the appellate order of the Commissioner, to the Financial Commissioner.

Language defective.—The language of this section is defective because strictly construed it does not give the right of appeal to a person who though not aggrieved by the order of the Collector is aggrieved by the order of the Commissioner passed on appeal against the order of the Collector. For instance, if the Collector makes an order in favour of the mortgagor, which is upset by the Commissioner on appeal by the mortgagee, the mortgagor will have no right to appeal to the Financial Commissioner, inasmuch as, the words "any person aggrieved by an order of the Collector under this Act" qualify both the clauses (a) and (b), and evidently the mortgagor in the above given illustration was not aggrieved by the order of the Collector. The legislature, however, could not have aimed at this result, which while allowing one party the right of two appeals deprives the other of the right of any appeal whatsoever, and it seems that this language which denotes something different from what the legislture intended was inadvertently used. We commend to the attention of the legislature the necessity of amending this section.

Limitation of appeal.

11. (1) The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows:—

(a) when the appeal lies to the Commissioner —Sixty days;

(b) when the appeal to the Financial Commissioner—Ninety days.

(2) In computing the period of limitation for an appeal under this section the period requisite for obtaining copies of the order appealed against shall be excluded.

(3) The provisions of section 5 of the Indian Limitation Act (IX of 1908) shall apply to all appeals under this Act.

This section lays down that the period of limitation for an appeal is to run from the date on which the order sought to be appealed against is made. Under sub-section (2) the period necessary for obtaining copy of the order to be appealed against is to be excluded, and the provisions of section 5 of the Indian Limitation Act have been made applicable to these appeals. Section 5 of the Indian Limitation Act, 1908, reads as under:—

"5—Any appeal or application for review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the precribed period of limitation may be sufficient cause within the meaning of this section."

Benefit of section 5 of the Indian Limitation Act.—The abovementioned provision of the Indian Limitation Act authorizes a court of appeal to admit an appeal after the period of limitation, when the appellant satisfies the court that there were sufficient reasons for his failure to prefer the appeal within time. No hard and fast rule applicable to all cases can, for obvious reasons, be laid down and the sufficiency or otherwise of the case, must in each case be decided on its merits. Suffice it to say that the discretion allowed under this law should be exercised judicially in conformity with principles of justice and equity. The benefit of this provision cannot be extended to help a person who has been guilty of negligence or intentional inaction, or who in sitting over his right has been actuated by malafides. In any case the Commissioner or the *Financial Commissioner* should set down his reasons for entertaining an appeal after limitation.

Rules regarding Appeals.—According to the rules framed by the *Provincial Government* the procedure prescribed under the Punjab Tenency Act for appeals before revenue officers is to be observed in the case of appeals under this Act.

Jurisdiction of civil courts barred.

12. No civil court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act or to question the validity of any proceedings under this Act.

Since some of the powers which under the general law vest in Civil Courts have, under the present Act, been conferred on Collectors, Commissioners and Financial Commissioners, it was necessary to make some provision like the one contained in this section, which lays down,

firstly, that a Civil Court is not to entertain any claim to enforce any right under a mortgage which has been extinguished by an order passed by the Collector, Commissioner or Financial Commissioner, and

secondly that a Civil Court will not be competent to question the validity of any proceedings held by any one of these officers under this Act.

Having given the parties concerned the right of appeal up to the Financial Commissioner, there could be no fun in allowing the door for litigation in Civil Courts to remain open about such of the points as may have already received due consideration. Furthermore exceptional jurisdiction given by any law always bars general jurisdiction, and in this respect this Act follows the line of certain other enactments, e.g., the Punjab Land Revenue Act and the Punjab Tenancy Act.

Lacuna in the law.—This section, however, has gone beyond the object in view. As stated under the heading "Compensation for waste committed by mortgagee" under section 7 the language used in the present section has taken away the rights of mortgagor and mortgagee for enforcing such of the rights under the mortgage as may be beyond the scope of authority of the officers authorized to function under this Act. The Act as it stands does not take notice of questions regarding compensation for improvements, permissible under a mortgage, due to and compensation for waste committed by a mortgagee, and such questions can neither be decided by any one of the officers empowered under the Act nor, in view of the present section, by a Civil Court. But these questions are likely to arise very frequently and it would certainly be very hard to deprive parties of their rights in this way. We are strongly of opinion that this section should be suitably amended.

13. (1) The provincial Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act. **Rule making power.**

(2) In particular and without prejudice to the generality of the foregoing power, the provincial Government shall make rules regulating or determining the following matters, namely—

(a) the presentation and verification of petitions under section 4 of this Act;

(b) the procedure by which the Collector shall deal with such petitions under sections 5, 6 and 7 of the Act and assess compensation, if any;

(c) the procedure and principles by which the Collector shall assess the amount due under the mortgage, and the value of the benefits accruing to the mortgagee while in possession;

(d) the procedure for making the deposit prescribed by section 8 of this Act; and

(e) the procedure for enforcing ejectment of the mortgagee and delivery of possession to the mortgagor under section 9 of this Act.

The rules framed by the Provincial Government are given in Appendix-A.

Appendix A

Procedure of Revenue Officers.

It has been prescribed under the rules that the procedure of Revenue Officers, as laid down under the Punjab Tenancy Act. shall apply to proceedings under this Act. For facility of reference relevant rules are given below but it would be advisable to read Standing Order No. 3 in its entirety.

2. (i) The statements and pleadings made by or on behalf of parties to a revenue proceeding, whether oral or written, shall be as brief as the nature of the case admits; and shall not be argumentative but shall be confined as much as possible to a simple and concise narrative of the facts which the party by whom or on whose behalf the statement or pleading is made believes to be material to the case, and which he either admits or believes that he will be able to prove. Statements and pleadings to be brief.

(ii) Every written application or statement filed by a party to a revenue proceeding shall be drawn up and verified in the manner provided by the Civil Procedure Code for written statements in suits. Verifications of applications.

3. The death of one of the parties to a revenue proceeding or in a proceeding to which a female is a party, her marriage shall not cause the proceeding to abate. And the revenue officer before whom the proceeding is held shall have power to make the successor in interest of the deceased person or of the married female a party thereto. Proceeding not to abate on death or marraige of party.

4. In fixing dates for the hearing of parties and their witnesses in adjourning proceedings and in dismissing applications on default or for other sufficient reason a revenue officer will, so far as the nature of the case may require or permit be guided generally by the principles of the procedure for the time being in force in revenue courts. In fixing dates etc. revenue officer to follow procedure of revenue court.

Commissions

5. The provisions of sections 75—78 of the Civil Procedure Code Act V of 1908 and of schedule I Order XXVI, annexed to the said Code in respect of commissions shall apply in the case of proceedings before a revenue officer.

Expenses of witnesses.

6. (a) A revenue officer may at his discretion award to a witness attending on summons sum on account of his expenses not exceeding the sum to which the witness would have been entitled for a like attendance in a civil court.

(b) The sum so awarded shall be costs in the proceeding.

Record of other proceedings under tenancy Act.

7. In proceedings before a revenue officer under the Punjab Tenancy Act, 1887, the revenue officer shall make with his own hand a brief memorandum of the statements of parties and witnesses at the time when each statement is made.

Contents of orders.

8. In every proceeding in which an order is passed on the merits after inquiry the revenue officer making the order shall also record a brief statement of the reasons on which it is founded.

Apportionment and recovery of costs.

9. (a) In proceedings in which costs have been incurred the final order shall apportion the costs between the parties to the proceeding.

(b) Costs thus apportioned shall be recoverable by the revenue officer by attachment and sale of the movable property of the person liable for the same in the manner prescribed in section 70 of the Land Revenue Act.

Execution of order ejectment etc.

10. (a) Orders of ejectment from, and delivery of possession of immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a civil court has adjudged ejectment from, or delivery of possession of such property.

(b) And in the enforcing of these orders a revenue officer shall have all the powers in regard to contempts, resistance and the like which a civil court may exercise in the execution of a decree of the description mentioned in sub-section (a).

11. The provisions of the Punjab Land Revenue Act, 1887, with respect to arbitration shall apply to proceedings before a revenue officer in respect of any matter described in the 1st and 2nd groups of section 76 of the Punjab Tenancy Act, 1887. Arbitration.

Language of revenue offices and Courts.—(12) (i) The language of revenue offices and courts shall be— Language of revenue courts and offices.

(a) English, in cases in which English is the mother-tongue of both the parties to a revenue proceeding; and

(b) Urdu in all other cases.

(ii) If the revenue officer's mother-tongue is English the memorandum referred to in rule 7 shall be written in English. In other cases it shall be written in Urdu.

(iii) In every case the order and the reasons for it shall— Language of orders.

(a) if the revenue officer's mother-tongue is English be written by him in English; and

(b) if the revenue officer's mother-tongue is not English be written by him in English or in Urdu.

Provided that when an order and the reasons for it are written in English, if any party or his pleader is unacquainted with English a translation into Urdu shall, at his request, be supplied to him, and the officer shall make such order as he thinks fit in respect of the payment of the costs of such translation.

13. A party to a proceeding to which clause (b) of the last foregoing rule applies, or his legal practitioner may make an application and plead in the English language if both the parties or their legal practitioners understand English and the presiding officer consents to the use of English. Use of English by parties or legal practitioners.

Processes and Notices issued under the Tenancy Act.—

Processes of arrest not to be issued between certain dates.

14. A revenue officer or revenue court shall not, except for reasons of urgency to be recorded issue any process of arrest against a tenant or against a landowner who cultivates his own land between the 1st day of April and the 31st day of May, nor between the 15th day of September and the 15th day of November.

Contents of application for issue of notices of ejectment etc.

15. (a) Every application for the issue of a notice of relinquishment, or of intended transfer of a tenancy or for the issue of notice of ejectment from a tenancy, shall be accomplished by a true copy of the entries in the last detailed jamabandi relating to the khata khatauni in which the fields to which the application relates are included.

(b) Where however such copy would be irrelevant owing to changes in tenancy subsequent to the date of preparation of the jamabandi true copies of the entries in the last khasra girdawari relating to the particular fields to which the application relates shall be substituted therefor.

Copies filed under (a) or (b) shall be certified as correct under his own signature by the patwari or any other official acting under section 76 of the Evidence Act, I of 1872, or section 151 (2) of the Punjab Land Revenue Act, XVII of 1887.

Appearances of Pleaders and Mukhtars in proceedings before the Financial Commissioner.

Pleaders and Mukhtars.—16. Whereas by schedule I, Order III, clause 4 (1) annexed to the Code of Civil Procedure every Pleader is required to be appointed by an instrument in writing and by Punjab Government notifications Nos. 728 and 729, dated 1st November 1887, every certified Mukhtar is required to hold a special power of attorney and no such Pleader or Mukhtar can be recognized in the absence of a written authority as aforesaid, as empowered to appear, plead, or act for any person in any proceeding governed by the Punjab Tenancy Act, XVI of 1887, ad Land Revenue Act, XVII of 1887, and it is expedient to provide for ascertaining that every such Pleader or Mukhtar is duly authorised to appear, plead, or act in any such proceeding before the Financial

Commissioer, the following rules are made by the Financial Commissioner :—

(a) Every appointment of a pleader and every power-of-attorney to a certificated Mukhtar presented to the court shall contain in full the name of the person or Pleader or Mukhtar to appear or act on his behalf and shall be executed by every such person. Contents of appointments

(b) When such appointment or power is not executed by the principal himself, but by some person claiming to appoint or give authority on his behalf the Pleader or Mukhtar will not be recognized by the court without proof that such person was duly authorised by the principal to execute such appointment or power. Proof of agent's power to act on behalf of his principal.

Applications for Revision.—17. (i) An application that the Financial Commissioner should exercise the powers conferred by section 84 of the Punjab Tenancy Act, 1887, drawn or supported by an Advocate or Pleader or by a Revenue Agent admitted to practise in the Financial Commissioner's court, shall specify the particular ground on which the aid of the Financial Commissioner's court is invoked— Contents of applications for revisions.

(a) if the ground be that the court which decided the case exercised a jurisdiction not vested in it by law, the application shall set out clearly the particular exercise of jurisdiction complained of :

(b) if it be that the court which decided the case failed to exercise a jurisdiction so vested, the jurisdiction which ought, in the applicant's opinion, to have, but has not, been exercised, shall be clearly set out;

(c) if it be that the court acted in the exercise of its jurisdiction with material irregularity, the particular irregularity or irregularities complained of shall be similarly set out.

(ii) The clerk of court is hereby authorised to return for amendment, within a time to be specified in an order to be recorded by him on the application, any application not drawn up in conformity with the forgoing directions.

Appendix B

The following draft of rules has been published for objections and suggestions and as there is no likelihood of any material change, hence they are being published. Any alteration in these rules will be shown in the Addenda.

REVENUE DEPARTMENT

REVENUE

The 27th April, 1939

No. 2489 R.—The following draft of rules, which the Governor of the Punjab, proposes to make in exercise of the powers conferred by section 13 of the Punjab Restitution of Mortgaged Lands Act, 1938, is published for the information of persons likely to be affected thereby. The draft will be taken into consideration on the expiry of 30 days from the date of its publication together with any objection or suggestion that may be received in respect thereto during the period specified :—

DRAFT RULES

1. These rules shall be called the Punjab Restitution of Mortgaged Lands Rules, 1939.

2. In these rules, unless there be anything repugnant in the context—

(i) "Act" means the Punjab Restitution of Mortgaged Lands Act, 1938,

(ii) "compensation" means the amount assessed by the Collector under section 7 of the Act as payable to a mortgagee prior to the restitution of any mortgaged land to the mortgagor, and

(iii) "petition" means a petition under section 4 of the Act.

3. (a) A petition shall be in form "A" attached to these rules, signed and verified as laid down in Order VI rules 14 and 15, respectively, of the Civil Procedule Code.

It shall bear the court fee prescribed by Article I (b) of Schedule II to the Court Fees Act, 1870, be accompanied by an attested copy of the latest jamabandi entry relating to the land.

Provided that if there are more petitioners than one, the signature and attendance of and verification by only one of them would be enough.

(b) A petition shall be presented to the Collector of the district in which the land is situated, by the petitioner personally or through a duly authorised agent.

4. Parties to a case under the Act may appear in person or through a legal practitioner holding a power of attorney or other duly authorised agent.

5. (a) When there are more mortgagors than one and all of them do not join in making a petition, it may be made by one or more of them, the names of the others being set out in column 2 of the petition; and the other mortgagors may subsequently be allowed to join as petitioners on such terms as may be decided by the officer deciding the case.

(b) If any such co-mortgagor fails to pay his share of the compensation assessed, possession shall be given to the mortgagor or mortgagers by whom such compensation has been paid in full; and he shall be shown in the revenue records as mortgagor under the latter until such time as he has paid his share.

6. On receipt of the petition, or if it is not in order after getting the necessary corrections made, the Collector shall order it to be registered, fix a date for further proceedings and cause notice thereof to be served on the parties.

7. Except as otherwise provided by these rules any officer dealing with a petition shall be guided by the procedure prescribed for revenue officers under the Punjab Tenancy Act of 1887, in so far as it may be applicable.

8. The persons mentioned in column 3 of the petition shall besides replying to the facts alleged by the petitioner state if they have any claim, such as a compensation for improvements with reasons for the same.

9. Every written statement filed by the persons mentioned in columns 2 and 3 of the petition must also be signed and verified as laid down in Order VI, rules 14 and 15, respectively, of the Civil Procedure Code.

10. The Collector shall then hear the evidence produced by the parties and make such further enquiries as he may deem fit.

11. (1) Before assessing the benefits received by a mortgagee while in possession the Collector shall obtain a statement in form "B" from the Sadr Kanungo in respect of each harvest during the period of the mortgage.

(2) In assessing such benefits the Collector shall calculate the value of such harvests, adding the income which might have been obtained for any period during which any part of the land has remained uncultivated on account of the neglect of the mortgagee or the person holding under him and may take into consideration any other use to which the land has been put during the period.

12. The compensation shall be the balance left after deduction of the sum assessed under the provsions of the foregoing rules from twice the amount of the principal sum originally advanced.

Provided that the compensation shall in no case exceed the scale laid down in sub-section 2 of section 7 of the Act.

13. After determining the amount of compensation due the Collector shall fix a time, which may for sufficient reasons be subsequently extended, within which the petitioner must deposit the amount in the Government treasury for disbursement to the mortgagee.

14. When the mortgagee has deposited with the Collector the mortgage deed and other documents, if any evidenc-

ing the mortgage or title to the land, he shall then be entitled to receive the amount of compensation in accordance with the rules of the treasury, and the documents of title shall be made over to the petitioner.

15. (1) On application by a petitioner in whose favour an order has been made under section 8 of the Act, the Collector may issue a warrant directing the petitioner to be put into possession of the land.

(2) The warrant shall after execution and with necessary endorsement be returned to the Collector.

(3) Possession shall normally be delivered between the first day of May and the fifteenth day of June unless the land is lying vacant, but the petitioner may, subject to the payment by him of compensation for standing crops, as may be determined by the Collector, be allowed possession at any other time.

16. (a) When any mortgage transaction affects land situated in more districts than one, a petition may be made to the Collector of any one of these districts, and the Collector to whom the petition is made shall deal with the case as if the entire land were situated in his district.

(b) The Collector hearing the case may have the statements contemplated by rules 11 and 12, so far as these relate to the areas situated in other districts, prepared through the Collectors thereof.

17. (1) In a case covered by rule 16 the Collector receiving the application shall transmit a copy of the same to the Collector of each district where any part of the rest of the land is situated.

(2) Every final order passed under sections 6 to 9 of the Act by the Collector enquiring into the petition shall so far as it relates to the land lying in the other district, be similarly communicated to the Collector thereof.

18. In cases covered by rule 16 above the Collector issuing a warrant of possession under rule 15 shall issue a

separate warrant for the area lying in each other district and transmit the same for execution to the Collector thereof, who shall execute the warrant as if it had been issued by himself.

19. If after the receipt by any Collector of an intimation under rule 17 (1) above any fresh petition is made to him in respect of the mortgage covered by the first petition, he shall forward the same to the Collector of the district where the first application is pending and advise the applicant to seek his remedy there.

20. The dismissal of any petition for default shall not bar a fresh petition on similar facts, and the failure of a petitioner to pay the amount of compensation due shall not bar a fresh petition.

Provided that such a petition shall not entitle the Collector to question the previous decision except in so far as it may have been altered on appeal; but the Collector may hold an enquiry regarding the period subsequent to the date of the presentation of the petition in the first case, taking the amount assessed as compensation in that case as the mortgage debt.

21. If there is any dispute between persons claiming to be entitled to compensation, the Collector may order the sum deposited by the petitioner not to be paid to any one till the contesting persons have had their rights decided by a competent court of law.

22. (1) An appeal against an order passed by a Collector or a Commissioner under the Act shall be preferred by submitting a memorandum, accompanied by an attested copy of the order appealed against.

(2) Each such memorandum shall bear the court fee prescribed by Article 11 of Schedule II of the Court Fees Act, 1870.

23. Appeals shall be heard, after proper notice to the parties, on a date fixed for the purpose and the procedure in force for the reception, hearing and disposal of appeals by Revenue Officers under the Punjab Tenancy Act of 1887, shall apply so far as it is applicable.

Form "A."

APPLICATION UNDER SECTION 4—RESTITUTION OF MORTGAGED LAND ACT.

In the district of ____________

Tahsil ____________

Year ____________

Name, parentage, caste and residence of the applicant.	Name, parentage, caste and residence of other mortgagors not joining the application.	(a) Name, parentage, caste and residence of the mortgagee and (b) *if he be not in* possession also of the person in possession of the land.	The area and description of the land to be restituted.	The date of the mortgage.	The name, parentage, caste and residence of the original mortgagor and mortgagee.	The amount for which the mortgage was effected along with additional charge, if any, with date thereof.	Payments, if any, made towards the *mortgage debt or additional charge.*	Period for which the *mortgagee* has been in possession.	How does the Applicant claim the right of restitution.	In case the respondent was not the original mortgagee the manner in which he came to possess the mortgagee rights.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12

NOTE.—The facts in columns 5 to 11 should be given as are known to the applicant and any mistake therein would not affect the application.

Signature of the applicant ____________.

VERIFICATION.

Verified that the facts set out in columns Nos. ____________ are *true to my knowledge* while facts set out in columns Nos. ____________ are true to my belief and information.

Verified at ____________ on ____________.

Signature of the person making the verification.

Form "B."

Statement of income from mortgaged land (Section 7, Rule 11 of the Punjab Restitution of Lands Act, 1938).

District ____________ *Tahsil* ____________ *Village/Town* ____________.

CULTIVATION BY MORTGAGEE HIMSELF.																		CULTIVATION THROUGH TENANTS.										
			Price of crop raised.				*Dry fodder.*			*Crops sold standing.*			*Deductions.*						*Deductions.*					*Cash rent.*				
Year and harvest.	Area under cultivation of each crop.	Crop cultivated.	Yield per canal.	Total yield in terms of maunds and seers.	Price per maund/seer.	Total price of the produce.	Total quantity of dry fodder produced.	Price per maund.	Total price of fodder.	Price per kanal.	Total price of the crop.	Total of columns 7, 10 and 12.	Kamin's dues.	Seed, etc.	Water rate and Land Revenue.	Total.	Net income.	Landlord's share out of column No. 13.	Kamin's dues paid by landlord.	Seed supplied by landlord.	Water rate and Land Revenue paid by landlord.	Total deductions.	Net income of the landlord.	Rate of cash rent.	Total cash rent received by landlord.	Abiana and land revenue paid by the landlord.	Net income of the landlord.	REMARKS.
1	2	3	4	15	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29

NOTES.—1. *Zaid Rabi* and *Zaid Kharif* should be shown separately from *Rabi* and *Kharif*.

2. Columns 8 to 10 deal with dry fodder which crops yield besides the commodity sown. Green fodder like Charri, Sainji, etc., and other crops like sugarcane sold while standing should be shown in columns 11 and 12.

3. Where rent is payable in cash columns 4 to 24 need not be filled in.

INDEX

In this Index the number given below against each Act will represent that Act.

The Redemption of Mortgages Act, 1913	..	(I)
The Usurious Loans Act, 1918	..	(II)
The Regulation of Accounts Act, 1930	..	(III)
The Relief of Indebtedness Act, 1934	..	(IV)
The Debtor Protection Act, 1936	..	(V)
The Registration of Money-Lenders' Act, 1938	..	(VI)
The Restitution of Mortgaged Lands Act, 1938	..	(VII)

—★—

Pages

B

C

D

Pages

E

F

G

Pages

Pages

Supplement to Relief Legislation in the Punjab.

RULES

After the printing of this book, Rules under the Punjab Registration of Money-lenders Act, 1938 and the Punjab Restitution of Mortgaged Lands Act, 1938 have finally been published, which are reproduced below.

The Punjab Registration of Money-lenders Rules, 1939

[Issued by the Punjab Government under section 13 of the Punjab Registration of Money-lenders Act, 1938. First published in Punjab Government notification No. 3084-J-39|20680, dated the 12th June, 1939.]

RULES

1. (1) These rules may be cited as the Punjab Registration of Money-lenders Rules, 1939.

(2) In these rules, unless there is anything repugnant in the context, "Act" means the Punjab Registration of Money-lenders Act, 1938.

2. Application for registration under section 4 of the Act shall be made, in the annexed form A, to the Collector of the district where the applicant has his residence, or, if he has no residence in the Punjab, where he has his principal place of business in the province.

3. Applications for registration shall bear the court fee prescribed in Article I (b) of Schedule II of the Court Fees Act, 1870, and shall be signed and verified by the applicant in the manner provided in Order VI Rules 14 and 15 of the First Schedule to the Code of Civil Procedure for plaints in suits.

4. An application for registration on behalf of a firm shall be signed by all the persons constituting the firm or their representatives duly empowered, or in the case of a minor by the person representing him in the business: Pro-

vided that no application shall be entertained which does not bear the personal signature of at least one member of the applicant firm.

5. *Every application for registration shall be presented* by the applicant personally or through a duly authorised agent : Provided that where there are more applicants than one, any one of them may present it.

6. (1) The Collector shall, if the application for registration is in order (or if it is not in order after getting the necessary corrections made therein), and if he finds after making such inquiries as he considers necessary that the grant of the application will not offend against any order made under section 6 of the Act, direct the applicant to deposit in the Government treasury a sum representing the fee prescribed in section 4 of the Act.

(2) *After the applicant has deposited the fee in* the Government treasury and produced the receipt therefor, the Collector shall direct the money-lender's name to be registered.

7. On registration of the applicant's name under the preceding rule the Collector shall issue a certificate to him in form B annexed.

8. No license shall be granted under section 5 unless the applicant has been registered under section 4 of the Act.

9. (1) Applications for the grant or renewal of licenses shall be made to the Collector mentioned in rule 2 above in form C annexed.

(2) The provisions of rule 3 above in regard to verification *and to the payment of court fee shall be equally* applicable to applications for the grant or renewal of licenses under the preceding sub-rule.

(3) In the case of a firm any adult member, or the guardian of a minor member, may make an application for a license on behalf of the firm.

10. Every application for the issue or renewal of a license shall be accompanied by an affidavit stating whether any court has since the making of the last application (if any) made any order in relation to the applicant in regard to any of the matters mentioned in section 6 of the Act.

11. After making such inquiries as he thinks necessary, the Collector shall, if he finds that there is nothing to debar the grant or renewal of the license, direct the applicant to deposit in the Government treasury a sum representing the fee prescribed in rule 12.

12. The fees payable for the grant or renewal of licenses shall be as under :—

For the district in which the money-lender is first registered.	Five rupees a year.
For every other district to which the validity of the license may be extended.	Two rupees a year, subject to a maximum of fifteen rupees a year (including the initial fee) for the whole province.

13. After the applicant has deposited the prescribed fee in the Government treasury and has produced the treasury receipt therefor, the Collector shall issue a license in form D annexed.

14. An application for the renewal of a license shall be made not less than one month before its expiry : Provided that the Collector may for sufficient reasons condone a delay not exceeding one month on payment of a penalty of two rupees.

15. A license may be issued or renewed for a period not exceeding three years at one time on pre-payment by the applicant of the full fees for the period.

16. Licences shall ordinarily be made valid for the district of issue only, but it shall be open to the Collector, after making such inquiries as he considers necessary from the

Collector of any other district, to extend the validity of a license so as to include the area of that district.

17. Notices issued under the proviso to sub-section (1) of section 7 of the Act shall be in Form E annexed, and shall be served in accordance with the procedure laid down in Order V of the First Schedule to the Code of Civil Procedure for the service of a summons.

18. As soon as any order is made by the Collector for the cancellation of a license the money-lender shall surrender the same, and the Collector shall endorse thereon the words "Cancelled" in red ink under his signature, with the date of so doing.

19. (1) The cancellation of a license by a Collector under section 6 of the Act shall be published in the **Punjab Government Gazette**, and any order made in appeal or review for the restoration of a license shall be published in the same way.

(2) Intimation of all orders referred to in the preceding sub-rule shall also be given by the authority making the order to the District Judge of every district in which the license is operative, with the request that the substance of the order be communicated to all the subordinate civil courts.

20. (1) Every appeal against an order of a Collector under section 6 of the Act shall be preferred in the form of a memorandum stamped as required under Article I (c) of Schedule II of the Court Fees Act, 1870, and shall be accompanied by an attested copy of the order appealed against.

(2) As soon as an appeal is filed the Commissioner shall cause notice of the same to be given to the Collector against whose order it is directed, and shall invite him to make such comments as he may consider necessary in connection with the grounds of appeal.

(3) Notice of the appeal shall also be served on any other person who may have moved the Collector under

sub-section (1) of section 7 of the Act or who may have otherwise appeared as a party before him.

(4) In all other respects the procedure in appeals under the Act shall be governed by the provisions of the Punjab Tenancy Act, 1887, and the rules made thereunder for the hearing of appeals against the orders of revenue officers, so far as they can be made applicable.

21. Every application under sub-section (2) of section 7 or sub-section (4) or sub-section 5 of section 11 of the Act shall bear a court fee stamp as laid down in Articles I (b) or I (c), as the case may be, in Schedule II of the Court Fees Act, 1870.

22. If an original order under section 6 or sub-section (2) of section 7 or an appellate order under section 11 of the Act is announced in the absence of the money-lender, it shall be communicated to him by registered post (acknowledgment due).

23. When a certificate is granted by a Commissioner to a money-lender under sub-section (3) of section 11, it shall be in Form F. annexed to these rules.

A

Application for Registration of a Money-lender
(Section 4 of the Punjab Registration of Money-lenders Act, 1938.)

In the office of the Collector of—————————

Tahsil———————(Here give the name of the tahsil containing the town or village where the money-lender resides or has his principal place of business).

Town|Village—————(Here give the name of the town or the village where the money-lender resides or has his principal place of business).

(a) Name of the applicant, with parentage, caste, residence and address in full.

(b) In cases where the applicant is a firm : the names of all persons constituting it, with parentage, caste, residence and address in full of each.

(c) In cases where the applicant is a firm: whether it is a Hindu joint family firm or otherwise constituted, and whether it has been registered under the Indian Partnership Act, 1932.

(d) Name or style under which the applicant carries on his money-lending business.

(e) Names of the districts within which the applicant has his business on the date of the application.

(f) Names of the districts to which the applicant wishes in future to extend his business.

(g) Location of the applicant's principal place of business, with full particulars thereof and the name, parentage, caste and address of the person in charge.

(h) Has the applicant any office at any other station ? If so give complete particulars; with the name, parentage caste and address of the person in charge of each office.

(i) What is the extent of the total business of the applicant on the date of the application ?

(j) For how long has the applicant carried on the business of money-lending ?

(k) Whether any application for registration had previously been made by the applicant; or where the applicant is a firm, by any one or more of its members singly or jointly inter se or with any other person under any name. If so, when, where and with what result?

(l) (i) In case the applicant had previously been registered and licensed, give full particulars of the license.

(ii) State whether any license granted previously to the applicant (or where the applicant is a firm, to any one or more of its members singly or jointly **inter se** or with any other person) has been cancelled. If so, full particulars should be given, including the name of the officer and the date and terms of the order cancelling the license.

(m) Whether money-lending is the sole business of the applicant or whether he is engaged in any other business, profession or calling.

Certified that all the facts set out in the application are true to my knowledge except paragraphs————, which are true to my belief being based on information supplied by——————————

(Signature of the person making the verification with date and place of so doing).	(Signature of the applicant with date).

B

MONEY-LENDER'S REGISTRATION CERTIFICATE

(Section 4 of the Punjab Registration of Money-lenders Act, 1938.)

District ________________________.

Tahsil ________________________.

Register No. ________________________.

CERTIFIED that __________________, son/daughter/wife of ____________________________________

the firm ____________________________________

caste, __________________, resident of __________________

with __his/her / its__ principal place of business at __________________ has been registered as a modey-lender under section 4 of the Punjab Registration of Money-lenders Act, 1938, on the __________________ day of __________________, 19 .

*The registered firm is constituted by—

1. ________, son of ________, caste ________, resident of ________
2. ________, son of ________, caste ________, resident of ________
3. ________, son of ________, caste ________, resident of ________
4. ________, son of ________, caste ________, resident of ________
5. ________, son of ________, caste ________, resident of ________
6. ________, son of ________, caste ________, resident of ________

(Seal of the Collector.)

Signed ________________________

Collector,

District ________________________.

---

*Where the money-lender is a single individual cross ont this portion.

C.

Application for the $\frac{\text{grant}}{\text{renewal}}$ of a Money-lender's License.

(Section 5 of the Punjab Registration of Money-lenders Act, 1938.

In the office of the Collector, __________________.

Tahsil ________________

$\frac{\text{Town}}{\text{Village}}$ __________, $\frac{\text{Post Office}}{\text{Police Station}}$ ______

The applicant submits as follows :—

(1) That he is a registered money-lender in the district, with necessary particulars being,

Tahsil ________________,

$\frac{\text{Town}}{\text{Village}}$ __________ $\frac{\text{Post Office}}{\text{Police Station}}$ ______

Register No. __________.

(2) That since the $\frac{\text{commencement of the Act}}{\text{application for the grant of the previous}}$

license, dated ________________

no court has given any ________________

finding against the applicant with regard to acts or omissions of the kind referred to in section 6 of the Act, with the following exceptions :—

____

(2) ________________.

(3) That on the date of this application his total business does not exceed Rs. __________ as principal.

(4) That he prays that $\frac{\text{he may be granted a license}}{\text{his license which expires on}}$ ____

for the calendar year ________________

may be renewed for three calendar years ________ to ________ on the prescribed terms in regard to fee and otherwise.

Verified that all the facts set out in the application are true to my knowledge except paragraphs __________ which are true to my belief based on the information supplied by __________.

____

(Signature of the person making the verification, with date and place.)

Signed

Dated

D.

Money-lender's License.

(Section 5 of the Punjab Registration of Money-lenders Act, 1938.)

District_________________.

Tahsil_________________.

Town / Village _________________. Post Office / Police Station _________________

License No. _________________.

THIS license has been granted to ________________________ to practise as a money-lender on the following terms :—

(*a*) The licence will be valid up to ____________________

(*b*) It shall entitle the licensee to carry on the business of money-lending within the area of ________________________.

(*c*) The licensee shall report to the Collector issuing this license any finding which any court may during its currency give against him regarding acts or omissions of the kind described in section 6 of the Act.

(*d*) The licensee shall surrender the license when ordered to do so by the Collector granting it or by the Commissioner or any court.

Signed______________________

Collector.

(Seal of the Collector.) Dated______________________

Renewals.

THIS license has on payment of the proper fees been renewed as under :—

From ________________________ to ________________________

____

(Signature of the officer granting renewal.)

Date ________________________

E.

Notice to a Money-lender.

(*Section 7 (1) of the Punjab Registration of Money-lenders Act, 1938.*)

IN THE OFFICE OF THE COLLECTOR, ____________
________________ DISTRICT.

NOTICE UNDER SECTION 7 OF THE PUNJAB REGISTRATION OF MONEY-LENDERS ACT, 1938.

To ____________________________________

(Here give the name and full particulars of the money-lender, whether an individual or a firm, and in case of a firm, give the name and full particulars of the manager in addition.)

WHEREAS it has come to my notice that in the $\frac{\text{case}}{\text{cases}}$ noted overleaf $\frac{\text{a finding}}{\text{findings}}$ adverse to you $\frac{\text{has}}{\text{have}}$ been given by the $\frac{\text{court}}{\text{courts}}$ therein mentioned, you are hereby called upon to appear before me personally or through a duly authorised agent or lawyer on ________ at ________ and show cause why your license should not be cancelled for such period as may be considered proper by me.

Further take notice that if you fail to appear at the appointed time and place, the case will be heard and disposed of in your absence.

Signed ____________________

Collector,

________________ *District.*

(Seal of Collector's Office.)

Date ____________________

(Reverse.)

Particulars of case/cases.

Name of the Court.	Name of parties.	Date of decision.	Nature of the adverse finding.

F.

COMMISSIONER'S CERTIFICATE.

(Sub-section (3) of section 11 of the Punjab Registration of Money-lenders Act, 1938.)

CERTIFIED that ______________,* son of __________ caste __________ resident of ____________, Tahsil __________ District ____________ whose appeal No. __________ of 19____ against the order of the Collector ________________________, dated __________, has to-day been dismissed, has been allowed to prosecute if already filed, or to file and prosecute, suits for the recovery of the undermentioned dues and application for the execution of the undermentioned decrees :—

Loans.

1. Loan of Rs. ______, dated _______, raised by * ______, son of ______, of village/town ________, Tahsil _________, District __________.
2. ________________________.
3. ________________________, etc.

Decrees.

1. Decree No. _______, dated _______, from the court of ________ for Rs. _______, against * _________, son of _________ of village/town ________, Tahsil _______, District _________.
2. ________________________;
3. ________________________, etc.

Signed __________________

Commissioner,

______________ Division,

(Seal of the Commissioner.) Dated ______________.

*In case of a firm give its name and cross out blanks not relevant.

THE

Punjab Restitution of Mortgaged Land Rules, 1939.

[Issued by the Punjab Government under section 13 of the Punjab Restitution of Mortgaged Lands Act, 1938 vide Punjab Government Notification No. 3251-R, dated the 31st August, 1939.]

RULES

1. These rules shall be called the Punjab Restitution of Mortgaged Lands Rules, 1939.

2. In these rules, unless there by anything repugnant in the context,—

(i) "Act" means the Punjab Restitution of Mortgaged Lands Act, 1938,

(ii) "compensation" means the amount assessed by the Collector under section 7 of the Act as payable to a mortgagee prior to the restitution of any mortgaged land to the mortgagor, and

(iii) "petition" means a petition under section 4 of the Act.

3. (1) A petition shall be in form "A" attached to these rules, signed and verified as laid down in Order VI, rules 14 and 15, respectively, of the Code of Civil Procedure.

(2) A petition shall bear the court-fee prescribed by Article I (b) of Schedule II to the Court fees Act, 1870, be accompanied by an attested copy of the latest jamabandi entry relating to the land, and a copy of the original mutation of mortgage. There shall also be filed with the petition as many copies thereof as is the number of persons mentioned in columns 2 and 3 of the petition :

Provided that if the petitioner is unable to supply copies of the latest jamabandi and the original mutation of the mortgage, he shall pay a fee of Rs. 2 and the Collector shall get those copies from his office.

(3) A petition shall be presented to the Collector by the petitioner personally or through a duly authorised agent. In the case of two or more petitioners, it may be presented by any one of them.

4. When there are more mortgagors than one and all of them do not join in making a petition, it may be made by any one or more of them, the names of the others being set out in column 2 of the petition; and the other mortgagors may subsequently be allowed to join as petitioners on such terms as may be decided by the officer hearing the petition.

5. On receipt of a petition, or if it is not in order after getting the necessary corrections made, the Collector shall order it to be registered, fix a date for hearing the petition and cause notice thereof, together with a copy of the petition, to be served on the persons mentioned in columns 2 and 3 of the petition.

6. Except as otherwise provided by these rules an officer dealing with a petition shall be guided by the procedure prescribed for revenue officers under the Punjab Tenancy Act, 1887, in so far as it may be applicable.

7. The persons mentioned in columns 2 and 3 of the petition may at the first hearing, and shall if required by the Collector at any time, present a written statement of their defence, which shall also be signed and verified as laid down in Order VI, rules 14 and 15, respectively, of the Code of Civil Procedure.

8. (1) Parties to a proceedings under the Act may appear in person or through a legal Practitioner holding a power-of-attorney or other duly authorised agent.

(2) If any one of the petitioners or respondents is a minor or of unsound mind, the provisions of Order XXXII,

Code of Civil Procedure, shall, so far as these may be applicable, apply to proceedings under the Act.

9. The Collector shall then hear the evidence produced by the parties and make such further enquiries as he may deem fit.

10. (1) Before assessing the benefits received by a mortgagee while in possession, the Collector shall, if possible obtain a statement in form "B" from the Sadr Kanungo or any other subordinate of his, in respect of each harvest during the period of the mortgage.

(2) In assessing such benefits the Collector shall calculate the value of such harvests, adding the income which might have been obtained for any period during which any part of the land has remained uncultivated on account of the neglect of the mortgagee or the person holding under him, and may take into consideration any other use to which the land has been put during the period.

11. The compensation shall be the balance left after deduction of the sum assessed under the provisions of the foregoing rules from twice the amount of the principal sum originally advanced under the mortgage :

Provided that the compensation shall in no case exceed the scale laid down in sub-section (2) of section 7 of the Act.

12. After determining the amount of compensation due, the Collector shall fix a time, which may for sufficient reasons be subsequently extended, within which the petitioner shall deposit the amount in the Government treasury for disbursement to the mortgagee.

13. When the mortgagee has deposited with the Collector the mortgage deed and other documents, if any evidencing the mortgage or title to the land, or satisfied him that the documents though at one time existing had been lost, he shall be entitled to receive the amount of compensation in accordance with the rules of the treasury, and the documents of title shall be made over to the petitioner.

14. (1) On application by a petitioner in whose favour an order has been made under section 8 of the Act,

the Collector may issue a warrant directing the petitioner to be put into possession of the land.

(2) If any co-mortgagor fails to apply under rule 4 to be made a petitioner, or being a petitioner fails to pay his share of the compensation assessed, possession shall be given to the mortgagor by whom such compensation has been paid in full; and such co-mortgagor shall continue to be shown in the revenue records as mortgagor until such time as he has paid his share, the person who has made payment being shown as mortgagee of his share.

(3) The warrant shall after execution and with necessary endorsement be returned to the Collector.

(4) Possession shall normally be delivered between the first day of May and the fifteenth day of June unless the land is lying vacant, but the petitioner may, subject to the payment by him of compensation for standing crops, as may be determined by the Collector, be allowed possession at any other time.

15. (1) When any mortgage transaction affects land situated in more districts than one, a petition may be made to the Collector of any one of those districts, and the Collector to whom the petition is made shall deal with the case as if the entire land were situated in his district.

(2) In a petition covered by the above clause the Collector receiving the application shall transmit a copy of the same to the Collector of each district where any part of the rest of the land is situated.

(3) The Collector hearing the case may have the statements contemplated by rule No. 10, so far as these relate to the areas situated in other districts, prepared through the Collectors thereof.

(4) Every final order passed under section 6 to 9 of the Act by the Collector enquiring into the petition shall, so far as it relates to the land lying in the other districts, be similarly communicated to the Collectors thereof.

16. If after the receipt by any Collector of an intimation under rule 15 (2) above, any fresh petition is made to him in respect of the mortgage covered by the first peti-

tion; he shall forward the same to the Collector of the District where the first petition is pending and advise the petitioner to seek his remedy there.

17. In cases covered by rule 15 above, the Collector issuing a warrant of possession under rule 14 shall issue a separate warrant for the area lying in each other district and transmit the same for execution to the Collector thereof, who shall execute the warrant as if it had been issued by himself.

18. The dismissal of any petition for default shall not bar a fresh petition on similar facts, nor shall the failure of a petitioner to pay the amount of compensation have such a result :

Provided that such fresh petition shall not entitle the Collector to question the previous decision, except in so far as it may have been altered on appeal; but the Collector may hold an enquiry regarding the period subsequent to the date of the presentation of the petition in the first case, taking the amount assessed as compensation in that case as the mortgage debt.

19. If there is any dispute between persons claiming to be entitled to compensation, the Collector may either decide the dispute himself, or order the sum deposited by the petitioner not to be paid to any one till the contesting persons have had their rights decided by a competent court of law.

20. (1) An appeal against an order by a Collector or a Commissioner under the Act shall be preferred by submitting a memorandum, accompanied by an attested copy of the order appealed against.

(2) Each such memorandum shall bear the Court-fee prescribed by Article II of Schedule II of the Court Fees Act, 1870.

21. Appeals shall be heard, after proper notice to the parties, on a date fixed for the purpose, and the procedure in force for the reception, hearing and disposal of appeals by Revenue Officers under the Punjab Tenancy Act of 1887, shall apply so far as it is applicable.

FORM "A"

Application under Section 4—Restitution of Mortgaged Lands Act.

In the District of ____________. Tahsil ____________. Year ____________.

Name, parentage, caste and residence of the applicant.	Name, parentage, caste and residence of other mortgagors not joining the application.	(a) Name, parentage, caste and residence of the mortgagee, and (b) if he be not in possession, of the person in possession of the land.	The area and description of the land to be restored.	The date of the mortgage.	The name, parentage, caste and residence of the original mortgagor and mortgagee.	The amount for which the mortgage was effected.	Payments, if any made towards the mortgage debt.	Period for which the mortgagee has been in possession.	*How does the applicant claim the right of restitution?*	In case the respondent was not the original mortgagee, the manner in which he came to possess the mortgagee rights.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12

NOTES—(1) Attested copies of the latest jamabandi entry relating to the land and the mutation of the mortgage in question should be attached to the petition.

(2) The facts in columns 5 to 11 should be given as are known to the petitioner, and any mistake therein would not affect the petition.

(3) *If the petitioner is unable to secure copies of the latest jamabandi entry and the mortgage mutation or to give the facts required* in columns Nos. 5 to 11, he should pay a fee of Rs. 2 and the Collector shall get the necessary documents and facts from his office.

Signature of the petitioner ____________.

VERIFICATION.

Verified that the facts set out in columns———are true to my knowledge while facts set out in columns Nos.———are true to my belief and information.

Verified at ____________ on ____________. Signature of the person making the verification ____________.

FORM "B".

Statement of income from mortgaged land (Section 7, Rule 10 of the Punjab Restitution of Mortgaged Lands Act, 1938.)

District ____________ Tehsil ____________ Village/Town ____________.

			TOTAL INCOME										CULTIVATION BY MORTGAGEE HIMSELF.					CULTIVATION THROUGH TENANTS.											
			Price of crop raised.				*Dry fodder.*			*Crops sold standing*			*Deductions.*						*Deductions.*					*Cash rent.*					
Year and harvest.	Area under *cultivation* of each crop.	Crop cultivated.	*Yield* per kanal.	Total yield in terms of maunds and seers.	Price per maund/seer.	Total price of the *produce*.	Total amount of dry fodder produced.	Price per maund.	Total price of fodder.	Price per kanal.	Total price of the crop.	Total of columns 7, 10 and 12.	Kamins' due.	Cost of seed, labour, etc.	Water rate and land revenue paid.	Total deductions.	Net Income.	Landlord's share out of column No. 13	Kamins' dues paid by landlord.	Cost of seed, labour, etc., supplied by landlord.	Water rate and land revenue paid by landlord.	Total deductions.	Net income *of the* landlord.	Rate of cash rent.	Total cash rent received by landlord.	Abiana and land revenue paid by the landlord.	Net income of the landlord.	Total net income of the mortgagee, *i.e.*, *total* of columns 18 and 28, or 24 and 28.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30

Notes.—(1) *Zaid Rabi* and *Zaid Kharif* should be shown separately from *Rabi* and *Kharif*.

(2) Columns 8 to 10 deal with dry fodder which crops yield besides the commodity sown. Green fodder like *charri*, *sainji*, etc., and other crops like sugarcane sold while standing should be shown in columns 11 and 12.

(3) Where rent is payable in cash columns 4 to 24 need not be filled in.