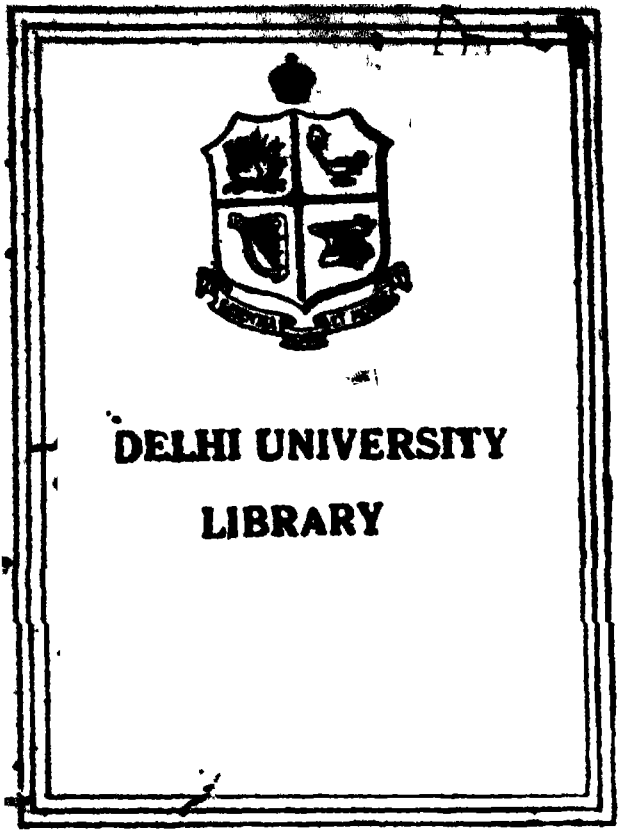

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LAW AND PRACTICE OF BANKING

BY

SOHRAB R. DAVAR,

BARRISTER-AT-LAW, ADVOCATE (O.S.)

First Indian Finalist of the Chartered Institute of Secretaries of Public Companies (London) and Incorporated Society of Accountants and Auditors (London); one time Member of the Syndicate, Fellow of the Senate and Member of the Board of Studies in Commerce of the University of Bombay; Past Government Professor of Mercantile Law and Business Organization for B.Com. (Final); Fellow of the Chartered Institute of Secretaries, London; Member of the Government of India Committee for Companies Act Amendment, 1936; Author of a Manual of Indian Companies Law, Practice, Forms and Precedents (in 2 Vols.); Indian Mercantile Law; Law of Meetings; Higher Accountancy; Indian Company Law, etc.; Founder and Principal of Davar's College of Commerce, Bombay.

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PREFACE TO FIFTH EDITION

The Fifth Edition has been called for within about eighteen months due to a large number of copies of the Fourth Edition being sold out some months ago. The Author takes this opportunity to express his thanks to the Indian Institute of Bankers for recognizing this work from the very First Edition as its Textbook for this subject for its Examination and a large number of copies are generally required for candidates appearing for the Indian Institute's Examination as well as those appearing in the English Institute of Bankers. A number of Indian Universities have also recognized this work of the Author as a Textbook for their Degree Course in Commerce Examination.

The Legal Profession as well as the Bank Officers, Managers and Directors have found it an excellent work for references. The cases are brought up to date and this Fifth Edition has been very carefully revised.

The Author takes this opportunity of thanking the Bank Officials and Professors of the Subject in the Universities as well as the Examination Boards like the Institute of Bankers for recommending this book to those under them as well as for valuable suggestions received from them which have considerably helped the Author in improving the present as well as the previous Editions with a view to enable this treatise to answer the universal requirements of those interested in the subject.

SOHRAB R. DAVAR.

DAVAR'S COLLEGE OF COMMERCE,

Bombay, 1st September 1945.

PREFACE TO FIRST EDITION

The development of Indian Joint Stock Banking of late years has made it clear that an authoritative book for reference and study, both for the Bank Officer as well as the Lawyer, where all points of reference both from the Indian and British standpoint of Law and Practice are not only collected together, but discussed and distinguished, was much in demand. We have, no doubt, numerous books by English authors on this subject, but owing to the fundamental difference on many points both of Law and Practice as applying in India and Great Britain, they are not always reliable guides for the practitioners in India. The advent of specially qualifying Diploma Examinations for the Bank Officers' qualification by the Indian Institute of Bankers and Indian University Degrees in Banking Specialisation is one more reason why a book where Indian Banking Law and Indian Banking Practice are dealt with exhaustively should be compiled. The author has thus taken up this responsible task of supplying this want, and hopes that this book will receive encouragement and support from all interested. He has made use of his long experience as a Professor and Legal Practitioner in this connection. In fact the first lectures on Banking Law and Practice in India were inaugurated, as early as the year 1912, in Davar's College of Commerce by the author. Both the Statute and the Case Law applying to Banking Practice has been exhaustively dealt with, with careful citations for ready reference and the forms and precedents of the greatest value have also been collected and incorporated in this volume. The author's best thanks are here due to the heads of various banking institutions of this country for furnishing him with copies of these forms in actual use by them with permission to get same published in the general interests of Banking Practice. The author's particular thanks are due both to Sir Osborne Smith, the Managing Governor of the Imperial Bank of India, and the President of the Indian Institute of Bankers, and the Hon. Mr. Justice Rangnekar of H. M.'s High Court of Bombay

for taking considerable interest in this work during the course of its preparation as well as for writing the generously worded "Forewords" which have considerably enhanced the value of this volume. It would be also most appropriate here to record the author's grateful thanks to Mr. J. G. Ridland, Secretary of the Imperial Bank of India, Bombay, for the encouragement and keen interest he displayed during the preparation of this book.

The author's thanks are also due to Mr. D. C. Sutaria, L.A.A., F.I.S.A. (London), for having prepared the index with great care and industry.

SOHRAB R. DAVAR.

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FOREWORD

(FIRST EDITION)

FROM THE STANDPOINT OF THE LAW OF BANKING

By

SIR S. S. RANGNEKAR, LATELY A JUDGE OF H. M.'S HIGH COURT, BOMBAY

I have great pleasure in writing a foreword to Mr. Davar's book on the *Law and Practice of Banking*, of which I have had the advantage of reading an advance copy. Mr. Davar has done a distinct service in bringing together within the compass of a handy volume all that need be known about an important and somewhat difficult subject.

There was a time when Banking engaged the attention of just a few experts, but in recent years increasing interest is being taken in it. Commercial education is much more popular now than it used to be, and several institutions, Government and private,—Mr. Davar's being one of the most successful among them,—are affording facilities for such an education. Dependence of commerce, industry and even agriculture on sound banking is now fully appreciated—witness the appointment of the Provincial and All-India Banking Enquiry Committees. Thus the number of those who want to know something about Banking has greatly increased, and it seems to me that there is a real demand for a book like the one written by Mr. Davar.

Mr. Davar is eminently fitted for writing such a book. He was for several years a Professor of Mercantile Law and Business Organization in the Sydenham College of Commerce and Economics. He has been the Head of a Commercial College, which bears his name and has had a successful record for over 30 years. He is the author of several books on commercial and legal subjects, which have run into several editions. On going through his *Law and Practice of*

Banking I have every reason to believe that it will be equally well received.

The opening chapter on the Development and History of Banking provides the necessary historical background. The Machinery of Banking is explained in the chapters on Cheques and Documents analogous to Cheques (Ch. II), Bankers' Clearing House (Ch. III), Bills of Exchange and Promissory Notes (Ch. IV), and other chapters. Relations between Bankers and Customers and their legal aspects are examined in the chapters on Bankers and Customers (Ch. VIII), Accounts of Customers (Ch. X), and Banker's Security for Advancement (Ch. XI). The Imperial Bank of India has a chapter to itself. There is also a chapter on Indigenous Banking, in which much useful and interesting information has been brought together. All important principles of Banking Law are illustrated and supported by legal decisions. As far as I know, this is probably the only book on the subject by an Indian Author, in which both Indian and English Case and Statute Law is fully discussed. The usefulness of the book is further increased by three Appendices, one of which gives the Forms and Precedents, and the other two contain the texts of the Negotiable Instruments Act and the Bills of Exchange Act.

Mr. Davar's book thus satisfies the needs of all classes of readers. I confidently hope that it will be found useful not only by practising lawyers, businessmen, students, but also by those who, though not specially connected with Banking, desire to be well informed on a subject of special and increasing importance.

S. S. RANGNEKAR.

HIGH COURT, BOMBAY,

22nd June, 1931.

FOREWORD

(FIRST EDITION)

FROM THE STANDPOINT OF AN EMINENT BANKER

By

SIR OSBORNE A. SMITH

One Time President of the Indian Institute of Bankers and Managing Governor of the Imperial Bank of India (Later Managing Governor of the Reserve Bank of India)

I have perused with genuine pleasure Principal Davar's book on the *Law and Practice of Banking.* The Professor takes us by easy stages from the early days in India of what might be termed barbaric banking (when advertisement by press insertions or palatial offices set off by gaily uniformed chaprasis was unknown, but where thoroughness and honesty was as ever the keynote of success) to the present day when it is hoped we are shortly to be blessed with the apex of banking, viz. a true Central Reserve Bank. Even in the present day when representatives of many countries have invaded India, bringing with them developed and stable systems from Europe, America and elsewhere, and capturing the trading business of the seaport and more populous inland towns, the Marwari, the Multani, the Chetty, the Sowcar and other Indian banking communities still carry on in the dark mofussil as they did hundreds of years ago. Their rates of interest for accommodation may seem usurious but are probably only commensurate with the risks undertaken, and it would appear as though they will continue to flourish in places where the distant ryot cultivates and until the co-operative movement invades, extends and establishes its influence in Settlements and smaller villages where the Joint Stock Banks would find it impossible to operate profitably.

Principal Davar has more than a theoretical knowledge of his subject, and he supports his views by many legal decisions accepted as impregnable in the banking world.

Law and Practice of Banking is written in easy to follow conversational language. I commend it as a valuable book of reference to the tyro, the more advanced banker and to the student of banking for inclusion in his library.

OSBORNE A. SMITH.

IMPERIAL BANK OF INDIA,
BOMBAY,

23rd June, 1931.

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CHAPTER I

DEVELOPMENT AND HISTORY OF BANKING

DERIVATION

The derivation or origin of the word " Bank " is in contest. According to some writers the word " Bank " was derived from " Banco ", " Bancus ", " Banque " or " Banc ", all of which mean a bench upon which the mediaeval European money-lenders and money-changers used to display their coins. Anyhow this word has been in use from the middle ages in connection with the business of a bank. The above version is very likely the correct derivation, because at one time in banking history money-changing was looked upon as the most important function of a banker.

EARLY EUROPEAN HISTORY

Early European banking was carried on by the Jews who had to keep their possessions in a more or less liquid state because they were not allowed to hold lands. The Jews are said to have introduced Bills of Exchange in Europe, very likely from the more advanced East of that date, which were soon discovered to be the most convenient method of transmitting money from one country to another. European banking has a very old history, dating from the days of Greece and Rome, where various functions known to modern banking were being performed by these ancient bankers. Banking in ancient times of course was largely confined to money-changing and money-lending as conducted in mediaeval times. These money-lenders were busy conducting the simple operations of lending money from their own private property and also borrowing from the people in order to lend out to others. In short they were more or less what we call in modern times " Usurers ". It is said that it was about the year 1615 that saw anything like banking organization similar to that of our modern banking in England though the continent of Europe seems to have made very rapid progress in this type of organization much earlier in the history of banking of that continent.

In mediaeval Europe, the bankers of Lombardy were famous, and to them belongs the credit of having planted the seed of modern banking in England when they settled in London at the place now famous as Lombard Street. Florence which was the capital of Lombardy, a province in North Italy, boasted of a large number of prominent bankers, the most prominent of whom were the Medici, so famous later not only in banking, but also in the political history of Europe. These Lombards were much troubled in the thirteenth century with internecine wars which were followed by a plundering invasion by Kaiser Fried-

rich II. Many important Lombardy families during that period migrated to more settled countries such as Belgium, France and England. In England they brought with them banking, usury and marine insurance. The three brass balls which formed part of the armoured bearings of the Medici family of Florence were introduced by them. England greatly profited by the presence of these emigrants, but owing to the exclusive habits of the Lombards, who would not even intermarry with the native population of England, they were never very popular. Henry IV made them settle in the marshes of Long Bourne. They, however, built a street and established banking among other pursuits, thus making the name of Lombard Street famous. Gradually restrictions were placed by successive monarchs on the activities of these foreign traders which compelled them to leave the country, and by the time of Queen Elizabeth, their power was entirely broken principally through the influence of Sir Thomas Gresham, the builder of the first Royal Exchange. Sir Thomas Gresham's crest, the grasshopper, still hangs outside the Martin's Bank premises, in Lombard Street, which proves that the bank is directly descended from Gresham. The Lombards left England, but the legacy of trades, including banking, which they left behind, enriched England.

A little later, Deposit Banks and Exchange Banks flourished on the Continent of Europe. The Banco di Rialto was the first public bank started in Venice in the year 1584, which did business both in the deposit and exchange branches. The Bank of Sweden was established in the year 1556. It is now known as the State Bank of Sweden. This bank has the credit of having invented Bank Notes. Exchange Banks were started in Amsterdam in the year 1609 and in Hamburg in 1690, the object of which was to do foreign exchange business, as well as finance the trade of their country with foreign countries. Later they began to do deposit banking.

EARLY INDIAN HISTORY

Banking is also of very ancient origin in India. It is stated by authoritative writers that as early as the Vedic period, say between 2000 and 1400 B.C., records of taking and giving of credits are to be found. All throughout the period of Indian history, money-lenders who were called either bankers, or seths, or shroffs, are recorded to have existed, and are stated to have carried on a roaring business in money-lending and banking. The great Hindu Lawgiver, Manoo, who is said to have flourished about the second or third century A.D., also devotes a section of his work to the question of deposits and pledges. By the twelfth century, the Jain bankers are recorded in history to have flourished, and the famous Dilwara on Mount Abu, is said to have been built by two Jain bankers somewhere between 1197

and 1247 A.D. The famous French traveller, J. B. Tavernier, writes in the seventeenth century that almost every village had a money-changer called the shroff, who, according to him, acted as a banker to make remittances of money and issue letters of exchange. He speaks very highly of these bankers, and pays them a very high compliment when he says that " all the Jews who occupy themselves with money and exchange in the empire of Grand Seigneur pass for being very sharp; but in India they would scarcely be apprentices to these changers." This eminent traveller also refers to the financing of foreign trade in India and to the use of bills drawn on Surat and payable in two months. It may be stated with regard to our ancient Indian bankers that their banking operations largely resembled those of modern private bankers inasmuch as they have from the earliest period been known to perform almost all the operations of the modern banker, viz. that of accepting deposits, granting loans against pledges and securities as well as mortgages, advancing money on personal security, lending money to the State and the Government or the King, acting as the bankers' custodians for valuables, managing the currency of the King and the State, dealing in instruments of credit similar to our Hundis and Bills of Exchange, exchanging money, collecting revenue on behalf of the State, etc. From the early Vedic period right through the Moghul period as well as that of the East India Company's rule one finds evidences of their conducting business along all these lines and even today the indigenous bankers, as we shall see in a separate chapter, are engaged in similar operations.

The Moghul Period.—Even during the Moghul period, the indigenous bankers of India were most prominent in connection with the financing of trade and the use of instruments of trade. Aurangzeb in his reign conferred the title of " Seth " on the most eminent banker of his time known as Maneckchand. Seth Maneckchand had six brothers in the banking line who were equally great bankers. Emperor Farrukhsiyer conferred on Fatehchand, nephew of Seth Maneckchand, the title of " Jagat Seth ", the " Banker of the World ". The house of Jagat Seth virtually came to occupy the position of the Rothschilds of India and rendered great assistance to the British in the early days of their advent in India. Lord Clive in 1859 is said to have entertained Jagat Seth for four days at the cost of Rs. 17,374. In those days the revenue of the East India Company was collected practically through these indigenous bankers of various districts, particularly in Bengal.

The Moghul period is said to be distinguished for their system of coinage which were struck in a large number of mints scattered all over their empire. The coins were both of gold and silver, though naturally the silver coins were in largest use.

The most important of the silver coin was the rupee which was more or less of the same weight as the present day rupee and is said to have been introduced during the reign of Sher Shah and considerably improved upon by the Emperor Akbar. The rupee was a round coin, whereas another coin almost of the same kind of silver as the rupee was known as Jalalah which was struck square instead of round. In other words it was a square-shaped rupee. The value of all these coins in those days was equivalent to the actual quantity and quality of metal contained in them. It is recorded, however, that Indian Banking received a certain amount of set-back during the long reign of the Emperor Aurangzeb who as an orthodox Mahomedan objected to take interest in money and prevented his co-religionists from deriving any advantage which would be classified as interest on the investment of their capital. The Imperial Treasury in his reign stopped money-lending transactions. This resulted naturally in dislocation of trades and a set-back to Indian Banking for a time. In the reigns of other Moghul Emperors, however, the bankers received a great impetus and encouragement. It may, however, be added that even Aurangzeb who is alleged to have stopped his co-religionists from indulging in banking business actually appreciated the work of eminent Hindu bankers as appears from the fact that he conferred the title of " Seth " on Manekchand as we have noted above.

The Decline of the Shroff.—Similarly the Nawabs of Oudh and the Peshwas and their chiefs, all sought their assistance. When the country was divided into multiplicity of sovereign and semi-sovereign powers, the principal occupation of these bankers was that of shroffs and money-changers. Gradually the unification of currency under the East India Company and the substitution of a single sovereign power in the place of petty principalities, took away from the hands of the shroffs the most profitable business of money-changing. In Bengal their business was affected later with the advent of joint-stock banks towards the end of the eighteenth century. In Bombay, however, joint-stock banking did not come upon the scene until the year 1840 with the result that the indigenous banker continued to enjoy the monopoly of banking in Bombay till that date. In spite of the establishment of these joint-stock banks, a good deal of banking business still remains in the hands of the indigenous bankers, the details of which shall be discussed a little later.

ENGLISH BANKING HISTORY AND DEVELOPMENT

In the early days of the great rebellion or civil war when the Cavaliers and the Round Heads were fighting, people were compelled to deposit for safety, their valuables with goldsmiths who had strong boxes and other arrangements for the purpose.

This resulted in a regular custom for merchants to deposit also their daily takings or cash with these goldsmiths. These goldsmiths used to charge a commission for these articles bailed with them as they were not permitted to use this in their business but had to return same. Later this custom was altered and the goldsmiths began to use this money and keep current accounts. Thus it is stated that banking in England began to grow somewhere between 1642 to 1645. The goldsmiths issued receipts promising to pay the value deposited on demand. Later on these receipts became mere promises to pay, and when the goldsmiths ultimately began to do banking business, they became bank notes. Banking thus developed into a business conducted all over England by private bankers. These goldsmith bankers began to keep pass-books which were originally known as " passage books " in which a copy of the customers account in the goldsmith's ledger was maintained for facility and use of the customer himself. These pass-books were written up every day from these ledgers and were kept ready for the customer who occasionally called and compared same with his own account. The customer in his turn used to draw such drafts on the banker after being guided by the pass-book as he liked and handed to the creditor whom he wanted to pay. The creditor thereupon cashed his drafts as he liked. Later on draft forms were printed for fixed amounts in blank which the customers were handed over, which they could sign and hand over to such creditors whom they wanted to pay. These bank drafts evidently formed the first step towards the ultimate use of bank cheque forms and cheque books as we know them today. The goldsmiths of course used the money with them for earning a profit by lending same to businessmen both local and foreign as well as to the Government or Crown on various securities. The Crown frequently gave them the security of taxes for such loans. This gradually resulted in the goldsmiths ultimately giving up their business of goldsmiths and confining themselves to that of bankers, pure and simple. The profit-making possibility of this type of business soon began to be noticed by others who were not goldsmiths with the result that a number of merchants as well as a number of firms of bankers who came out to do exclusively banking business entered the field in competition with those old goldsmiths, thereby bringing into existence the growing body of influential and private bankers all over the country. In the year 1667, the Dutch burnt the British Fleet anchored in the Medway and it was rumoured that they were marching on London which resulted in a panic and there was a run on these goldsmith bankers from their customers. The goldsmith bankers in their turn applied to Charles II for re-payment of the loans they had made to him. The King, however, could not pay and stopped payment not only during the

period of hostilities with the Dutch but even refused to pay after the hostilities ended right up to the end of his reign. His successor James II also repudiated these debts which resulted in great disaffection against him. William III ultimately compromised with these goldsmith bankers by an arrangement to pay a sort of annuity to them against their debts. In the reign of this monarch tranquility and credit were restored after many years of revolution and fighting, and the question of establishing the Bank of England was taken up. This bank was established by the grant of a Royal Charter by the King with a capital of £1,200,000 which was to be lent to the State at 8 per cent per annum interest. In return, the State promised to pay £4,000 a year for the expenses of management of the bank and empowered the bank to issue notes for the equivalent amount of the bank's capital, viz. £1,200,000.

Later on, the Tories who came into power started a land bank which was a total failure whereupon the Whigs when they came into power again, passed an Act of 1708 which forbade any other bank consisting of more than six persons to " borrow, owe, or take up any sum or sums of money on their bills or notes, payable at demand, or in less than six months from the borrowing thereof ". The result of this was that it forbade any joint-stock bank being established in England which could issue its own notes. In those days when the multifarious transactions with which we are so familiar today were unknown, the scope of banking business was very limited with the result that the issue of bank notes was looked upon as a very important function, without which no banker could exist in competition with others who issued notes. The issue of bank notes means receiving money on which no interest has to be paid. Though in theory all this money could be demanded immediately, in actual practice a good proportion of it could be with safety profitably invested by the banker. It will thus be seen that a competition with those who were in a position to secure so much capital without interest, by those who had not that facility, was difficult if not impossible. Thus for more than a century, the Bank of England remained the only joint-stock bank of England surrounded by a cluster of private banks around it, both in London as well as all over the country. The Bank of England notes circulated freely in London, but could not in those days of restricted transport facilities, spread outside beyond a limited area, with the result that each country banker within the area where he had settled had his own notes circulating freely.

Restriction of Monopoly.—As there was no restriction on the note issue, because in those days any one who called himself a banker could issue notes, this power was much abused, with the result that in 1825 there was a great financial crisis, when

the public felt the evil effects of this unrestricted note issue. The bankers, however, were so powerful that the issue could not be restricted, and the only measures taken were that the Bank of England was advised and authorised to open branches in principal towns of England and all bankers were prohibited from issuing notes under £5. The monopoly of the Bank of England, which was hitherto the only joint-stock bank in England, was restricted to sixty-five miles' radius of London. Thus a joint-stock bank outside this radius could thereafter be established with the right of issuing notes. In London itself a number of joint-stock banks were also established though they did not enjoy the privilege of note issue, because by that time the scope for banking business had increased. Some of the now famous banks founded at that time were the London & Westminster Bank in 1834, the London Joint Stock Bank, the Union Bank of England and the London County Bank.

Introduction of Cheque Books.—We have seen that the London bankers were not allowed to issue bank notes. Thereupon the London private bankers introduced and developed deposit banking by issuing cheque books. People soon began to realize the convenience offered by this cheque book system as compared with the use of bank notes for making large payments. This innovation removed the inconvenience and risk annexed to the use of bank notes which they had to keep in their strong boxes and carry about for the purposes of daily business. Naturally the cheque book system superseded notes and became universal. Today this system is looked upon as the mainstay of modern banking. These early cheques largely resembled those which we are using in modern days, the only difference being that the old cheques were invariably payable to bearer on demand. The first bankers recorded to have issued these cheques were the famous Messrs. Child & Company who issued them in printed forms.

Limited Liability System.—The next step forward was the introduction of the " limited liability " system which was applied to banks in the year 1858. Prior to that all joint-stock companies had to be unlimited liability companies, with the result that in case any of the companies failed, the shareholders were completely ruined because of the liability to pay towards the debts of the company to their last penny. This was a great impediment to the progress of joint-stock enterprise. An average shareholder has very little voice in the internal management of the company, and therefore there was no justification for burdening him with heavy liability on the footing of a partner in a private partnership, where a partner had a right to take a working part in the business and had the right to inspect or get inspected the accounts of his firm. An Act was, therefore, passed in 1855 under which trading companies could be incor-

porated as limited liability companies. It also provided for the existing companies to be converted into limited corporations if they so desired. In case of banks, however, fears were expressed that an extension of limited liability privilege would impair their credit. It was argued that they stood in a peculiar fiduciary position to the public, having under their control and power large amounts of deposits belonging to the people. These fears were ultimately found to be misconceived on the failure of some of the banks when it was found that the shareholders happened to be persons of very little means, as the rich and the responsible section of the community had got rid of these shares and declined to shoulder the heavy responsibility entailed by unlimited liability. This attitude of the investing public was largely the result of the sad experience they had on failure of the Western Bank of Scotland, which involved the ruin of wealthy old families. Ultimately, the Parliament agreed to pass the Act of 1858, extending the limited liability privilege to banking companies also, with, however, one reservation that, in case of banks issuing their own notes, their liability with respect to the note issued was to remain unlimited.

PRESENT-DAY BANKING IN ENGLAND

The Present-day Groups.—Banking in England at the present day is divided into the following groups :—

(1) The Bank of England, which acts as the Central Bank of the country, has a capital of £14,553,000 with limited liability and is incorporated under a special Bank Charter Act of 1844

(2) Joint Stock Banks with limited liability who have now acquired control over the bulk of English banking business

(3) A small number of private bankers

(4) A small number of unlimited joint-stock banks, the shares of which are mostly owned by a small number of people

(5) Overseas banks with head offices in London incorporated under the Royal Charter or under the Companies Act specially with a view to do business in the Colonies.

Note.—It may be noted here that the most prominent of these joint-stock banks under the second group are what are commonly known as the "Big Five", viz the Midland, Lloyds, Barkleys, the Westminster and the National Provincial. These banks are giant institutions who have absorbed a number of banks or have amalgamated with them. These giant banks are among the largest in the world and carry on almost similar business as that of other joint-stock banks of England

Spread of Banking Habit.—In England the banking habit has spread largely as will be seen from the figures given by Mr. James Dick in his paper read before the Institute of Bankers. There were, according to him, in 1883, 317 banks in England alone, having 2,382 offices, which worked out at one office to every 11,315 head of population. In the year 1911, the number of banks had declined to 99, while banking offices

increased to 6,480, which worked out at one office to every 5,680 of the population. According to Mr. Skyes, in his book entitled *Banking and Currency*, by the year 1921 the number of English banks had fallen to 40, with approximately 8,022 offices, which worked out at one office to every 4,722 of the population. These figures clearly indicate that banks, as such, are decreasing, the offices are increasing and each office is maintained by a much smaller number of the head of population than it was in the year 1883.

Amalgamation and Absorption.—The decreasing number of banks is due to the fact that in England the process of amalgamation and absorption was rapidly progressing. Large joint-stock banks of London have absorbed a large number of private bankers on the countryside with a view to start branches there; and those in towns outside London absorbed London private bankers in order to open offices in London. Over and above these, the process of amalgamation and absorption among the large joint-stock banks themselves progressed for a time at a rather alarming rate. The process has now stopped. At one time fear was expressed that these absorptions and amalgamations might result in concentrating the monopoly of banking and finance within the hands of a limited number of banks, and that the public might suffer as a result. This fear so far has not been justified, but on the other hand it is argued that these amalgamations have resulted in uniformity of practice and may prove a source of strength during emergencies and periods of financial peril, in so far as it is now possible to take concerted action owing to the small number of banks that have to be dealt with.

The above amalgamations between private and joint-stock banks, as well as between joint-stock banks themselves, both during the period of war and at the end of the war, resulted in bringing to the front five most powerful banking institutions, viz. the "Big Five" referred to above. These five big banks also obtained control over several Scottish and Irish banks thus extending their activities in the two countries concerned. The rapidity of the amalgamations caused alarm which resulted in a committee being appointed in the year 1918 to report on these amalgamations and their effects prejudicial or otherwise, to the interest of industries and commerce and also as to whether any legislation was necessary with a view to prohibit such amalgamations in the future. The committee reported recommending legislation by which such amalgamations should only be allowed to be made after the approval of the Treasury and the Board of Trade was obtained. Though no legislation was ultimately introduced in the Parliament, a convention has grown up by which banks desiring amalgamation have now to approach the Treasury for their sanction and not to proceed to such amalga-

mation if the Treasury do not approve of the suggestion or project.

The other development in connection with British banking since and during the war was the growth of foreign business which is now carried on by British banks themselves instead of their agents in foreign countries and persons of foreign banks. The Westminster Bank had opened an office in Paris even before the war and also extended its business to Spain. The war brought such a pressure of circumstances over banking business that principal British banks started developing branch business outside the United Kingdom on the continent of Europe. No branches unfortunately could be opened in the United States of America owing to prohibition by the banking law of that country. The same extension fever was to be found in connection with British branch banking both in the dominions and the colonies. In the case of Australia and New Zealand, the banking monopoly is maintained by their own banks through their legislation, though originally these banks were established through British pioneers.

MODERN DEVELOPMENT OF INDIGENOUS BANKING

Banking Castes.—Though indigenous banking is not confined to any particular caste, the most prominent of these indigenous bankers who do a sort of mixed banking and money-lending business are to be found among the *Vaishyas*, the *Jains* and the *Marwaris* all over India; the *Chettis* in Madras; the *Khatris* and *Auroras* in the Punjab and the *Multanis* in Sind, Gujerat, as well as on the North-West of the United Provinces. To quote from the Bombay Provincial Banking Enquiry Committee's Report, 1929-30, para 253, Vol. I :—

"As it exists, the system of indigenous banking is an institution in itself, with its fine traditions concerning the respectability, resourcefulness and integrity of the indigenous banker, his hereditary relations and close personal contact with his clientele and simple and popular methods of work. As a credit agency that has stood the test of centuries, notwithstanding political convulsions, revolutions and changes in dynasties, it occupies a unique position in respect of the magnitude of its operations and their importance to society. Its development has naturally proceeded on the lines suited to the commercial and financial genius of the people, their local requirements, habits, customs and traditions. It is not, therefore, organized on the lines of the modern banking institutions of the country, which are modelled on the western system of banking. Nevertheless, there are many points of resemblance between the indigenous system and the modern system of banking.

"There are diverse castes and classes of the bankers and in certain large centres they have their own associations and bazaars Within its own sphere each of these associations conducts its business on well-defined lines and is governed by its own regulations Questions of common interest are considered at meetings of such associations where members' differences and disputes regarding business matters are also settled. Members of one association have dealings with those

of another, but there is no organization for interchange of intelligence concerning the credit position of constituents, enunciation and adoption of policy and methods of work or for the regulation and promotion of *inter-shroff* business.

"The indigenous banker performs all the principal functions associated with modern banking except that he does not allow cheques to be drawn on customers' accounts. He receives call-money, short-term deposits, and fixed deposits, keeps current accounts as well as deposit accounts, makes payments to the account holder personally and honours his written orders conveyed by letter. He gives advances, loans on security, or on personal credit, either as overdrafts on current accounts, or as call money, or for short or long periods. He discounts and accepts *hundis* or bills for collection and gives *hundis* or drafts for purposes of private or trade remittance. Thus he carries on a very large amount of inland exchange business through a network of offices and agencies, being in many cases an outlying part of the Province, the only agency for the transmission of funds. A remarkable feature of the indigenous banking system is the banker's close personal touch with the customer. He knows the history of the family of the borrower and the details concerning his business and financial position. This renders it easy for him to determine whom to accommodate and to what extent. Again, after giving a loan he is in a position to watch the borrower's transactions with a closeness denied to the modern organized banks. In one material respect, however, indigenous banking differs from modern banking. It does not draw any distinction between dealing *in* other people's money and dealing *with* other people's money so that many an indigenous banker combines trading with banking, therein exceeding the legitimate scope of modern banking. There are, accordingly, three classes of indigenous bankers :—

(1) Those who do no business other than banking.

(2) Those who are both bankers and traders or commission agents.

(3) Those who are principally merchants or traders, but who also employ their surplus funds in banking business

By far the largest number of the indigenous bankers belong to the second class.

"It is in the methods rather than the nature of business that indigenous banking stands in marked contrast with modern banking The most distinguishing feature of the indigenous system is that its operations are not attended with the formalities and delays incidental to modern banking. The indigenous banker prefers to do business on his own The principle of combination of resources on the joint-stock basis does not appeal to him. The volume of business of each individual or firm being necessarily restricted, as compared with that of a modern bank, it lends itself easily to the *deshi* (Indian) orthodox but simple, economical, and, for all practical purposes, accurate and efficient system of accounts Following the traditional system of accounting, the indigenous banker keeps only a few books, in most cases only a day-book and a ledger No audit is required and no balance sheet has to be published; no elaborate staff is necessary, no attractive counter, and no imposing edifice. Until recently there were no hard and fast regulations concerning hours of business. Payments were made at any time of the day and even after sunset till midnight. Recently, however, the hours of business in principal centres, such as Bombay, Ahmedabad and Karachi, have been restricted and payment is generally made till sunset only but elsewhere, we find, the doors of the firms of indigenous bankers are open till midnight for making payments or advancing loans. It is with them a matter of prestige of the firm." (Para 256, Bombay Provincial Banking Enquiry Committee's Report, 1929-30, Vol. I.)

EUROPEAN BANKING IN INDIA

The Agency Houses.—After the fall of the House of Jagat Seth through his friendship for the British, in the reign of Mir Jaffer, who was fighting at the time against them,—" it is said that the latter after his defeat at the hands of the English ordered this banker to be thrown into the Ganges from one of the bastions of Monghyr fort and confiscated his property,"—the European merchants in Calcutta began to feel great difficulty due to lack of credit. One particular difficulty, they always experienced, over and above this new difficulty, was the lack of proper facilities for the financing of foreign trade in which the indigenous bankers did not take part. This resulted in the adding of banking departments to the business of the great agency houses of Calcutta. As Calcutta gradually rose in importance, the money market was shifted to Calcutta from Moorshidabad, and in the year 1771 the treasury or the *Khalsa* was also removed there. One of the leading agency houses, Messrs. Alexander & Co., started a bank under the name of " The Bank of Hindoostan," which was the earliest European bank in India. This bank ultimately failed in the year 1832, with the fall of the agency house of Messrs. Alexander & Co.

Early Joint-Stock Banks.—The earliest bank which was not connected with any of the agency houses is said to have been the Bengal Bank. The exact date of the establishment of this bank is unknown, but it seems to have been functioning for some years before the year 1784. This Bengal Bank was quite distinct from the one which was one of the Presidency Banks going under that name. The General Bank of India was established in the year 1786, as the first joint-stock bank in India with limited liability. The bank was authorised to issue its own notes on condition that " one-third at least of the capital, including its extension by the issue of note shall always remain *in specie* in the bank ". The Bengal Bank also was issuing its notes for the denomination of Rs. 500, Rs. 50 and 1 gold mohur, respectively. Both these banks were keen competitors. Ultimately the General Bank of India was appointed Government bankers somewhere in the year 1787. The General Bank's notes were recognized by the State, and Lord Cornwallis dealt a powerful blow against the Bengal Bank's prestige and credit by asking public officials to retire from that bank, the most prominent of whom was Mr. Edward Hay, who was an important Government official, being the Secretary of the Secret Department. This recognition was withdrawn by a notification, dated 8th September 1788, by declaring that Government had discontinued its relations with the General Bank. This was the result of jealousy among the competing banks of the time. The exact closing of the account of Government with the General Bank took place somewhere in April 1789. There followed a mone-

tary crisis in the year 1790 and the General Bank was dissolved somewhere in the year 1793. This was the time of war between the British forces and Mysore, which though successful for the British in the beginning became more difficult later. Tipoo was fortunate in recording a number of successes in his favour. Particularly one of them at Coimbatore caused a panic in Calcutta. There was a rush on the Bengal Bank which had to suspend payment in November 1771. The Bank of Hindoostan was also in considerable difficulty. Government were, however, appealed to by both the Bengal Bank and the Hindoostan Bank for assistance which was sympathetically received by the former. The Hindoostan Bank took advantage of this assistance, but the Bengal Bank was too hopelessly involved to be able to do so.

The Establishment of Presidency Banks.—The only bank thus left was the Hindoostan Bank, which flourished and prospered particularly since the failure of the two rival banks, and continued to do so up to the year 1806, in which year a rival bank at Calcutta was established. This bank was established by the Government with the main object of improving the depreciated currency. Ultimately sanction was received from Parliament and the Directors of the East India Company in the year 1809 brought into existence the first Presidency Bank entitled the " Bank of Bengal ". It started work on excellent premises, entrusted as it was with the funds of the Government and thereby acquiring a peculiar prestige. The capital of this early bank was £500,000, one-fifth of which, i.e. £100,000 was contributed by the East India Company, i.e. the State. The Government had power to appoint three members on the Board of the Bank and the Secretary was usually a member of the Civil Service of that time. The Bank of Bombay was first constituted in the year 1840, with a capital of Rs. 52,25,000, Government having subscribed three lacs of rupees. All these banks were formulated more or less on the same principle as the Bank of Bengal, and they were all issuing notes. In the year 1862, the right of note issue was taken away from these Presidency Banks, but they were allowed to transact paper currency business on behalf of the Government, and in addition, by way of compensation for the right of note issuing, they were given the right of management of the Treasury at the Presidency towns and at their branches in which connection the Government balances were left with them for use. Having deprived them of the right of note issue, many of the restrictions which were imposed originally on them for the safety of the currency were withdrawn. They were of course, prohibited from conducting foreign exchange business, or from borrowing or receiving deposits payable out of India. They were not to give loans for a period longer than six months, or upon the security of the mortgage of immovable property, or on promissory notes bearing less than

two independent signatures. They were not to advance money on goods until the goods were deposited with them and pledged. The Government also gave up the right of appointing their own officials as directors of the bank.

The Establishment of the Imperial Bank.—The Presidency Banks continued until the year 1920 by which time India had considerably advanced. The spread of education had brought about unification among the different denominations of the population, and the introduction of railway, telegraph and other up-to-date methods of communication and transport, brought various centres in close touch with one another, with the result that there grew up a strong demand for unification of the Presidency Banks in the form of one central bank for India, so that it could by uniformity of practice and organization, control and guide the Indian money market. The Imperial Bank of India Act was thus passed in the year 1920 which brought into existence the Imperial Bank which was the result of the fusion of the three Presidency Banks.

The Imperial Bank of India Act of 1920 had to be amended in the year 1934 on the passing of the Reserve Bank of India Act of 1934. The Reserve Bank of India as we shall see later was specially formed to act as a Central Bank of the country in its full sense of the term, a part of which function was performed by the Imperial Bank of India as the Treasurer of the Government of India, as well as that of the Provincial Governments. Thus the issue of notes and its regulation which was prior to the passing of that Act in the hands of the department of the Government was transferred to the Reserve Bank as well as the reserves and the work of achieving monetary stability in the country as well as the general conduct of the currency and credit system of the country is now left to this new bank. The Reserve Bank also became the banker of the Government in place of the Imperial Bank which ceased to act as such from the date the Central Reserve Bank Act came into force. It has, however, been arranged that the Imperial Bank should act as the sole agent of the Reserve Bank of India at all places in British India, where the Imperial Bank had its branches at the commencement of the Reserve Bank of India Act and where the Reserve Bank had no branch of its banking department, a contract was entered into according to Section 45 and the Third Schedule of the Reserve Bank of India Act and the Imperial Bank Act subject to the approval of the Governor-General-in-Council which was to subsist for fifteen years and thereafter until terminated after five years' notice on either side. The Imperial Bank, however, had to undertake to maintain a sound financial position and to fulfill all the conditions of the agreement, failing which the Reserve Bank has been given the power to recommend the Governor-General-in-Council to make

such enquiries as he thinks fit and to issue instructions to the Imperial Bank of India with reference either to the agreement or to any matter which in his opinion involves the security of the Government moneys from the assets and the issue department in the custody of the Imperial Bank and in the event of the Imperial Bank disregarding such instructions, the Governor-General-in-Council is empowered to declare the above agreement to be terminated. The Imperial Bank of India is naturally remunerated for these services in the terms of the agreement, which we shall see in detail in the special chapter on Imperial Bank. Various restrictions which were placed on the Imperial Bank orignally including one against doing exchange business, under the Imperial Bank of India Act of 1920 were removed in connection with the transaction of business. Various alterations in connection with the Central and Local Boards, etc. were also effected which have been dealt with in a separate chapter.

Establishment of the Reserve Bank of India.—As we saw above, the Reserve Bank of India was formed by the Act of 1934. This Bank was established with a view to provide for India a Central Bank in accordance with the latest ideas under which in all civilized countries similar banks function. These central banks naturally work in close relationship with the State and manage the currency of the country for which they have to manipulate in gold reserves, securities, etc., with a view to protect their own currency and stabilize foreign exchanges. The Reserve Bank has been established as a shareholders' bank and not as a State bank as worked by some States, though the Act is so framed as to give very little power to shareholders of interference in its internal working and organization. The Governor-General in India is given considerable control and power of interference with the result that among the 61 sections of the Act the name of the Governor-General happens to occur nearly 84 times. These powers of interference of the Governor-General relate to the appointment of Governor, Deputy Governor, nomination of directors and his previous sanction in connection with various other matters. He can supersede the Central Board of the Bank if in his opinion it fails to carry out its obligation and it is by his order that the bank can be placed in liquidation. This power in the hands of the principal executive is necessary in a large way for safeguarding the monetary interests of the State whose banker the Reserve Bank happens to be, and at the same time he is expected to protect the interest of the public by seeing that the bank functions efficiently and in the public interest. The subject has been dealt with fully and in detail in a separate chapter.

Banking Companies under Indian Companies' Act.—Under the present Indian Companies' Act of 1913 as amended in the year 1936, a special chapter has been added entitled Part XA

which specifically legislates for banking joint-stock companies with which we shall deal later on. This marks an additional and new departure in Indian banking legislation, inasmuch as the Act for the first time in the history of British legislation defines a banking company at some length as well as restricts the use of the word " bank ", " banker " or " banking " by joint-stock companies which do not come under the definition. Under this Act no banking company after the expiry of two years from the commencement of the Indian Companies' (Amendment) Act of 1936 which came into force in January 1937, can employ or be managed by a managing agent other than a banking company for the management of the company. The other restriction is that no banking company incorporated in future shall be formed unless shares have been allotted to an amount sufficient to yield the sum of at least Rs. 50,000 as working capital. Banking companies in India are also prevented from creating a charge or mortgage on the unpaid capital of the company and if such charge is made it is invalid. The banking companies are also compelled in India to transfer a sum equivalent to not less than 20 per cent of profits of each year to a reserve fund before paying a dividend, until the amount of the reserve fund is equivalent to the paid up capital. The amount standing to such reserve funds is to be invested in Government securities or any securities mentioned by the first two in Section 20 of the Indian Trust Act of 1882. If any of these funds is not so invested it may be kept deposited in a special account to be opened by the bank for the purpose in a scheduled bank as defined in the Reserve Bank of India Act of 1934. This provision applies to the old companies formed prior to the commencement of the Amendment Act of 1936, after the expiry of two years from the commencement of the Act. Over and above this every banking company is now compelled to maintain a ' cash reserve ' in hard cash equivalent to at least 1½ per cent of time liability and 5 per cent of the demand liabilities of such companies and must file with the Registrar before the tenth day of every month a statement of the amount so held on Friday of each week of the preceding month with particulars of the time and demand liabilities of each such day. The time liability of course here means the fixed deposit accounts and the demand liabilities current accounts. Any failure to comply with this regulation as to cash reserve entails a fine on every director or officer of the company who is knowingly and wilfully a party to the default. Banking companies are also prevented from forming or holding shares in any subsidiary company except subsidiary companies formed by themselves for the purpose of doing business of trust, administration of estates as executors, trustees or otherwise. Besides this a section has been introduced

in the Act by which a protection is sought to be given in the nature of a temporary moratorium to a banking company under certain circumstances. Here it is laid down that where a banking company is temporarily unable to meet its obligations, it may apply to the Court and the Court may make an order staying the commencement or continuance of all actions or proceedings against such banking company for a fixed period of time on such terms and conditions as the Court thinks fit and proper and may even extend the period from time to time as it deems fit. This section is meant to protect banks against an undue rush on it at a time of peculiar financial stringency in the money market or other similar cases so that the bank may be able to extricate itself from its temporary difficulties and thus save its depositors and the shareholders from great loss. The Court is authorised to impose such conditions as it thinks fit at the time of making this protection order. The most arresting feature of the whole Act is the definition of a " banking company " which runs as follows :—

In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, viz :—

(1) The borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundis, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable ot negotiable or not; the granting and issuing of letters of credit, travellers' cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or ther forms or securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent including the power to act as attorneys and to give discharges and receipts;

(3) contracting for public and private loans and negotiating and issuing the same;

(4) the promoting, effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue public or private, of State, Municipal or other loans or of shares, stock, debentures, of debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(5) carrying on and transacting every kind of guarantee and indemnity business;

(6) promoting or financing or assisting in promoting or financing any business undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

(7) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights of privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realization of any securities held by the company or to prevent or diminish any apprehended loss or liability;

(8) managing, selling and realizing all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(9) acquiring and holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form part of the security for any loans or advance or which may be connected with any such security;

(10) undertaking and executing trusts;

(11) undertaking the administration of estates as executor, trustee or otherwise;

(12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;

(13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the company or the dependents or connections of such persons; granting pensions and allowances and making payments

towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section;

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company. (Section 277F of the Indian Companies Act of 1913 as amended upto 1936);

(18) any other form of business which the Central Government may by notification in the *Official Gazette* specify as a form of business in which it is lawful for a banking company to engage.

THE EXCHANGE BANKS

Besides the Imperial Bank, we have what are known as the Exchange Banks doing business in India, which receive deposits from the public but whose business is confined largely to the financing of import and export trade. About half a dozen of these Exchange Banks are doing the bulk of their business in India though nominally incorporated in England. Others are agencies of large banking corporations doing the bulk of their business abroad. Several of these Exchange Banks incorporated in England were founded about seventy years ago. According to Mr. B. T. Thakur, in his book on the *Organization of Indian Banking*:

"In 1870 there were only 3 Exchange Banks; in 1880, 4; in 1890, 5; in 1900, 8; 1910, 11, in 1920, 15; and in 1924, 18. In 1913 the year preceding that of the Great War, there were 12 Exchange Banks, out of which more than half had their Head Offices in London and the rest were connected with Japan, France, Germany, Russia and America, respectively. The war disturbed the proportion of India's foreign trade with the various countries which induced other banks to establish their branches here. This principally accounts for 50 per cent increase in the number of Exchange Banks during the period 1913-14, e g. in 1913 and 1919 two Japanese, in 1920 Banco National Ultramarino, and in 1920 two Netherlandish banks opened their offices in India. In the beginning, of course, the total business of Exchange Banks was very modest but with the passing of time it has gained great momentum. Today they wield very great influence in the Indian banking activities and are more powerful than the Indian Joint Stock Banks. The Indian deposits of these 18 Exchange Banks at the end of 1924 exceeded Rs. 70½ crores."

The exchange banks' finance largely consists of the following :—

(1) Financing of goods which are sent out from Indian ports to foreign ports and *vice versa*; and (2) financing of goods from the interior of India to the ports.

The financing of goods from outside into India is generally done through the medium of documentary bills mostly D. A. (documents on acceptance) and in some small measure by D. P. (documents on payment) bills. The bills are drawn either at 30 days or 60 days sight, and sometimes they are drawn at three months sight also. On the same footing the exports are treated through the opening of a credit in Great Britain with London banks or finance houses which are communicated to India through the local exchange banks or their branches. In all these cases, the usual currency used is sterling on the basis of which the payments are measured and dealt with. The exchange banks also finance the imports and exports of gold and silver bullion, the orders for most of which are placed in London and imports are done into the ports of Bombay; some orders particularly for silver are sent direct to New York.

INDIAN JOINT-STOCK BANKS

We have already dealt with the history of early Joint-Stock Banks in India and have also dealt with the special legislation applying to banks in India as laid down in Ss. 277F to 277N of Indian Companies Act, 1913, as amended up to 1936. Now we shall briefly survey the position of those joint-stock banks, which are, or were, established in India under the Indian Companies Act. Bombay was the first city to give a sort of impetus to the establishment of Indian Joint-Stock Banks, which activity commenced after the year 1905. In 1906 the Indian Specie Bank was established which was followed by numerous flotations. Some of these banks have made very great progress; others have failed through want of experience in Western banking. Their difficulties were practically similar to those of the early Joint-Stock Banks in England. The student of banking history will remember that in case of the early Joint-Stock Banks of England, they had to face a similar difficulty of want of experience and assistance, or co-operation, from their brother bankers who were carrying on business for generations as private bankers. The working and organization of these early English Joint-Stock Banks naturally was not up to the standard necessary. The same difficulty was experienced in India by the early Indian Joint-Stock Banks. The failure of the defunct banks was due to the following among other causes :—

(1) Large and heavy loans to directors.

(2) Large purchases of shares of companies floated by directors or managing agents and in which they were largely interested.

(3) Large advances to these companies on deposits of shares of companies in which some of the banks' directors were also directors.

(4) Accumulation without making adequate provision for them from profits, but on the contrary interest was calculated and credited to profits.

(5) Innumerable properties and investments were written up or appreciated and such unrealized appreciation was utilised in paying dividends.

The obvious remedy is the introduction of carefully thought out banking legislation as obtains in other countries. The Bombay Provincial Banking Inquiry Committee in their report (para 285, Vol. I) lays down that, " since the year 1913, there have been several cases of failure of Indian Banks incorporated under the Indian Companies Act. Such failures of Indian Banks shake the confidence of the investing public in credit institutions, especially when the failures are due to fraudulent management." They, therefore, recommend that banking legislation ought to receive careful consideration " in light of experience gained concerning existing and defunct institutions." In their opinion " in India the problem assumes greater importance as it is not a matter merely of taking precautions against unsound banking, the necessity for which may have been felt in the past, but of the questions of popularising the banking system, cultivating the banking habit, promoting thrift and inspiring confidence in the stability of banking institutions."

The Indian Joint-Stock Banks are practically cut off from the old giant banks, who are doing business as Exchange Banks and whose head offices are located outside the country. With all these disadvantages, however, it is remarkable that the Indian banks have done so well. The following table taken from the Indian Year Book published by *Times of India Press* is most interesting in that regard :—(See next page.)

These banks advance money on Government Securities, first class companies' shares, raw or finished goods as well as produce. A small portion of their funds is also invested in mortgage of immovable properties. They do not rediscount their bills as Continental bankers of Europe do. They have also developed agency and safe custody business. In connection with the safe custody business, the Central Bank of India has built a special vault which is perhaps the largest in India and can bear comparison with any first class bank in Europe.

The scope for expansion of Indian joint-stock banking is unlimited. We have in all 2,500 towns in India, whereas hardly

In Lakhs of Rupees.

Name	Capital	Reserve	Deposits	Cash and Investment
	Rs	Rs.	Rs.	Rs.
Allahabad Bank, Ltd, affiliated to Chartered Bank of India, Australia & China	35	58	1,682	1,124
Bank of Baroda, Ltd.	83	99	2,066	1,614
Bank of Hindustan, Ltd, ...	8	—	19	14
Bank of India, Ltd	100	123	5,513	4,410
Bank of Mysore, Ltd.	20	28	557	349
Bombay Provincial Co-op. Bank Ltd ...	13	2	337	252
Canara Bank Limited	22	5	197	164
Canara Indus. & Banking Synd. Ltd. ...	15	2	111	86
Central Bank of India, Ltd.	168	120	8,163	6,180
Devkaran Nanjee Banking Co. Ltd. ...	20	2	379	329
Habib Bank, Ltd	50	2	307	246
Indian Bank, Ltd, Madras	27	29	698	385
International Bank of India, Limited ...	12	—	188	107
National Savings Bank, Ltd. ...	6	—	182	171
Punjab National Bank, Ltd	31	31	2,627	1,793
Union Bank of India, Limited ...	40	13	458	370

400 of them possess a branch office or a bank. The total number of bank offices in the whole country in the year 1931 was said to be 906 in all, whereas there are over 13,000 bank offices in Great Britain and Ireland, over 4,400 in France, 3,100 in Germany and nearly 25,000 in U. S. A. We have thus one bank office for every 387,000 head of population in India as against 4,800 in Great Britain, over 3,000 in U. S. A. and nearly 9,500 in Japan. Our 906 banking offices are made up of three head offices of Imperial Bank and 163 branches, 89 branches of exchange banks, 159 head offices and 492 branch offices of our Indian joint-stock banks. The Reserve Bank of India has in addition five offices in accordance with the new Act. It can thus be seen that absence of banking facilities to the people of this country is a great handicap to the expansion of trade and industry. With all the difficulties and sometimes strong competition of powerful outside banks there seems to be considerable scope for our Indian joint-stock banks, and with a little encouragement from the public as well as public bodies, such as the Municipal Corporations, Port Trusts and the Government to substantial Indian joint-stock banks, the bank offices in India could be easily and rapidly multiplied into much large numbers. The Reserve Bank of India recently started, will, it is expected, go a long way to encourage the spread, establishment and protection of our Indian joint-stock banks as the central institution specifically formed with the dominant idea

of controlling as well as protecting the credit and currency of this country. What is particularly required is a close watch over floatation of our joint-stock banks and prevention by legislation of unsound schemes of capital with voting power designed and so manipulated as to preserve same in the hands of managing director, the board of directors and their friends. Limitation should also be imposed on the length of term of service and mode of remuneration which the managing directors of banks can provide for under their agreements.

CO-OPERATIVE CREDIT BANKS

The co-operative method has come to the front all over the world for working and developing a system of rural credit. The object here is to plant a system which has for its basis the collective guarantee afforded by groups of agriculturists or artisans coming together in voluntary association. The system was first introduced in India in the year 1904 when the first Co-operative Credit Society Act was passed and the operations of the societies formed under this Act were restricted only to credit. The societies formed under the Act were intended to be " small and simple credit societies for simple folks requiring small sums only ". The other idea was also that of educating the agriculturist as to the use of credit and of inculcating in him the habit of thrift and self-help. This original idea was expanded in scope by the Co-operative Credit Societies Act of 1912 which made it possible for establishment and organization of central banks and unions as well as establishment of non-credit societies. This scope was even further widened by the passing of Bombay Co-operative Societies Act in the year 1925 under which societies could be formed by persons with common economic needs to bring about by co-operation better business, methods of production, etc. The co-operative movement has considerably progressed and promises within its legitimate sphere to develop to the advantage of the country. The policy of having a local bank for each district was initiated in the year 1916 and in 1920 the policy of entrusting to the local central bank all responsibility for finance within its area was systematically followed in various provinces. The Co-operative Banks generally raise their funds by issuing shares and by taking loans and deposits. Generally, the loans are granted to co-operative societies and in some cases to individual members of banks. In Bombay, the Bombay Provincial Co-operative Bank, which is the apex bank, was registered in the year 1911 under a special agreement with the Government of Bombay. The Bank now deals as an apex bank for areas where district banks are in charge of the financing societies and with the other area it deals with primary society through its branches or direct. In the province of Madras also these co-operative societies and

co-operative banks have considerably advanced. They have the apex bank which borrows in the open market and lends to the central banks which also receive deposits from individuals and institutions. The central banks received their remittances from the Madras Central Urban Bank through the Treasuries by remittance transfer receipts or cash or orders at par. The other provinces have similar organizations which have considerably developed.

To summarise, the services rendered by these co-operative societies are :—

(1) They act as media for encouraging saving.

(2) They facilitate industry and agriculture by advances for productive purposes.

(3) They help to keep down rates of interest to proper limit.

(4) They make borrowing by collective credit possible.

(5) Generally, they exercise a healthy educative influence on their members in the sense that they get used to organized methods, self-reliance, self-government, and thereby raise them considerably in their intellectual outlook.

Chapter II

CHEQUES AND DOCUMENTS ANALOGOUS TO CHEQUES

Definition and Form.—A cheque is defined by Section 6 of the Negotiable Instruments Act, 1881, as " A bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand." Section 73 of the English Bills of Exchange Act, 1882, also defines it as " A bill of exchange drawn on a banker payable on demand." It will be thus seen that three requirements are necessary here, viz., that (1) it should answer the definition of a bill of exchange, (2) it should be drawn on a banker, and that (3) it should be payable on demand. A bill of exchange is defined by Section 5 of the Negotiable Instruments Act, 1881, as " An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument." The English Section 3 (1) of the Bills of Exchange Act defines it as " An unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer." Both these definitions carry the important requirements as to a bill of exchange, viz. that it should be (1) in writing, (2) unconditional, (3) in the form of an order not a request, (4) for a sum of money and not for commodity or for any other purpose, and (5) payable to a certain person or to bearer.

In this connection the actual legal position of a cheque as defined by Park, C. B., in the case of *Ramchuran Mullick* v. *Luchmee Chand*, (1851) 9 Moore P. C., 46-49, is interesting :

> " A Banker's cheque is a peculiar sort of instrument, in many respects resembling a Bill of Exchange, but in some entirely different. A cheque does not require acceptance ; in the ordinary course it is never accepted ; it is not intended for circulation, it is given for immediate payment ; it is not entitled to days of grace ; and, though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note or the acceptor of a Bill of Exchange payable at a particular place."

Who is a Banker.—We have thus seen that the document we call a cheque is one which must be drawn on a banker and

must be payable on demand. This naturally raises the question as to what is the exact meaning of a " Banker ". So far the legal definitions had been most unsatisfactory. The English Bills of Exchange Act, Section 2, lays down the definition as " Banker includes a body of persons whether incorporated or not who carry on the business of banking." Our Negotiable Instruments Act also goes no further. (Sec. 3). Mr. Hart, in his book on *Law of Banking*, Vol. I, p. 1, defines the banker as " A Banker of a Bank is a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts." However, now as we have noticed in the last chapter the Indian Companies Act 1913 as amended in 1936 lays down in Section 277F, Part XA the definition of a banking company, i.e. a banking joint-stock company.

Who Should draw a Cheque.—It is now laid down that though under normal circumstances a cheque is drawn by a customer of the bank against his current account, strictly speaking, it is in no part of the definition of a cheque that it should be either an inland bill or that it should be drawn by a customer upon his banker. As to who is a customer, the Privy Council case, viz., *Commissioners of Taxation* v. *The English, Scottish and Irish Bank*, (1920) A.C. 683, has laid all doubts at rest. Formerly it was thought that in order to be a customer, a person must have a bank account for some time. But in this case, it is now laid down that the word " Customer " signifies relationship in which duration is not of the essence and includes a person who has opened an account on the day before, paying in a cheque to which he has no title. The fact that the customer has overdrawn his account does not alter his position and he is none the less a customer. (*Clarke* v. *London and County Bank*, (1897) 1 Q.B. 552).

When a cheque is presented to a banker with a view to open a current account, the banker should be very careful, as failure to obtain satisfactory reference on the opening of a current account has been held to be negligence sufficient to deprive the banker of the protection under Section 82 of the Bills of Exchange Act or Section 131 of the Negotiable Instruments Act. In *Ladbrok* v. *Todd*, (1914) W.N. 165, a thief who had stolen a cheque and forged the endorsement of the payee opened an account with it with a banker, got it collected and withdrew the proceeds. The bank was held guilty of negligence and had to refund the money. The other case in point is *The Guardians of St. John* v. *Barclays*, (1923) 30 T.L.R. 229. Here the thief actually gave a reference of one Mr. Woolfe, at Fitzroy Square, whom the bank did not know. The reply to

inquiry was satisfactory as it was forged by the thief himself. Of course, both the names of the thief and the referee were fictitious. Held that the bank had acted with negligence.

A banker's drafts are bills drawn either on demand or otherwise by one banker on another in favour of a third party or by one branch of a bank on another branch of the same bank or by the head office on a branch or *vice versa*. Under the old English Law, these drafts when drawn by one branch of a bank on another or by the head office to its branch office were not treated as cheques and thus the protection of Sections 76-82 of the Bills of Exchange Act of 1882 and the Bills of Exchange Cross Cheques Act of 1906 did not apply to them. This position has now been altered through the passing of the Bills of Exchange Amendment Act of 1932 which now lays down that " the abovementioned Sections 76-82 shall apply to a banker's draft as if the draft were a cheque" and that for the purposes of this Act, the expression ' banker's draft ' means a draft payable on demand drawn by or on behalf of a bank upon itself, whether payable at the head office or some other office of the bank." The position in India under our Indian Negotiable Instruments Act, however, remains unchanged with the result that the old English Law still applies to us, viz. that these demand drafts drawn by a banker upon its branch office or *vice versa* are not cheques in India within the meaning of our Negotiable Instruments Act. (*Capital & Counties Bank Limited* v. *Gordon*, (1903) A.C. 240). In India, however, these demand drafts issued by one office of a bank upon another office of the same bank are for purposes of Stamp Act to be treated as cheques and thus they are exempt from Stamp duty under the present Stamp Law. (*In re Demand Drafts of the Imperial Bank of India*, (1929) 56 Cal. 233).

The Parties to a Cheque.—The parties to a cheque are the drawer, i.e. the person who draws the cheque, the drawee, i.e. the banker, and the payee, viz. the person named in the cheque to whom the money is to be paid. If the person named in the cheque as the payee is a fictitious or non-existing person, the cheque may be treated as payable to bearer. (See *Glyn* v. *Marget Son & Co.*, (1893) A.C. 851; *North and South Insurance Corporation* v. *National Provincial Bank*, (1936) 1 K. B. 328; 154 L.T. 255; 52 T.L.R. 71). The practice which was common in England at one time, viz. to draw cheques payable to " Wages or order ", " Petty Cash or order ", is now discouraged by bankers, though as far as the banker is concerned there is no legal liability, because the payee being a fictitious and non-existing person, they could treat the cheque as payable to bearer. The leading case here is the *Governor and Company of Bank of England* v. *Vaguano Bros.*,

(1891) A.C. 107. There the principle laid down was that even though the bill was made payable to a payee who happens to be a real person, but is not and never was intended by the drawer to have any right upon the cheque or arising out of it, the cheque was payable to a fictitious person and should be treated as payable to bearer. The point is that, as far as the drawer of the cheque is concerned, the person is entirely fictitious or was never meant to be the payee in order to bring the cheque under the operation of the section. According to Sir John Paget, the primary factor is the state of mind and intention of the drawer of the bill or cheque. With regard to payee it should be noted that the original payee is not a holder in due course. [*Jones (R. E.), Ltd.* v. *Waring & Gillow*, (1926) A.C. 670].

Postdated Cheques.- If a cheque is not dated, the holder can, as in case of any bill of exchange, insert the correct date if he knows it. Again the drawer may draw a postdated cheque, and such a cheque is not invalid even though it bears the usual stamp duty (*Bull* v. *O'Sullivan*, (1871) L. R. 6 Q.B. 209; *Gatty* v. *Fry*, (1877) 2 Ex. D. 265; *Robinson* v. *Benkel*, (1913) 29 T.L.R. 175). These cheques are issued on one date though on them a subsequent date is entered. This naturally amounts to, in effect, giving a bill payable at some future date. These cheques are frequently given and taken in connection with money transactions where instalments are agreed to be paid at certain specific future dates. The English Bills of Exchange Act clearly lays down that a Bill is not invalid by reason only that it is antedated or postdated. The *Lloyds Bank* v. *Dolphin Court of Appeal, Times Newspaper*, December 2, 1920, was a case based on a cheque which was postdated, and the fact that the cheque was postdated did not, in that case, affect the bank's liability to sue the drawer. The older cases, even those prior to the passing of the English Bills of Exchange Act, also support the claim of postdated cheques to be valid independently of the section in the Bills of Exchange Act. In a Bombay case also a postdated cheque was declared available in the hands of its holder and admissible in evidence (*Motilal* v. *Jagmohandas*, 6 Bom. L.R. 699). In a Calcutta case it has also been laid down that "in India a postdated cheque was admissible in evidence although it bore a stamp representing duty payable in respect of a cheque (at the time it was one anna, at present there is no duty) and not the *ad valorem* duty payable in respect of a Bill of Exchange. (*Walter Mitchell* v. *H. K. Tannet*, 52 Cal. 677). As far as the banker is concerned, he should not pay a postdated cheque before the ostensible date for the simple reason that the customer's intention and direction in this case is quite apparent. If he were to pay a postdated cheque

earlier than its ostensible date, he will not be entitled to debit his customer's account until the ostensible date arrives. He should, however, not dishonour the cheque if presented before its ostensible date, but should return it with a slip stating, "Present it on the date mentioned on the cheque." In a case where the banker has paid a cheque before the ostensible date, and on reaching the ostensible date, he finds that there is not enough money to the customer's credit to pay same, he will be in an awkward position. His remedy will, of course, be to sue his customer in the capacity of the holder in due course on the ground that he purchased the cheque himself from the holder by paying it earlier than the ostensible date. (*Morley* v. *Culverwell*, (1840) 7 M. & W. 174).

Stale Cheques.—Where a person is given a cheque, the idea is that he should present it for payment within a reasonable time. (S. 36 (3) Bills of Exchange Act 1882). What is a reasonable time would depend upon the usage of bankers. According to decisions if the drawee bank and the payee are in the same place it should be presented not later than the day following. (*Alexander* v. *Burchfield*, (1842) 7 M. & G. 1061). When a banker receives a cheque through post he can present it next day (*Richford* v. *Ridge*, (1810) 2 Camp. 537). On this point it should be borne in mind that a cheque is not intended to be circulated for any length of time as a bill of exchange payable at a future date is, and that what is expected of the payee, is the immediate encashment of same. An endorser is not liable on a cheque if it is not presented within a reasonable time after his endorsement. Of course, as far as the Common Law is concerned, a cheque is payable within the ordinary period laid down by the law of limitation, viz. three years in India and six years in England. But as a matter of practice or custom the banker does not pay a cheque presented to him after six months in India. In England some bankers decline to honour a cheque after six months, others after twelve months. This position rests entirely on the practice and course of business of bankers of a particular location, and this custom and practice is binding on all dealing with these banks. The holder, however, has his remedy against the drawer, who is bound to pay the cheque within the period of limitation. These cheques are called "Stale Cheques" which mean cheques which have been circulating for an unreasonable length of time since the date of their issue. Generally speaking, a cheque is said to have been presented according to the custom of banker if (1) the person who received the cheque as well as the banker upon whom it is drawn are at the same place, and it is presented for payment after the day it is received; (2) if they are at different places, then in the absence of special circumstances, if it is forwarded for presentment for payment on the day after the same is received. In

case an agent is asked to present same he should do so at least the day after it is received by him. Of course, in computation of time non-business days are excluded.

The rule that a cheque must be presented for payment within the reasonable time of its issue is laid down in Section 74 of the Bills of Exchange Act 1882 of England and Section 84 of the Negotiable Instruments Act 1881. These sections formally lay down that if the holder does not present the cheque within a reasonable time and the drawer has sufficient balance to the credit of his account and the banker fails, the drawer is released from responsibility.

The endorser of a cheque will also be released from his liability on it in case the same is not presented for payment by the holder within a reasonable time after endorsement. (*Wheeler* v. *Young*, (1897) 13 T.L.R. 468). It has been held in *Alexander* v. *Burchfield*, (1842) 7 M. & G. 1061 that if the holder and the banker are at the same place, the former is bound to present the cheque for payment not later than the date following that on which he receives it. This rule applies in spite of the fact that the presentment may have been made by the holder through the banker. In case where a banker in London receives a cheque for collection through post he is not bound to present same for payment until the following day (*Richford* v. *Ridge*, (1810) 2 Camp. 537). Here in case of failure of the bank, the holder's right to put in a claim with the liquidator of the bank of course remains unimpaired and in connection with such a claim he may receive such dividend as may be paid to the ordinary creditors of the said banking company. In case the bank is a private firm, the claim would have to be put in as a creditor in bankruptcy in the Insolvency Court. In this connection it should be noted that the duty is thrown upon a banker to whom a cheque is delivered for being collected by its customer to collect same with all possible and reasonable diligence, because a failure to use such diligence would make the banker liable to such damages as the customer may suffer therefrom.

Cheques in Foreign Currency.—All cheques must be drawn in local currency because the banker is not bound to pay them if drawn in foreign currency. If, however, the banker honours a cheque drawn in foreign currency, he pays it at the rate of exchange ruling at the time of presentation. In one case, viz. *Cohn* v. *Boulken*, (1920) 36 T.L.R. 767, where a cheque was drawn for Fr. 7680, it was decided that the drawer could not set up against an endorsee an oral agreement that the rate of exchange should be that ruling at the date of the cheque, with the result that the amount payable had to be calculated according to the rate of exchange ruling at the date of the trial.

The above rule is based on the fact that generally speaking the British Courts have no jurisdiction to order payment in foreign money for the simple reason that such an order cannot be enforced by the ordinary writs of execution. The Bills of Exchange Act, however, lays down in Sections 70-72 (4) that where a bill is drawn out of, but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall in absence of some express stipulation be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

Drawer's Signature on Cheques.—The usual practice is for the banker to keep a specimen of his customer's signature and to carefully compare the signature on cheques, etc. drawn by him with the specimen before he pays same. If the drawer's signature is forged or unauthorised, however clever the forgery, the banker cannot debit his customer's account in case he pays same. The only exception is where the banker can prove that this payment *made by him* was due to *negligence imputable to the customer*. Best, C. J., in *Young* v. *Grote*, (1827) 4 Bing. 253 with reference to the Banker's liability to make good the amount paid on a forged cheque said that " though the rule is well established, yet if it be the fault of the customer, that the banker pays more than he ought, he cannot be called on to pay." This generally arises where the customer draws cheques, so negligently that a forger has the chance of altering the amount. (See also *Bhagwandas* v. *Creet*, 31 Cal. 249). In *London Joint Stock Bank* v. *Macmillan*, (1918) A.C. 777, the principle laid down is that a customer of a bank owes a duty to the bank in drawing a cheque to take reasonable and ordinary precautions against forgery, and, if as the natural and direct result of the neglect of those precautions the amount of the cheque is increased by forgery, the customer must bear the loss. Here mere carelessness on the part of the customer in keeping the cheque book lying about, which enabled the forger to use the cheque, will not save the banker. This is, of course, subject to the rule that there should be no negligence imputable to the customer. (*Bhagwandas* v. *Creet*, 31 Cal. 249). This view was also adopted in the English case of *Scholfield* v. *Londesborough*, (1896) A.C. 514, where Lord Halsbury, in course of his judgment on pages 523-4, lays down that if " the customer by any act of his induced the banker to act upon the document by his act, or neglect of some act usual in the course of dealing between them, it is quite intelligible that he should not be permitted to set up his own act or neglect to the prejudice of the banker whom he has thus misled or by neglect permitted to be misled." The old view of law was rather very strong on this point because it used to be held in those

days that once there was forgery, the banker was assumed to be negligent. This view is not followed now, but what is required now is negligence of some sort on the part of the banker. Mathew, J., in *London and River Plate Bank* v. *The Bank of Liverpool,* (1896) 1 Q.B. 7, stated that if the forgery was cleverly executed, the banker may not be able by any amount of care to ascertain whether the signature was a forgery or not, and in that case he cannot possibly be made liable on the ground of negligence. A banker who has to pay a cheque to an innocent third party, on which the signature of the drawer was a forgery, may recover the money on the ground of payment by mistake in some cases, though of course law here is rather unsettled. Anyhow, the bank which tries to recover the money on this ground must take action immediately.

In *Lewes Sanitary S. Laundry Co., Ltd.* v. *Barclay Bevan and Co.,* (1906) 11 Com. Cas. 255, Kennedy, J. stated that " in order to relieve the banker from the consequences of paying money on a forged cheque, it is not enough for the banker to show that the conduct of his customer—wilful, careless or wasteful, or all—enabled the fraud to be committed. He must show that the customer caused him to pay the money upon the forged cheque . . . It must be shown, if the defence is to succeed that the conduct of the plaintiff company, in or immediately connected with the forgery or altering of the cheques, misled the defendant bank into making the payments upon those cheques." The position no doubt would be different where the customer, though aware of forgery, withholds the knowledge from the bank until the bank's chances of recovering the money from the forger have been materially prejudiced. Here the rule of estoppel would apply and prevent him from relying on the forgery and claiming that the banker should make good the amount debited to him. (*M'Kenzie* v. *British Linen Co.,* (1881) 6 App. Cas. 82; *Greenwood* v. *Martins Bank,* (1931) *Times* Newspaper, July 30, p. 4, col. 2). In another case where the customer himself was informed of forgery by an agent of the bank and remained silent in what he believed to be the interest of the bank, he was not held guilty of having done any wrong to the banker and the rule of estoppel did not apply to his attempt to set up forgery against the banker in debiting his account. (*Ogilvie* v. *West Australian Mortgage & Agency Corporation,* 1896). If on the other hand the information given by the bank's officer was such as to create in the mind of a person of ordinary intelligence a suspicion that the officer or agent was betraying the bank's interest, it would be the duty of the customer to inform the bank's directors of it. The question whether circumstances do raise a estoppel against the

plaintiff or not in such cases of forged cheques is a question of fact (*William Ewing & Co.* v. *Dominion Bank*, (1904) A.C. 806).

In case of illiterate drawers, the practice is to sign by mark or thumb impression, in the presence of at least one witness who must be known to the banker and who must not be a member of the banker's own staff. The witness should also state his or her name and address. In case of a person too ill to sign his cheques, he may have his mark witnessed by a medical attendant and one witness. The former should also certify as to the nature of his illness, and that, though ill, he was capable of understanding the nature and effect of what he was doing, in other words, that he was in full possession of his faculties. In case of a drunken person who presents a cheque across the banker's counter, the precaution of getting a witness to his signature on the cheque before paying, should be taken. Many banks in India are now accepting or allowing signatures in Indian languages from those customers who are not able to sign in some European language. Others still follow the old practice of asking the customer to sign a number of cheques in vernacular in the presence of the Bank Manager who initials all these signatures. It need hardly be emphasised that in order to spread the " banking habit " among our trading and mercantile communities, it is obsolutely necessary to encourage signatures in leading business vernaculars of the district concerned.

Signatures in pencil or rubber stamp, as well as typewritten signatures, are not accepted by bankers for the obvious reason that the former class are rather precarious and are likely to be obliterated through use, whereas in case of the latter there is no proof before the banker that the said signature was typed by the customer himself or by his duly authorised agent. Modern bankers also discourage the use of cheques in any other forms than those supplied or furnished by them.

The Amount on Cheque.—There is no limit as to the amount for which a cheque may be drawn. If the cheque or bill is so drawn that the amount as stated in the body of the cheque, differs from that stated in figures, in strict law, the paying banker is safe if he pays the amount as indicated by the words. It is thought by some that if on a cheque the amount is stated in words but not in figures the banker should pay or else he may be liable to damages but that if the amount in figures only is stated, the cheque should be returned with a request to fill in the words and complete the cheque. In our opinion even if figures are omitted and the amount is stated in words the banker may return the cheque as irregularly drawn making it clear that the same was not paid because the figures were not added. Here there cannot be any question

of damages as the customer's credit does not suffer. In actual practice, however, the banker returns the cheque with the remark on the slip "Cheque irregular."

On this point Lord Haldane in *London Joint-Stock Bank* v. *Macmillan*, (1908) A.C. 77 at page 816 laid down that :—

> "the banker as a mandatory, has a right to insist on having his mandate in a form which does not leave room for misgiving as to what he is called on to do, and there is nothing in the Act which in any way abrogates this right if by usage between himself and his customer he is entitled to expect the amount to appear in words as well as in figures."

Frequently, customers by way of caution cross cheques with words such as "Under fifty rupees." Here the banker has to see that the amount for which the cheque is drawn does not exceed the limit so fixed, otherwise he might be held to be guilty of negligence, though there is no decided case on the point to guide us as to the exact position. On occasions the amounts on cheques are perforated with the same object. Of course, all material alterations in the cheque should be initialled by the drawer himself, otherwise the banker will not pay it. If the banker is not able to discover the fact that there was an alteration because the same was made in the same handwriting, or for some other equally good reason it was not obvious on reasonable inspection, he would not be liable for paying such a cheque. To take an illustration, supposing a customer orders his clerk to make out a cheque for say £8, which he wants to pay to the clerk as his salary. The clerk fills up the cheque leaving sufficient space after the word "Eight" as well as after the figure "8". After his master signs the cheque he adds the letter "y" after the word "Eight" and places a zero after the figure "8", thus converting the cheque into one for £80 and cashes same, the banker will not be liable, because here the alteration was such as was not apparent on reasonable examination. (Section 89, Negotiable Instruments Act.)

Chequelets.—In England the raising of the stamp duty on cheques to 2*d*. was evidently found to be an inconvenient charge by many traders, with the result that, the Midland Bank offered that any customer could obtain from any of its offices and branches a book of receipts containing a number of forms which could be filled up for sums under £2. As they were receipts, and that too for under £2, they argued that no stamp duty will be payable on same. This was challenged by the Revenue Authorities with the result that the matter had to be taken to the Court. Justice Rowlatt in the course of his judgment laid down that the Court has to see what the document happens to be and how it is used, and that mere wording of the document was not to be looked at, but what was to be looked at was the function which the document per-

formed. The documents in question issued by the Midland Bank would not be used as receipts, because the person to whom they were given by the drawer received them not as receipts but as cheques which they were to cash at the bank. (*Midland Bank, Ltd.* v. *Inland Revenue Commissioner*, (1927) 2 K.B. 465).

Cash Orders.—These are demand drafts drawn by one trader on another. As they are not drawn on a banker they do not fall under the definition of cheques and do not naturally carry with them the privileges attached to those documents. They are frequently made payable at a bank and the banker pays same provided he has proper directions from the drawer who, of course, must be his customer. Generally, as these documents do not give adequate protection to the banker, as cheques do, and place the bankers in the less satisfactory and more onerous position of debt collectors, they are discouraged by them.

Dividend Warrants.—These are issued by Joint-Stock Companies to their shareholders for the payment of dividends from profits which are to be collected by the holder either at the company's bank on which they are drawn. Very rarely they are also drawn payable at the office of the company itself.

These documents are drawn in various forms. In old days they used to be drawn in form of drafts issued by the company directing the banker on whom they are drawn to pay the dividend mentioned therein. The bulk of Indian companies now issue them in form of receipts which the shareholder has to sign before presenting them for payment. Under the Act dividend warrants can be crossed and all rules as to crossing of cheques are made applicable to these instruments. If they are drawn in cheque forms, they are to be treated as ordinary cheques. The only direct decision in this connection in which the dividend warrants, if payable to bearer or order are considered negotiable instruments, is *Partridge* v. *Bank of England*, (1846) I.Q.B. 396, which was a case dealing with a dividend warrant of the Bank of England. In other words, that case decided that if the warrant did not contain the words " or Order " or " Bearer ", it would not be negotiable, but that view has been doubted in two cases, viz. *Goodwin* v. *Roberts*, (1875) L.R. 10, Ex, 345, and *Thairlwall* v. *Great Northern* Railway, (1910) 2 K.B. 509, and according to " Grant on Banking ", in view of these *dictas* the ordinary dividend warrants having the character of cheques are negotiable instruments in either case. Even Sir John Paget, in his *Law of Banking*, says that " it seems, however, probable that dividend warrants have now acquired negotiability by custom of merchants, and that on evidence of such custom the Courts would recognize the fact." In India and particularly in

Bombay, dividend warrants are issued in form of receipts which are to be cashed at the company's bank. Whether these would be covered by the authorities given above as their being negotiable instruments is doubtful, though it may be urged that custom of merchants made them negotiable in India being dividend warrants as suggested by Paget. On the footing of the decision of Rowlett, J., in *Midland Bank Ltd.* v. *Inland Revenue Commissioner*, (1927) 2 K.B. 465 (though this was a case decided on the question of revenue stamps) it may be argued that though the warrant was not made out in the form of a cheque the drawer used same as a cheque and not as a receipt. The argument would of course be of doubtful utility. The safest course under the circumstances for our companies to follow would be to issue their dividend warrants in form of cheques.

It has been held by Finlay, J., in *Slingsby* v. *Westminster Bank*, (1930) 1 K.B. 173 that the term " dividend warrant " as used in the Bills of Exchange Act in England included interest warrant and particularly interest warrants issued for payment of interests in Government stocks. The other point laid down here was that if a draft is drawn by an official of the bank on his own bank but in case while drawing it he was acting as an agent of the Government the said draft may be a cheque within the meaning of the Act.

Dividend warrants must be signed by the person to whom the dividend is payable because the mere authority to sign and endorse cheques does not give the authority to sign dividend warrants *per pro*. If the dividend warrant is to be signed *per pro* by any agent duly authorised, that fact should be submitted to and approved by the company concerned. Dividend warrants which are payable to a deceased shareholder should be marked for payment by the drawers, i.e. the company concerned. Formerly it was the practice to issue dividend warrants with receipts attached, and it was held that such dividend warrants were not cheques as they were conditional, and, therefore, the forged signature of the payee did not protect the banker as in case of a forged endorsement on a crossed cheque. The acid test here is whether the instructions on these dividend warrants in form of cheques are addressed to the banker or the holder. If the former is the case, the same becomes conditional, but not so in case the instructions are addressed to the holder. (*Nathan* v. *Ogdens*, (1905) 22 Times L.R. 57). In case of a dividend warrant payable to more than one person, the banker would pay same on the endorsement of one of the payees. Frequently, Articles of Association of Joint-Stock Companies expressly provide for this.

Interest Warrants.—These are issued periodically to holders of Consols, Government Loans, Bonds, etc. for interest which

has fallen due and which the holder has to cash at the Bank of England or the Reserve Bank of India as the case may be. There are also interest warrants issued on debentures of Joint-Stock Companies for interest periodically falling due on money lent by the debenture-holders to the company.

Interest warrants for payment of fixed interests cannot be treated on the same footing as dividend warrants as to payment of dividend. Here all the payees must join and sign before the banker would pay. The interest warrant is not a cheque, for the simple reason that it is drawn by a representative of the Bank of England, on other officials of the same Bank. (*Allan* v. *Sun Fire and Life Assurance Co.*, (1850) 9 C.B. 574). The interest warrant, therefore, is not susceptible to crossing, or of being marked " not negotiable ". *Per pro* endorsements on these documents are not accepted. The principle would equally apply to Interest Warrants drawn by the Reserve Bank's Public Debt Department on the bank's Banking Department.

Postal Orders.—Postal orders and postal money orders are not cheques for the simple reason that they are drawn by one Post Office on another Post Office. They are also generally marked " not negotiable ". If these postal orders are crossed by Post Office regulations, such crossed postal orders are payable only to a bank as if they were crossed cheques. The banker's position in collecting these postal orders is rather risky. There is a Post Office regulation by which the Post Office can return a postal order it has paid to the presenting bank, and if it be found irregular, the Post Office can deduct the amount covered by the order so returned, from any sum payable to the bank, or which may become due in the future. There is no length of time prescribed within which the Post Office authorities can so deduct. Here the only remedy the banker has, is to debit his customer's account, and in some cases he may stand to lose his money if the customer is not a substantial party and does not happen to have a credit balance at the time of such deduction by the Post Office.

Mutilated Cheques.—In case of mutilated cheques, the banker's position is that in case the drawer tore the cheque with the intention of cancelling same, the bank would suffer loss if he pays same thereafter. (*Scholey* v. *Ramsbottom*, (1810) 2 Camp. 485). In this case the cheque was torn into four pieces and thrown away and new cheque drawn which was paid. The torn cheque was thereafter presented neatly pasted though dirty. The bank paid same. It was held that the banker cannot debit his customer for this amount of second cheque. It appears here that the fact that the cheque was dirty and the rents of the torn cheque were visible influenced the judgment. Thus as a matter of precaution, it is customary

for bankers to return such cheques unless the mutilation is satisfactorily accounted for. When the cheque is returned the usual answer is " Cheque mutilated." If, however, the cheque is being collected by any banker and that banker confirms that the same was torn, or mutilated, while it was being handed in the collecting bank's office, it would be paid. A cheque slightly torn should not be refused on the ground of mutilation. Of course, in case of bills of exchange sent through post from a distance, there is a custom in some places to cut same into two parts for safety in transmission with a view to send them by separate posts or by two different routes. In such cases, the banker pays such bills though cut into halves.

Lost Cheques.—A lost cheque stands on the same footing as a lost bill of exchange. Both the English Bills of Exchange Act, Section 69, and our Negotiable Instruments Act, Section 45 (a), give the holder of a cheque or a bill, who has lost it, the right to apply to the drawer for a fresh cheque or bill of the same tenor, giving security to him with a view to indemnify him against all persons whatsoever in case the bill or cheque alleged to have been lost should fall into innocent hands and the drawer should thereby suffer a loss. In case the drawer on request refuses to give such a duplicate bill, he may be compelled to do so by an action. But in case the lost bill has already been paid, the drawer will not be bound to give a duplicate of the lost bill, until the holder guarantees him against any future demand and the holder of a lost bill cannot claim payment on it if the original has been paid. (*Ider Chandra Dugar* v. *Lachmee Bibee*, 15 W.R. 501). Of course, the usual course to be followed by the holder of a lost bill is to ask the drawer to stop payment as well as to notify the other parties thereto.

When a cheque is sent through post as a remittance, and is lost, the loss would fall on the sender if the cheque was so sent on his own responsibility, i.e. without the authority from, or request of, the creditor. If, however, remittance was sent through post in accordance with the instructions of the creditor, the loss would naturally fall on the creditor otherwise the loss will have to be borne by the sender. (*Warwicke* v. *Noakes*, (1791) Peak, N.P.C. 98; *Norman* v. *Ricketts*, (1886) 3 T.L.R. 182). The same rule will apply to a dividend warrant. (*Thairwall* v. *Great Northern Railway*, (1910) 2 K.B. 509). The request of the creditor to send such remittance through post must be express, and will not be inferred even from the mere fact that through the long course of business cheques have been sent by post and duly acknowledged. (*Pennington* v. *Crossley & Son*, (1897) 77 L.T. 48 C.A.). Of course the sender must take the usual precaution which an ordinary businessman is bound to take while remitting, as for

example he should not send an uncrossed bearer cheque by post. If, however, the creditor says " Send my cheque through post crossed as follows ", and describes the crossing, the remitter should see that he strictly carries out that instruction. In a Bombay case where an uncrossed cheque was taken by a remitter from a bank at Ahmednagar on a bank in Bombay and sent by post and lost, it was held that (1) sending such a cheque through post did not amount to gross or culpable negligence, and (2) that from the mere fact that cheques were sent from time to time by post in the ordinary course of business, it could not be inferred that there was any implied request from the firm to whom the same were sent to do so. (*Jagjiwandas Jamnadas* v. *The Nagar Central Bank, Ltd.*, 27 Bom. L.R. 226).

Cheque and Legal Tender.—A cheque, of course, is not a legal tender and the creditor is not bound to accept same when offered in payment of his claim. (*Cubitt* v. *Gamble*, (1919) 35 T.L.R. 223). It is thus usual to enquire whether the creditor will accept payment by cheque in cases where the time of payment has been specifically made an essence of the contract. Once the creditor writes to say that he prefers payment by a bill or cheque, the tender by bill or cheque is absolute. The cheque, of course, even if accepted in payment will only amount to a conditional payment. (*Currie* v. *Misa*, (1875) L.R. 10 Ex. 153 at page 163; *Felix Hadley & Co.*, v. *Haddley*, (1898) 2 Ch. 680). Thus the debt will only be discharged if the cheque is paid or if the party to whom the cheque was given failed to obtain payment through his own delay or fault. (*Cohen* v. *Hale*, (1878) 3 Q.B.D. 371; *Bridges* v. *Garett*, (1870) 5 C.P. 451). In the latter case the debt is taken to have been discharged or paid as between the debtor and the creditor from the date when the cheque was given. (*Marreco* v. *Richardson*, (1908) 2 K.B. 584).

ENDORSEMENTS ON CHEQUES

The endorsement is defined by Section 15 of the Indian Negotiable Instruments Act as " When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same and is called the endorser. The English Section 31 states that " an endorsement means an endorsement completed by delivery ". Section 32 states that the said endorsement must be written on the bill itself and be signed by the endorser. The simple signature of the endorser on the bill without additional words is sufficient. A " regular endorsement " is one which *purports* to be the endorsement by the payee.

It may be for the purpose of clarification added here that an endorser of a negotiable instrument (which of course includes a cheque) by endorsing and delivering same creates three legal consequences, viz. (1) transfers the title and interests in the document to the endorsee, (2) guarantees that the document is genuine and that all signatures prior to his endorsement on it are genuine, and (3) undertakes that in case the instrument is presented for payment strictly in accordance with its tenor and is dishonoured, he would make good the loss.

The endorsement, of course, must be of the entire bill, and a partial endorsement, i.e. one which purports to transfer a part only of the amount payable on the cheque or bill, does not operate as a negotiation of the bill. Even where the transferor of a cheque or bill, payable to his order, transfers it for value without endorsing it, the transfer gives the transferee such title as the transferor had in the bill and in addition the transferee acquires the right to have the endorsement of the transferrer. The usual place for an endorsement is the back of the bill, but in case the same is placed on its face, that would be legally sufficient, so long as the Court was satisfied that the signature was so placed with a view to endorse. If a cheque is made payable to order, and the payee's name is misspelt, he may endorse the bill according to the spelling in the body of the cheque or bill, and thereafter, if he so chooses, add his proper signature. If a cheque is made payable to more than one payee, or order, all must endorse unless they happen to be partners, or unless the cheque or bill is made payable to a partnership firm.

Where the space for writing endorsements on the reverse of the bill is filled up, a slip is attached on which further endorsements are made. This slip is known as an *allonge*. When the allonge is pasted, the upper half of the signature is written on the original bill and the lower half on the allonge.

Different Classes of Endorsements.—

The endorsement may be :—

(1) Blank, i.e. only a signature, or

(2) Special, e.g. *Pay to John Smith or order.*

(Sd.) William Green.

or (3) Partial, e.g. where only a part of the amount of the bill is transferred. This does not operate as a negotiation of the instrument; but may authorise the endorsee to receive payment of the amount specified. The law lays down that an endorsement must relate to the whole instrument.

or (4) Restrictive, i.e. (*a*) where it prohibits further negotiation, as " Pay to M. only ", or (*b*) restricts the endorsee to deal with the bill as directed by the endorser, as " Pay to M. or order for collection."

or (5) *Sans Recourse*, i.e. where the endorser makes it clear that the endorsee, or the subsequent holders, should not look to him for payment in case the bill is dishonoured, i.e. if A endorses a bill " *Sans Recourse* " to B, and if B agrees to take it with such an endorsement, he takes it with the understanding that in case he (B) fails to recover money from the acceptor, or any of the previous endorsers to A, he (B) cannot sue A on the bill. In India the words " without recourse " are used.

If a bill or a cheque is endorsed conditionally as " Pay C or Order on arrival of ship MARMORA ", the same may be disregarded by the payer and the payment to the endorsee is valid whether the condition has been fulfilled or not.

It may be added here that a cheque, originally made payable to bearer by a special endorsement, can be made payable to order to some particular payee under Section 50 of the Negotiable Instruments Act. (*Forbes, Forbes, Campbell and Co.* v. *Official Assignee of Bombay*, 27 Bom. L.R. 34).

Liability of the Endorser.—The liability of endorser is very completely defined by Section 35 of the Negotiable Instruments Act as follows:—

> "In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement, expressly excluding or marking conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided."
>
> "Every indorser after dishonour is liable as upon an instrument payable on demand."

The English Bills of Exchange Act, Section 55 (*a*), (*b*) and (*c*), similarly lays down the liability.

When a cheque is dishonoured the notice of dishonour must be given to the endorser to make him liable, otherwise he would be released. (*Mohamad Rafi* v. *Muzaffar Hussain*, 165 I.C. 768; A.I.R. (1936) Lah. 796).

The Banker's Position as to Endorsement on Cheques.—Here the position as described by Section 85 of our Negotiable Instruments Act is simple and clear. It says that " Where a

cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course." Paying banker is not responsible for a forged endorsement so long as it is regular on the face of it. The English Bills of Exchange Act, Section 60, lays down the same principle, though in a more elaborate language, as follows :—

> "When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee, or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority."

In case of the Indian definition, the drawee of a cheque of course means a banker. In the English section, what is laid down is that if a bill of exchange drawn on a banker and payable on demand, meaning a cheque, is paid by a banker in the regular course of his business and in good faith, the banker will not be responsible of the endorsement happens to be forged so long as he has taken care to see that the endorsement "purports to be the endorsement of the payee or endorsee." If a banker pays a cheque after or outside the regular banking hours as announced by him he will be paying same outside the usual course of business. In one case where the doors were closed after regular hours but the bank paid all who had entered before these hours closed, though after the appointed hours, the Court held that the cheque was paid in regular course of business. It was further laid down that the banker had the right to deal with a cheque within a reasonable business margin after their advertised time or hours. (*Baines* v. *The National Provincial Bank*, (1927) 96 L.J.K.B. 801). Section 16 (2) of the Negotiable Instruments Act extends the protection under Section 85 of the Act to the drawee (banker) of a cheque and in case of endorsee also, if the signature of the endorsee is not genuine. (*Jagjivandas Jamnadas* v. *The Nagar Central Bank Ltd.*, 23 Bom. L.R. 226). It should also be noted that when a cheque is originally drawn payable to bearer it remains a bearer cheque both under the English Bills of Exchange Act and the Amending Negotiable Instruments Act of 1934 of India, notwithstanding any endorsement in full or blank appearing thereon and notwithstanding such endorsement purporting to restrict or exclude further negotiations.

Thus the banker who is called upon to pay a cheque has to take care to see that the endorsement is regular before he pays same. The other requirement is that he should pay same in the regular course of his business. If a crossed cheque

is presented to the banker with forged endorsement and he pays same through a banker, he is acting in the regular course of his business, but if he cashes such a cheque for a holder who is not a banker, say across the counter, he will not be acting in the regular course of his business as a banker, and, therefore, will not get the protection of this section. Of course normally a forged endorsement gives no title even to a *bona fide* holder in due course for value, though in case of a banker Section 60 of the English Bills of Exchange Act and Section 85 of the Negotiable Instruments Act give due protection to the banker as we have noticed above. On the question of forgery it should be remembered that if a cheque is endorsed to him in blank and the servant of the endorser who steals it places the name of a third party over the endorser's signature and sells it, the third party gets a good title because signature was genuine and not forged and the third party had *bona fide* purchased the cheque for value. (*Bird and Co., London* v. *Cook and Son*, (1937) 156 L.T. 415). As to the question how far the endorsement is regular, i.e. it purports to be the endorsement of the payee, the easiest answer is that, as far as possible, the endorsement should be in the same spelling as the payee's name on the cheque. However, it may not be in the same spelling, in the sense that if a cheque is payable to " John Jones or Order " and the endorsement is " J. Jones ", the banker would be justified in paying because the endorsement purports to be the endorsement of the payee. On the same analogy, if a cheque is made payable to " Messrs. Robinson " and is endorsed as " Robinson and Son ", or " Robinson Brother " the same would be regular, but " Robinson & Co." would not be regular, because " Messrs. Robinson " signifies a large number of Robinsons. Of course, it would be very irregular to draw cheques in that form. Again, in India, as well as in the United Kingdom, we do not include our courtesy titles such as " Mr." or " Esq." or professional designations such as " Dr." or " Captain " in our signature. Therefore, if a cheque is made payable to " Capt. W. Johnson ", it should not be signed as " Capt. W. Johnson ", but only as " W. Johnson." On the Continent of Europe, the practice to sign as " Capt. W. Johnson " is usual. In case the banker has good reasons to believe that such an endorsement was placed in, say Germany, or France, he may pay the cheque, but otherwise, he should decline to accept such an endorsement. In case of Dr. W. Johnson, the signature " W. Johnson, M.D." would be quite in order, but " Dr. W. Johnson " would not be. In case of a joint-stock company the proper form of signature is :—

" For the Bombay Tramway Co., Ltd.,
M. Sodawaterwalla,
Secretary."

But if the signature is placed as :

"M. Sodawaterwalla,
Secretary,
Bombay Tramway Co., Ltd."

the same would not be the signature of the company, but that of the secretary personally, and therefore an endorsement such as this on a cheque payable to the Bombay Tramway Co., Ltd., should be rejected. (*Courtauld* v. *Sanders* (1867) 16 L.T. (N.S.) 562). In the above illustrations the Secretary signs on behalf of the company by virtue of his office and thus in his case no special power of attorney is necessary. The resolution of his appointment is sufficient if passed in proper form. The same remarks would apply in the case of a Manager, Agent or Director of a company. However, it should be remembered that though Mr. M. Sodawaterwalla, the Secretary of the Bombay Tramway Co., Ltd., has by virtue of his office as secretary a right to endorse cheques, that does not mean that he can delegate his authority to some one else. The rule of law is that a delegate cannot delegate his authority to somebody else. *delegatus non potes delegare*. Thus an endorsement such as :

"For the Bombay Tramway Co., Ltd.,
For M. Sodawaterwalla,
Secretary,
P. Katrak"

would be entirely irregular. There is, however a practice among bankers to permit certain officials of the bank to sign "*pro Manager*", but such a signature is entirely irregular at law, and the banks accept it because it happens to be general practice dictated by mutual convenience.

A cheque drawn payable to the order of Ramchander Govind, is no doubt accurately endorsed as "R. Govind", but our Indian banks frequently object to such a form. Of course, when Ramchander Govind is spelt Ramchandar Govinde it would not be paid. In case of a married woman, the usual practice is to sign as "Anna Robinson—wife of William Robinson." If Miss Anna Cook were to marry William Robinson and a cheque were given to her in her maiden name, she could sign "Anna Robinson, *nee* Anna Cook."

It may be added that payee's signature on a receipt form will not constitute an endorsement within the meaning of the Bills of Exchange Act, and this is so in spite of the fact that the receipt, or instrument bears the statement that the payee's signature on receipt is to operate as an endorsement, or that no further endorsement was required.

To make things more explanatory, we append the following tables which will give at a glance an idea as to which endorsements are regular, irregular, or doubtful.

INDIVIDUALS

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
Ramchandra Bhatt, Esq.	Ramchandra Bhatt	Mr. Ramchandra Bhatt or Ramchandra Bhatt, Esq.	
Capt. S. Paymaster	S. Paymaster ...	Capt. S. Paymaster	
Dr. Ranvir Mehta	Ranvir Mehta or Ranvir Mehta, M. D.	Dr. Ranvir Mehta	
J. McIntosh ...	J. McIntosh ...	J. MacIntosh	
Sister Mary ...	Sister Mary		

AGENTS

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
Ramchander Govind	Per Pro. Ramchander Govind (Sd.) Vishnu Pant	Per Pro. Ramchander Govind Pro. Vishnu Pant (Sd.) Gopal Pendse	For Ramchander Govind (Sd.) Vishnu Pant
Do. ...	Ramchander Govind, By his Attorney, (Sd.) Vishnu Pant		
Do. ...	For Ramchander Govind, (Sd.) Vishnu Pant, Agent		

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
The Bombay Mercantile Co., Ltd.	For the Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia, Secretary	For the Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia	For the Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia, Cashier or The Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia, Secretary
Do.	The Bombay Mercantile Co., Ltd., Per D. J. Pastakia, Secretary	For the Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia, Pro. Secretary	
Do.	Per Pro. The Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia	For the Bombay Mercantile Co., Ltd. Per Pro. D. J. Pastakia, (Sd.) M. Gimy	
The Bombay Mercantile Co., Ltd.	Per Pro. The Bombay Mercantile Co., Ltd. (Sd.) D. J. Pastakia, Secretary		
Do.	For the Bombay Mercantile Co., Ltd., For Indian Corporation, Ltd. (Sd.) B. G. Govind, Secretary		
Do.		(Sd.) D. J. Pastakia, The Bombay Mercantile Co., Ltd.	

FIRMS

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
Messrs. Ralli ...	Ralli Brothers or Ralli & Son	Ralli & Co. ..	Ralli
Do. ...	Per Pro. Ralli Brothers (Sd.) William Smith	For Ralli Brothers (Sd.) William Smith	
Do. ...	F. & N. Ralli		
Do. ...	Ralli & Ralli		
P. Rustomji & Co.	P. Rustomji & Co.	Rustomji & Co.	
P. Rustomji & Bros.	P. Rustomji & Bros.	P. Rustomji & Co. or P. J. Rustomji & Co.	
Misses Pistonji ...	Pistonji Sisters or Hilda Pistonji and Ratti Pistonji		

MARRIED WOMEN

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
Mrs. A. Robertson	Anna Robertson	Mrs. Anna Robertson	
Do. ...	Anna Robertson (Mrs.) Wife of John Robertson		
Do. ...	Anna Robertson Widow of John Robertson		
Miss Catherine Booth (now married)	Catherine Roberts *nee* Booth		

EXECUTORS AND ADMINISTRATORS

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
D. J. Daruwalla (deceased)	R. N. Katrack, P. M. Davar, Executors of late D. J. Daruwalla		
Do. ...	For Self & Co-Executor of late D. J. Daruwalla (Sd.) R. N. Katrack	Per Pro. Executor of late D. J. Daruwalla, Pro R. N. Katrack (Sd.) B. S. Vakharia	
Note.—The same in case of Administrators.			

TRUSTEES

Payee	Regular Endorsement	Irregular Endorsement	Doubtful Endorsement
D. J. Daruwalla (deceased)	R. N. Katrack, P. M. Davar, Trustees of late D. J. Daruwalla	For Self and Co-Trustees of late D. J. Daruwalla (Sd.) R. N. Katrack	
Do. ...	...	Per Pro. The Trustees of D. J. Daruwalla (Sd.) R. N. Katrack	

PAYMENT OF CHEQUES

Unstamped Cheques.—The cheque would not be strictly legal if it is not stamped according to the Law of Stamps as is provided for in England, but the banker seldom refuses to pay such a cheque. What he does is to affix the necessary adhesive stamp, cancel same and charge the stamp in account to his own customer. He should not deduct it from the money he pays to the payee, because, as Sir John Paget in his *Law of Banking* puts it, " it would be exceedingly arbitrary and unwise for a banker to adopt such an extreme course." In India, however, Stamp Duty on cheques has been abolished, hence the question does not arise here.

Irregular Cheques.—With reference to the payment of cheques, the position of the banker is that the cheque is a mandate, or command on the banker from his customer, to pay the amount mentioned in the cheque, so long as there is sufficient balance to the credit of the customer's account to warrant such payment and the cheque is a regular document. A cheque would not be regular if it is drawn in an ambiguous form, or where the signature of the drawer or endorser is not regular, or the cheque exhibits signs of having been tampered with in any way. In case of the forged indorsement, which is regular to all outward appearances, if the banker pays *bona fide* the cheque drawn by his customer, he is not liable because under Section 60 of the English Act it is not for him to show that the endorsement was made by, or under the authority of, the person whose indorsement it purports to be. Our Indian Section 85 of Negotiable Instruments Act, 1881, in such cases lays down that "the drawee (banker) is discharged by payment in due course." (*Sulleman Hussein* v. *The New Oriental Bank*, 15 Bom. L.R. 267). In returning such a cheque care should be taken not to say anything which is directly or indirectly likely to reflect on the drawer's financial position, but simply to say "Cheque irregular, requires confirmation". (*Flach* v. *London and South Western Bank*, 31 Times L.R. 331). In *B. Liggett Liverpool, Ltd.* v. *Barclays Bank, Ltd.*, (1928) 1 K. B. 49, where a cheque drawn in favour of trade creditors of the company were signed by one director, instead of two as arranged, and even paid, it was held that they acted with negligence, though as the liabilities of the company had not increased by this negligence, the bank was protected on equitable grounds and were entitled to stand in place of creditors whom they had paid. Of course, the banker has to be guarded, and it is in the interest, both of himself and his own customer, to see that he does not take any unusual risk in paying the cheque. The case where he would be entitled to refuse payment on the ground of the cheque being "irregular", other than irregular signature of the drawer, is where the cheque is a stale, or post-dated cheque, or where the sum expressed in words differs from that expressed in figures, or the endorsement is not regular. A banker also is not bound to honour an undated cheque. [*Griffiths* v. *Dalton*, (1940) 2 K.B. 264; (1940) W.N. 227].

Stopping of Cheques.—The stopping of a cheque is a mandate on the banker from his customer on the same footing as the cheque when drawn on a banker is a mandate from his customer to pay same. It was held in *Syd Mohammad Yakub* v. *Imperial Bank of India*, (1940) 2 Cal. 578, that a bank which has negligently paid a cheque notwithstanding countermand of payment by customer, cannot debit the customer's account. In one other recent case where the bank by an error

dishonoured a cheque and returned same with the remark " Not Sufficient ", a defence of qualified privilege was taken but the bank lost and had to pay damages to the customer. [*Davidson* v. *Barclays Bank*, (1940) All. E. Rep. 316]. However, this mandate from the customer ordering the banker to stop his cheque operates only if it reaches the latter before the amount is actually paid out. In one case it was held that the fact that the cashier actually counted out the notes and led them across the counter amounted to payment. This was the famous case of *Chambers* v. *Miller*, (1862) 13 C.B.N.S. 125 where after so counting out and placing the notes on the counter the cashier discovered that the account of the drawer was overdrawn and hence demanded the money back. It was held here that the property in the notes and money had passed from the banker to the buyer of the cheque and hence he could not recover same back. When the banker receives a telegram purporting to have come from his customer he would be quite justified in case he had doubts to postpone the honouring of the cheque, pending enquiry. He should, however, be cautious because in case he pays the cheque in spite of the telegram he may be liable to make good that amount. In all these cases the best course is to be guided by previous course of business with the said customer and the common practice of bankers in the particular district. [*Westminster Bank Ltd.* v. *Hilton*, (1926) W.N. 332; *Courtis* v. *London City and Midland Bank Ltd.*, (1908) 1 K.B. 293]. The other cases where he must stop payment are where he has a notice of an available act of bankruptcy of his customer, or that of his death, or insanity. Here questions may arise whether a communication amounted to a countermand or also whether the countermand was received in time. These are of course questions of fact. In one case it was held that the customer must give correct particulars of the cheque that the bank may not be misled. [*Westminster Bank* v. *Hilton*, (1926) W.N. 332; *Courtis* v. *London City and Midland Bank, Ltd.*, (1908) 1 K.B. 293]. In case of a company, the banker should stop payment where he gets notice of the company having gone into liquidation; or where he gets notice that the cheque drawn by his customer is not against his personal account, but against the funds that are in trust for personal use. In the last case, he must be very cautious before honouring the cheque, because trust funds are very zealously protected by Courts of Law and the banker may have to make good the loss in case trust monies so drawn are misappropriated. If a customer's personal account happens to be overdrawn and on being passed for a settlement, he draws a cheque on a trust account of which he is a trustee and pays into his personal account, the banker is put on enquiry. Of course, when the Garnishee Order has been served upon him and the balance at the credit of the current account is attached,

the banker cannot possibly honour a cheque drawn on that account. Where a cheque drawn on a branch was stopped but the payee presented it at some other branch of the bank and received an advance on it which was given in good faith it was held that the bank was entitled to recover the advance on the cheque. [*London Provincial and S. W. Bank* v. *Buszard*, (1918) 35 T.L.R. 142].

Liability re Irregular Dishonour.—Before refusing a cheque on the ground of customer's credit not being sufficient, or with the remarks such as " insufficient funds ", the banker should be very careful, as here he would be running great risks if the step taken by him were to prove to be erroneous. If the customer happens to be a business man, the position would be worse and the banker would be mulcted with heavy damages, because the credit of a business man is a delicate and valuable possession. Here the principle applicable to damage would be " smaller the cheque, greater the damage ", because it is obvious that dishonour of a cheque for a very large amount would not damage the credit and standing of a customer to the extent of a cheque for a very small amount. In this connection Section 31 of our Negotiable Instruments Act, 1881, is interesting. It lays down that " the drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default." Here the law is so strict in case of the drawee that it has been held in *Rolin* v. *Steward*, (1854) 14 C.B. 595 that even though the default arose through inadvertence, and in fact the cheque was subsequently paid, the court will not award merely nominal damages, because the discredit and injury to the person whose cheque is refused was of a very serious nature. This would be the case even though the customer's account was overdrawn, if the banker had agreed to pay his cheques on an overdraft within certain limits. [*Fleming* v. *Bank of New Zealand*, (1900) A.C. 577]. In case, however, where the customer is not a trader unless he proves special damages, nominal damages will be allowed. [*Gibbons* v. *Westminster Bank Ltd.*, (1939) 2 K.B. 882]. Of course, this right of a customer against his banker of getting his cheques or mandates, honoured is against the bank head office, or the branch where he happens to maintain a current account. The customer, for example, cannot insist on a cheque drawn on the head office to be cashed by a branch, or *vice versa*, without having arranged previously. It may be added that whatever liability the banker may incur here, will be confined to his own customer, and the third parties (particularly holders), have no recourse against the banker for non-payment of the cheque.

Usual Answers on Non-payment.—The usual answers given in case of non-payment of cheques are :—

(1) Endorsement irregular.
(2) Writing and figures differ.
(3) Requires confirmation (vernacular endorsement).
(4) Refer to drawer.
(5) N. S. (Not sufficient funds).
(6) N. A. (No account).
(7) Effects not cleared. Please present again tomorrow.
(8) Not arranged for.
(9) Drawer's signature differs from specimen supplied.
(10) Post-dated.
(11) Out of date.

The remark " No account " is the most dangerous if passed through an error. It would mean that the customer was a cheat, who drew cheques on a bank in which he had no account. On the question of " Not sufficient funds ", the important Court of Appeal case is *Frost* v. *London Joint Stock Bank*, (1906) 22 T.L.R. 760. In case where the endorsement is forged, though the banker is justified in returning a cheque with the remark " Endorsement false ", he should avoid taking this risk. According to the Council of the Institute of Bankers, it would be judicious to state instead " Endorsement requires verification ". If a cheque is presented through the post, the same should be returned at the close of the day, or the next day; if received through local exchange, or provincial town, before the close of the day of presentation. In case a crossed cheque is offered over the counter, the answer whether the same is to be paid or not should be given immediately.

It may be added that the banker usually maintains what is called a " Stop Register " in which the notices of countermand are entered, properly describing the cheque which is sought to be stopped and it is also the duty of the banker to inform other branch offices of this countermand of payment in the interest of his own customer and with a view to avoid unnecessary unpleasantness with him.

PAYMENT OF CHEQUES IN BANKRUPTCY

Insolvency in India and England.—In connection with bankruptcy in England a receiving order is passed in the first instance on the creditor's petition and after the petition is heard, a second order known as the Adjudication Order is passed. In India, Adjudication Order is passed immediately after the hearing of the petition, on which the property of the debtor vests in the Official Assignee. In England an insolvent who has been adjudicated is known as a bankrupt and his affairs are said to be in bankruptcy. In India he is called an insolvent all throughout and no distinction is made in his designation before and after adjudication. In this connection it may be interesting to note that in case of an insolvent per-

son, i.e. a person who has more liabilities than assets, the Bankruptcy Act in England and the Insolvency Act of India aims at protecting him from his creditors. He has, therefore, to file a petition and prove to the satisfaction of the Bankruptcy Court that his insolvency was brought about through misfortune and that he had not lived extravagantly or traded in a speculative manner. If, however, he does not petition, and his creditors are afraid that he may run through the assets he still possesses, they have a right to file a petition in the Bankruptcy Court to have him declared a bankrupt and to take away from him all his assets with a view to distribute them amongst his creditors. Before the Court would take action, the Court requires to be satisfied that the debtor has committed an available act of bankruptcy, i.e. such an act as would satisfy the Court that he was a bankrupt. The act of bankruptcy may be any of the following, viz. when the debtor (1) leaves British India with a view to defeat or delay his creditors, (2) transfers all his property to a trustee for the benefit of his creditors, (3) gives fraudulent preference to any creditor by paying him in full and thereby depriving other creditors of their right of receiving their money, (4) fails to pay when his property has been attached for non-payment of a debt for twenty-one days and more, (5) when he fraudulently transfers his property to someone with a view to defraud or defeat his creditors, or (6) when a creditor who has obtained a decree gives a notice called an "Insolvency Notice" calling upon the debtor to pay the decree and warning him that non-payment would be treated as an act of Insolvency after eight days.

The banker in England has to stop payment of all cheques for at least three months from the date on which such an act was committed on hearing of the commission of one of these acts. This is because within three months of commission of this act, any creditor can go and lodge a petition to have him declared a bankrupt, in which case the bankruptcy would commence from the date on which the said act of bankruptcy was committed. The result is that, the banker will have to account to the Trustee in Bankruptcy in England, for the whole balance which stood to the credit of the customer on the date on which the act of bankruptcy, on which the petition was based, was committed. In England the Bankruptcy Act of 1914, Section 45, protects the banker in one regard, viz. that even though an act of bankruptcy was committed, but if the banker did not know of it at the time he pays a cheque of his customer in the regular course of business, he would not be accountable for it to the trustee in bankruptcy.

Over and above this, Section 46 of the English Bankruptcy Act of 1914 takes the protection even a step further, and enacts that a payment of money to a person subsequently adjudged

bankrupt, or to a person claiming through an assignment from him, shall be a good discharge, if the payment is made before the date of the presentation of a bankruptcy petition and in the ordinary course of business, or otherwise *bona fide*. Thus, in Section 45, the banker in England is protected until he has a notice of " an available act of bankruptcy ", whereas in Section 46 it is notice of " the presentation of a bankruptcy petition." It is considered that the words " to a person claiming by assignment from him " do not apply to cheques, and therefore the best course which a banker can adopt for safety, is to inform his customer, as soon as he receives notice of an available act of bankruptcy, that he can pay only those cheques made payable to the customer himself.

The Indian law is not so stringent because here the notice of the presentation of the petition, not that of an act of insolvency, places the burden on the banker of stopping payment.

This point has been dealt with in some detail in the Chapter on Insolvency.

CROSSED CHEQUES

General and Special Crossing.—A crossed cheque is a cheque across the face of which two parallel traverse lines are drawn with or without the words " and Co.", or any abbreviation thereof, or some other words, the effect of which is that the banker on whom it is drawn shall not pay same otherwise than to a banker. A cheque may be crossed generally or specially.

When a cheque is crossed generally it bears two parallel lines without any words or with the words " and Co.", or its abbreviation. (Sec. 123 of Negotiable Instruments Act.) It should be noted that a crossing is operative only on a cheque and a postal order. If a bill of exchange other than a cheque is crossed the crossing is inoperative and the acceptor or party liable can pay same to any person even though that person is not a banker.

A cheque is, on the other hand, said to be crossed specially where it bears across its face an addition of the name of a banker, either with or without the words " not negotiable ". (Sec. 124 of Negotiable Instruments Act.)

When a cheque as originally issued is uncrossed, it is permissible to the holder to cross it generally or specially. He can add the words " not negotiable " to the crossing. Where a cheque is crossed specially, the banker to whom it is so crossed may again cross it specially to another banker or his agent for collection.

Banker's Duty.—In the case of these crossed cheques, it is the duty of the paying banker to see that the cheque is paid only to a banker; otherwise he would not be deemed to have

made the payment in due course. Where a banker makes such an irregular payment, i.e. pays a crossed cheque to a person other than a banker, or in case of specially crossed cheque he pays it to a party other than the banker mentioned in the crossing, he would be responsible to the drawer for any loss the drawer may sustain. At the same time, where the cheque is presented for payment which does not at the time of payment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by the Act, the banker paying the cheque in good faith and without negligence shall not be responsible, or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of crossing having been obliterated or having been added to, or altered otherwise than as authorised by the Act and of payment having been made otherwise than to a banker. (Sec. 79, Bills of Exchange Act; Sec. 89, Negotiable Instruments Act.) On the same principle if a banker receives payment of a crossed cheque on behalf of a customer, in good faith and without negligence in the regular course of business, he shall not incur any liability to the owner of the cheque in case the holder's title to the cheque proves defective. If, however, the crossing is obliterated, or is of a nature which cannot be noticed, and the banker pays the cheque in good faith he would be protected. If a cheque is crossed to two different branches of a bank, it would be considered as a crossing to a single bank, as the branches of a bank would not constitute two separate or distinct banks. It may also be noted that when a cheque is crossed generally, it may be altered to a special crossing, but a special crossing cannot either be altered or be made general crossing without the consent and the signature of the drawer. (Secs. 55 and 123-31, Negotiable Instruments Act.)

" Not Negotiable " Crossing.—In cases of cheques crossed " generally " or " specially ", and bearing in either case the words " not negotiable ", their position would be that such instruments shall not have, and shall not be capable of giving, a better title to the holder than that which the person from whom they were taken had. (Sec. 130, Negotiable Instruments Act.) The effect of a " not negotiable " crossing is to deprive the instrument of the special advantage which a negotiable instrument as such enjoys. The special advantage is, as we have seen, that the holder in due course of a negotiable instrument who receives it in good faith, complete and regular on the face of it, and without any notice as to defect in title of a previous holder receives it free from all defects in title of a previous holder. An instrument crossed " not negotiable " may of course be indorsed any number of times as far as its transferability is concerned, Lord Halsbury in *Laws of*

England says that " the effect of adding the words ' not negotiable ' to a cheque is not to impede transfer, but to perpetuate in the hands of any transferee whatever defect or infirmity of title may affect the person who first transferred the cheque with those words on it."

Forms of Crossing.

& Company

& Co.

Not Negotiable

Not Negotiable

& Co.

The Central Bank of India, Ltd.

The Central Bank of India, Ltd.

The Central Bank of India, Ltd.
Not Negotiable

The Central Bank of India, Ltd.
Not Negotiable

Remitted to the "B" Bank Ltd.,
by the "C" Bank for collection.

Note.—It should be noted here that crossing may be with or without two parallel lines in case where the name of the bank is written across the cheque.

Crossing a Material Part of the Cheque.—The crossing is a material part of the cheque, and, therefore, it cannot be obliterated or removed by a holder. (Sec. 78 of the English Bills of Exchange Act.) The only person who could cancel the crossing is the drawer, which he usually does by writing the words " Pay cash " followed by the signature of the drawer. It should be noted here that if in this case a fraudulent person were to write " Pay cash " at the same time forging the drawer's initials, the paying banker is not protected. If the obliteration of the crossing is such that on a reasonable examination of the crossing the same is not apparent, the banker would be protected. Wrongful obliteration of the crossing as well as any other alteration of a material character by the holder would invalidate it. (*Gour Chandra Das* v. *Prasana Kumar Chandra*, 33 Cal. 812.) The law is that the holder can make an uncrossed cheque a blank, or specially crossed cheque. In short, the crossing may make the encashment of the cheque more difficult.

Account Payee.—Cheques are frequently crossed " Account payees ", but such a direction does not bind the paying banker who may ignore same, though in actual practice the banker who collects such a cheque does see that the instruction is carried out. The banker who pays a cheque, of course, is not concerned with it as the banker receiving the money is concerned with the directions as to how the money is to be dealt with. [*Akrokerri (Atlantic) Mines Ltd.* v. *Economic Bank*, (1904) 2 K.B. 465 at p. 472; *Morrison* v. *London County and Westminster Bank*, (1914) 3 K.B. 356; *National Bank* v. *Silke*, (1891) Q.B. 435 at p. 439.] A cheque bearing the words " not negotiable " without the two parallel lines is not a crossed cheque, and therefore, the paying banker need not insist on its being presented through a banker.

It is the custom of banks to impress rubber stamps on cheques passing through their hands for collection. This is done as a convenient method for identification, particularly when they pass through the Clearing House. When the cheque so impressed has already a special crossing, these rubber stamps do not operate as crossing. Double crossing by ordinary individuals is not permitted. Even in case of bankers the double crossing is permissible only where it is shown that the second crossing was placed by the collecting banker for the purpose of the Clearing House. (Sec. 79 of the English Bills of Exchange Act; Sec. 125 of Negotiable Instruments Act.) In cases where cheques are crossed to the branch office as well as the head office of the same bank, or two of its branches that would not, according to Sir John Paget, fall within the meaning of Section 79, as that would not constitute a double crossing on the ground that the head office and the branches make up one bank. The question is, however, open to some doubt, though

in England the practice of crossing in this fashion does not seem to be uncommon.

MARKING OF CHEQUES

With regard to the marking of cheques the question may be discussed from three standpoints, viz. (1) the marking at the instance of the customer, (2) the marking as between a banker and a banker, and (3) the marking at the instance of a holder or payee.

Lord Halsbury, in *Laws of England*, states : " Occasionally cheques are marked or certified by the bankers on whom they are drawn. Doing so does not convert the marker into an acceptor or make him liable on the instrument, but it does constitute a representation by him on which he may be held liable, that the cheque will be paid as drawn if presented within a reasonable time. The effect on the cheque is to give it additional currency by showing on its face that it was drawn in good faith on funds sufficient to meet its payment and by adding to the credit of the drawer the credit of the banker on whom it is drawn." [See also *Gaden* v. *Newfoundland Savings Bank*, (1899) A.C. 281 ; *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A.C. 49 at p. 55.)

Marking for Customers.—

(1) The object with which marking is done is with a view to ascertain whether the customer has sufficient funds with the banker to be able to get the cheque honoured. If the cheque is marked at the instance of a drawer or the customer, it is quite clear that the drawer will have no right of countermanding payment, which, of course, simplifies the question. Sir John Paget, in his *Law of Banking* says :—

" The object and effect of a banker's marking of cheques at the instance of the customer has been stated by the Privy Council to be to further remedy the ready acceptance of the instrument by affording evidence on the face of it that it is drawn in good faith, and that there are funds sufficient and available to meet it and as adding the credit of the drawee bank to that of the drawer." The principal danger in case of marking of a cheque by a banker arises from the fact that after a cheque is marked the drawer of it may countermand payment, which he has every right to do in the second and third instances cited above, and the banker may be put in an awkward position as he has to indemnify the party for whom he marked, in case an innocent third party takes the cheque relying on such a marking. If, however, the marking was done at the request of the customer, the position is simplified because, as we saw above, the drawer cannot countermand without holding himself liable to indemnify the banker for any

loss he suffers through his having marked the cheque, the payment of which is now stopped. British Bankers have such a prejudice against marking that even in case of a request from a customer to mark his cheque they induce him to take their own draft instead.

In a Privy Council case recently decided it was held that marking or certificating of a post dated cheque as good for payment by the manager of bank was not an acceptance within the meaning of the English or Indian Act or the common law. It was also held that there was no custom amongst bankers in India to that effect. Therefore the endorsee of such a cheque had no remedy in law against the drawee banker. It was also held that the manager's ostensible authority did not extend to cover the certifying of post-dated cheques. [*Bank of Baroda Ltd.* v. *Punjab National Bank Ltd.* (1944) W.N. 119.]

Marking between Bankers—Constructive Payment.—

(2) The marking between bankers has been legally recognised in England as a custom of bankers by which such a marking is construed as a promise or undertaking to pay. It is, however, doubtful as to whether a customer can countermand payment after a banker has marked a cheque for another banker. The authorities seem to be conflicting on this point though, of course, the right of the customer to countermand payment previous to such a marking is clearly acknowledged. In one case, *In re Beaumont* v. *B. Eaubanks*, (1902) 1 Ch. 889, Justice Buckley called such a marking "constructive payment". His Lordship said: "He (Vice-Chancellor Stewart) must have so decided either because the cheque was constructively paid, the bankers having substantially said they would pay so that the payment constructively related back to the date of payment or because the bankers had in effect said, 'The account is in credit, and we will hold enough of the balance to satisfy the cheque subject to the signature being shown to be genuine'." If the view expressed, viz. that such a marking constitutes a constructive payment, is correct, then, of course, the customer's right to countermand after such an operation is complete, is lost. In *Goodwin* v. *Robarts*, L.R. 10, Ex. 351, it was laid down that "a custom has grown up among bankers of marking cheques as good for the purpose of clearance by which they become bound to one another." It would thus be seen that the position of a banker marking for a banker is considered to be quite distinct from that of a banker marking for his customer, though, of course, how far the decision would be upheld in future is doubtful. With regard to constructive payment, Sir John Paget (*Law of Banking*) says: "In this as in some other similar cases, the banker's conception of payment would not coincide with the legal. A court would infalliaby decline to recognize as payment an operation expressly

designed to give currency to a cheque, and performed before its issue."

These remarks of Sir John Paget are based upon the original intention and meaning of marking which is, as we have seen, to make sure that the cheque will be duly paid because the drawer has ample funds, and thereby it becomes more acceptable and readily transferable from hand to hand.

Marking for a Holder.—

(3) The third case of a holder or payee presenting a cheque to the banker and getting it marked is not quite uncommon in India, though it is not much prevalent in England, but the practice still prevails largely in America. Such a marking would constitute nothing more than an intimation that at the time of marking the banker had a sufficient balance to the credit of the drawer and that there is no appropriation by the banker. (See *Prince* v. *Oriental Bank Corporation*, 3 A.C. at p. 331.) If the cheque was presented for payment, but for some reason the bank instead of paying the amount marked same, the conclusion would be the same. [*In re Beaumont*, (1902) 1 Ch. at p. 895.]

COLLECTION OF CHEQUES

Collection of cheques presented by his customer drawn upon other banks forms one of the most important functions of a modern banker. The banker here acts as what is known as an agent for collection, and in connection with his duties is bound to use reasonable skill, care and diligence. If any loss is suffered by the customer through the negligence of the banker in this regard, the banker would make good the loss. It is, therefore, the duty of a banker collecting a cheque to carefully examine the endorsements, and to see whether they are regular, otherwise he might be held guilty of negligence. [*Bavins and Sims* v. *London and South-Western Bank*, (1900) 1 Q.B. 170.]

According to Section 82 of the English Bills of Exchange Act, 1882, " where a banker in good faith and without negligence receives payment *for a customer* of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." (The corresponding section is 131 of the Negotiable Instruments Act.) This section no doubt gives ample protection in the normal circumstances to the banker who collects cheques on behalf of his customers so long as the cheque happens to be crossed generally or specially to himself when he receives it. It will not do if the cheque was received uncrossed and the banker puts the crossing himself. However,

in old decisions it was held that in order to get the protection of this section, a banker should act purely as an agent for collection and not as a holder in due course, i.e. should not buy up the cheque himself. It was held in one case, viz. *Capital and Counties Bank* v. *Gordon*, (1903) A.C. 240, that where a banker first credited the amount of the cheque he was asked to collect and then collected, he is to be treated not as an agent for collection, but as a holder for value and therefore he cannot get the protection of Section 82 of the Bills of Exchange Act. In other words, under the law, as in force at that time, it was necessary, in order to be entitled to take the position of an agent for collection, to collect the cheque first and then subsequently to credit the customer. This position created a great stir amongst bankers in England whose practice was for the purpose of book-keeping facility, to credit the customer immediately on receipt of a cheque for collection and then send it to the Clearing House for collection. The Central Association of Bankers in England, therefore, introduced a Bill into Parliament called " Bills of Exchange " (Crossed Cheques) Act, 1906, which runs as follows :—

> " A banker receives payment of a crossed cheque for a customer within the meaning of Section 82 of the Bills of Exchange Act, 1882, notwithstanding that he credits the customer's account with the amount of the cheque before receiving payment thereof."

In India, however, such a practice does not prevail, i.e. the practice is to collect first and then to credit, and therefore, no action was for a long number of years thought to be necessary. However, in the year 1922 the Government of India brought the Negotiable Instruments Act in line with the Bills of Exchange (Crossed Cheques) Act of England by passing a special amending Bill in the terms given above. The result of this, both in India and England, is that if a banker receives a crossed cheque for collection he will be protected under Section 82 of Bills of Exchange Act, 1882, as well as Section 131 of Negotiable Instruments Act, 1882, as an agent for collection whether he first credits and then collects or first collects and then credits the cheque, so far as he acts (1) in good faith, (2) without negligence, and (3) on behalf of customer.

In this connection the case of *In re Alliance Bank of Simla in Liquidation*, (1925) Cal. 54 A.I.R., is important. Here the Alliance Bank received certain cheques from their customers for the credit of their accounts which were first credited and then sent for collection. They were dishonoured at the Clearing House by the Chartered Bank, upon which the Alliance Bank reversed their original credit to their customers' accounts. It was held that the reversal of the credit was quite consistent with the position of the Alliance Bank as collecting agents. The money was placed to the credit of the customers not with the

view that they should draw upon same before being cleared. The cheques were not cleared finally and hence the money represented by the cheques did not form part of the assets of the bank. It was also laid down here that the Calcutta Banker's Clearing House is a place where exchange of cheques, etc. takes place in lieu of direct presentation at the offices of the respective banks. Where X having an account with bank A which had a branch B in some other location sent a cheque to B and asked him to collect the proceeds and remit same to bank A and accordingly B bank collected the proceeds but did not carry out the instructions of X to remit the proceeds to A bank and meanwhile the bank went into liquidation, it was held that the liquidator was not entitled to retain the proceeds but must return them to X, because each branch of a bank was a distinct concern as far as the customer was concerned and that the relation of a bank and a customer had never been created between X and B bank as the latter only acted as an agent for collection. If the proceeds had been remitted to A bank the position would have been different. [*The Indian Hume Pipe Co., Ltd.* v. *The Travancore National and Quilon Bank Ltd. (in Liquidation)*, (1913) Mad. 187.]

Collection of Cheques payable to Undischarged Bankrupts.—A banker should never open an account with an undischarged bankrupt, and in case he has unknowingly opened such an account, he should inform the Trustee in Bankruptcy or the Official Assignee of it and suspend operation on it till he hears from them. It may, however, happen that the undischarged bankrupt may be collecting crossed cheques given to him through his wife's account or that of a tradesman with some banker. The banker here can plead protection under Section 82 of the Bills of Exchange Act, 1882 (our Section 131 of the Negotiable Instruments Act, 1881), if he is not aware of this fact. In case of the wife's account this will be difficult to establish as the banker may be suspected of knowing of insolvency of the husband of his customer. In case of a tradesman's account his want of knowledge would be easy to establish. However, as soon as the banker has notice of this fact he should refuse to collect such cheques.

As to the negligence, in one case [*Ladbroke* v. *Todd*, (1914) 30 T.L.R. 433], a man opened an account with the banker with a stolen cheque representing himself to be the payee of the cheque. The banker did not make proper inquiry to satisfy himself whether the man was what he represented himself to be. Here the banker collected the cheque, the amount of which the man withdrew. It was held that the banker was negligent, and thus he was not entitled to the benefit of Section 82 of the Bills of Exchange Act 1882, which he would otherwise be entitled to.

Forged Cheques by Wife.—In one peculiar and outstanding case a customer of a bank discovered that his wife had drawn four cheques on his current account but remained silent for nine months. His wife died thereafter on which he claimed to be credited for all these amounts on the ground of banker having paid forged cheques. It was held that the customer's silence until after the death of the forger resulted in bank's loss of their right against the forger and therefore he was estopped from relying on the said forgeries. [*Greenwood* v. *Martin Bank Ltd.*, (1932) 47 T.L.R. 607.]

The Banker and his Clearing Agent.—What actually happens in connection with collection is that either the banker himself collects a cheque, or hands it over to some other banker to clear same as the agent of the banker concerned. In England, particularly in London, where the membership of the Clearing House is restricted, a large number of bankers who are not members of the Clearing House, have to employ those who are members, as their clearing agents. These clearing agents collect cheques on behalf of their principal, i.e. the banker who employs them. Sir John Paget, in his excellent book, raises the question by giving an illustration as to what would be the position of the clearing agent in case the cheque so collected had a forged endorsement, because Section 82 of Bills of Exchange Act and Section 131 of Negotiable Instruments Act only contemplate and provide for the simple case of one bank receiving a crossed cheque for collection from a customer. [*Gordon's Case*, (1902) 1 K.B. at p. 262]. He thinks that probably the collecting bank may be entitled to indemnity from the original bank for which he collects, either because he acts as an agent for the original bank, or that he has done an act at the request of A, the original bank, and suffers loss or that the original bank had represented the title of the cheque as good. This is, of course, a hypothetical question not yet decided by the Court of Law, and no doubt it would be a great hardship if the collecting agent banker were not given the same protection as his principal for whom he collects. Sir John sums up by adding that most probably as the principal bank and the collecting agent bank keep accounts for each other, the original bank would be considered a customer of the collecting agent bank and protected under the extended meaning of the word "Customer", as in the case of *Importers Co., Ltd.* v. *Westminster Bank*, (1927) 2 K.B. 297. When a cheque is drawn on a bank presentment of same at the Clearing House in the same town is presentment at the bank. [*Reynolds* v. *Chattle*, (1811) 2 Camp. 598; *Harris* v. *Parker*, (1833) 3 Tyr. 370].

Cashing or Exchanging Cheques.—Frequently bankers cash, or exchange cheques, drawn upon other banks either making

a small charge, or in order to oblige their customers. The only danger is that here they do not get the protection under Section 82 of the Bills of Exchange Act, or Section 181 of the Negotiable Instruments Act. They are here purchasing these cheques as holders for value, and for that reason are not protected against forged endorsements. The rule would be the same whether cashing or exchange was done for a customer, or a stranger.

Death of an Agent.—The other point to be noted is that in case an agent duly authorized dies, the banker should honour cheques signed by him. This is because the death of the agent does not revoke the authority of the banker to pay such cheques. On the other hand, as soon as the banker gets notice of the principal's death he should return the cheques marked "drawer deceased."

A partner of a trading firm signs in the firm's name as an agent for the firm and his other partners when he signs cheques in the name of the partnership firm. The death of a partner does not revoke the authority of the banker to pay cheques signed by him in the firm name, because the authority of the surviving partners continues for the purpose of the dissolution of the firm.

Collecting Cheques for Employees and Agents.—While collecting cheques the banker has to see that the person who signs as an agent does not endorse the cheque drawn payable to the order of his principal and then place same into his own account. In one case a commercial traveller opened an account in a bank in his own name and paid into his personal account cheques payable to his principal which he endorsed *per pro.* Here, it was held that the banker was negligent because he ought to have made enquiries as to why a cheque drawn on the principal's order was not paid into the account of the principal instead of that of the agent. [*Bissell* v. *Fox*, (1885) 53 L.T. (N.S.) 193.] A secretary of a company similarly endorsed a cheque in his capacity of secretary which was drawn payable to the order of the company and then paid same into his bank account. Here also it is held that the bank was negligent. [*Hannan's Lake View Central, Ltd.* v. *Armstrong & Co.* (1900) 16 T.L.R. 236]. In a later case when an officer of a bank with power of attorney drew a cheque on account of his principal (bank) and sent it to be credited in his own account, with some other bank which had the officer's personal account, it was held that the bank was put on enquiry and if it omitted doing so and collected and permitted its customer to withdraw the amount, it was guilty of negligence. [*Lloyds Bank* v. *Chartered Bank*, (1929) 1 K.B. 40.] It is of course no excuse for the bank to say that pressure of business prevented them from dealing with the cheques with a proper degree of care.

The other case is *A. L. Underwood, Ltd.* v. *Bank of Liverpool and Martins and Barclays Bank*, (1924) 1 K.B. 775, where Underwood, who was the only director and held all shares except one, endorsed a large number of cheques payable to the order of the company and paid them into his own account. The bank was held to have acted with negligence.

In *Lloyds Bank Limited* v. *E. B. Savory*, (1933) W.N. 6 the House of Lords in an appeal held the bankers liable for negligence in a cast where the Lloyds Bank had made an arrangement under which their customers could pay in cheques for collection at any one of their offices, for credit of the account of the said customer at any other office. Here two clerks of Stock Brokers stole a large number of cheques made payable to the accounts of their masters, which were crossed and were made payable to bearer, according to the stock exchange custom of jobbers and opening their accounts at two different branch offices of the country-side collected same by paying these cheques in for credit of their account at a branch of the said bank in London. The majority of the House of Lords were of opinion that this system of the appellant bank was defective in that it made no provision for informing the country branches of the name of the drawers and payees of the cheques received by the London offices. See also *Midland Bank* v. *Reckit*, (1933) A.C. 1, where a solicitor acting as an agent drew cheques on his client's account for which he had a Power of Attorney and fraudulently placed same to the credit of his own account and the banker was held liable to make good this amount and this decision was given in spite of the fact that the Power of Attorney of the solicitor contained a clause in which his principal agreed to ratify all acts of his agent.

In a latest case where a clerk fraudulently obtained from his employers crossed cheques drawn on their banking account, and forged the payee's endorsement and paid the cheques into his own account at the employers' bank, the employers naturally claimed against the bank the value of the cheques so dealt with. The bank relied on Sections 60 and 82 of the English Bills of Exchange Act, 1882. We have noticed both these sections in our previous discourse. The Court held that though under Sec. 82 the bank was guilty of negligence and could not rely for protection under that section principally because Section 82 clearly lays down that in order to get protection under it, the banker must have acted in good *faith and without negligence*, he could get protection under Sec. 60 of the same Act where negligence is not mentioned, but all that is required is that he should pay the bill in good faith and in the ordinary course of business. [*Carpenters Co. of City of London* v. *British Mutual Banking Co.*, (1937) 156 L.T. 53 T.L.R. 270.]

DONATIO MORTIS CAUSA

This is a gift in English Common Law by a person who is very ill and believes that he is going to die. This is a peculiar gift inasmuch as the condition is that it is only to come into operation if the person actually dies of the illness. But if on the other hand he recovers from that illness, the gift is to be returned. Bank notes can be subject of *donatio mortis causa*. [*In re Hawkins*, (1924)•2 Ch. 47; *Drury* v. *Smith*, (1717) 1 P. Wms. 403; *Miller* v. *Miller*, (1735) 3 P. Wms. 356]. If, therefore, a cheque was delivered as a *donatio mortis causa*, but not cashed before his death, it cannot be cashed after his death. If, however, the cheque was cashed after his death but before the bank knew of it, the representative of the donor cannot recover the amount. [*Tate* v. *Hilbert*, (1793) 2 Ves. Jun. III.] If, however, the person who receives such a cheque has sold it by endorsement to a third party for valuable consideration, the executors have to pay the cheque. The Indian Succession Act, 1925, Section 191 (which does not apply to Hindus, Jains, Sikhs or Buddhists) : " A man may dispose by gift made in contemplation of death, of any movable property which he could dispose by will." The gift is said to be made in contemplation of his death where a man who is ill, and expects to die shortly of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness. Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made. Though the donor's own cheque does not pass to donee unless he cashes same before his death, a cheque payable to the donee's order may pass even if not endorsed as he can ask the legal personal representative to complete his title by the former's endorsement, as there is here a trust in his favour. This is because a donor's own cheque is only a revocable mandate [*Clement* v. *Cheessman*, (1884) 27 Ch.D. 681] on the same principle as a promissory note payable to order not endorsed [*Veal* v. *Veal*, (1859) 27 Beav. 303]; a bill of exchange payable to donor's order not endorsed [*In re Mead*, (1880) 15 Ch.D. 651]; a banker's deposit note [*In re Dillon*, (1890) 44 Ch. 70], have been held to be good subjects of *donatio mortis causa*. A deposit receipt can also be a subject of a *donatio mortis causa* [*In re Dillon Duffin* v. *Duffin*, (1890) 44 Ch.D. 76]. It has been, however, held that a bank deposit account book not being a document of title as it was not required to be produced a the time of withdrawal was not subject matter of a valid *donatio*. [*Delegoff* v. *Fader*, (1939) 1 Ch. 922.]

Donatio Mortis Causa rule is also to be found in Mahomedan Law and is known as death-bed (*Maroz-ul-mout*) gift. As the Mahomedan Law permits only one-third of the total estate of a Mahomedan being made the subject of a will, and that, too, to a non-heir, this gift has necessarily to be (1) within the limit of one-third of the total estate, and (2) to a non-heir.

Mr. Amir Ali in his book on Mahomedan Law while dealing with the Law applicable to Shias states on the authority of *Jamma-ush-Shittat*, a work of authority among the Shiahs, that " a gift made by a person suffering from a mortal illness which ends fatally, is valid with reference to the entire disposition, provided delivery takes place before the death and the donor is in perfect possession of his senses."

CHEQUE PAYABLE IN ENEMY-OCCUPIED COUNTRY

Where in one case where the plaintiff received from a Belgrade bank in England a cheque for goods sold which was drawn on an Amsterdam bank, and almost on the day of receipt of this cheque by the plaintiff, the Germans invaded Holland which was declared an enemy country, the plaintiff returned the cheque to the defendants and demanded money, the defence taken was that as the presentment of the cheque had become illegal, the plaintiff was precluded from suing. It was, however, held that under Section 46, Sub-section 2(*a*) of the Bill of Exchange Act, 1882, the presentment was dispensed with where after reasonable diligence the holder was unable to effect presentment for payment and that under the circumstances the plaintiff holder had a right under the Sub-section to recover payment from the drawer (i.e. the defendant). [*Cornelius* v. *Banque Franco-Serbe*, (1942) 1 K.B. 29.]

CHAPTER III

BANKERS' CLEARING HOUSE

Clearing is a process by which bankers exchange cheques drawn against each other which are received by them for collection or clearance from their customers.

The old practice in connection with clearing of cheques was to send clerks with bundles of them, technically called charges, who went round collecting cash for them from various banks concerned. This method was found to be very wasteful as well as laborious, with the result that informal meetings of these clerks used to be held where they exchanged these cheques. According to W. Evitt in his book on Banking a bank clerk named Irvin originated this idea. This ultimately led to the establishment of the London Clearing House. According to Gilbert, the author of *Principles and Practice of Banking*, the London Clearing House was founded in the year 1775, but he also adds that some sort of clearing was being done in London even prior to that date. At first certain bankers held aloof from this organization, but ultimately, it became a very exclusive association. The membership up to 1854 was restricted to private banks and only from that year Joint-Stock Banks were admitted. There are at present only twelve member banks of the London Clearing House, viz. (1) Bank of England, (2) Barclay's Bank Limited, (3) Coutts & Company, (4) Glyn, Mills, Currie & Co., (5) Lloyds Bank Limited, (6) Martins Bank Limited, (7) Midland Bank Limited, (8) National Bank Limited, (9) National Provincial Bank Limited, (10) Westminster Bank Limited, (11) Williams Deacons Bank Limited, and (12) District Bank Limited. It may be added that there are Clearing Houses for local clearing all over England and Wales, the principal towns being Birmingham, Bradford, Bristol, Hull, Leeds, Leicester, Liverpool, Manchester, Newcastle, Nottingham and Sheffield.

THE LONDON CLEARING HOUSE

The London Clearing House is housed in very unpretentious premises. The ground floor is furnished with long wooden forms and desks at which the officers representing the member banks take their seat. The three stories of the building, as well as the basement, are occupied by several hundreds of adding machines on which totals are calculated in connection with "clearing". At first this Clearing House only dealt with cheques of banks situated locally, but later in the year 1858, it was extended to banks situated on the countryside, which came to be called "country clearing".

"Clearing" proper is divided into three divisions, viz. (1) town clearing, (2) metropolitan clearing, (3) country clearing.

" Town clearing " is restricted to the clearing of cheques on banks and its branches within easy reach of the Bank of England. The " metropolitan clearing " is operated in connection with banks and their branches situate outside the town clearing area, but within the metropolitan area of the City of London, roughly corresponding with the London Postal District. The " country clearing ", on the other hand, deals with all cheques outside the metropolitan clearing area and within England.

Town Clearing.—Town clearing in London commences at 10-30 a.m. on week days and there is a second clearing known as " afternoon clearing ", which is the busiest of the day. What actually happens is that each member takes a printed form furnished by the Clearing House known as the " summary sheet " which has one column for the name of each clearing bank, subdivided into debit and credit amount columns. Now supposing the officer who represents the Lloyds Bank is handed over a bundle of cheques drawn against the Lloyds Bank by the officer of the Westminster Bank, the Lloyds Bank officer would place the total amount of these cheques in the credit column of the Westminster Bank, and if he (the Lloyds Bank officer) hands over a bundle of cheques drawn against the Westminster Bank and sent for collection to the Lloyds Bank, the total amount of such cheques is entered by himself in the column of the Westminster Bank in the Clearing House form (Summary Sheet). All throughout the day, bundles of cheques are dealt with similarly which are constantly brought by messengers from their respective banks, until ten minutes to four in the evening, which is the closing time. The Clearing House Summary Sheets are then totalled with the help of adding machines in each case, and the clearing officer of each bank strikes a balance between amounts of his " in clearing " and " out clearing " with each other bank. The balance arrived at is either a debit as against, or credit in favour of the Lloyds Bank. Formerly each bank balance was settled separately, but since the year 1854, it has been arranged that every Clearing Bank should keep an account with the Bank of England, and that the net balance, after amalgamating all the debit and credit balances of all the Clearing Bankers concerned, should be arrived at, whereby the net result would be the sum owing to or by the Lloyds Bank on the " General Balance ", i.e. all the Clearing Bankers taken together. In other words, that method of reckoning would enable them to ascertain the net amount which the Lloyds Bank would either owe to the other Clearing Bankers or *vice versa*. In case it is found that the Lloyds Bank owes say £15,000, on the general balance, all it has to do is to authorise the Bank of England to transfer this sum from the Lloyds Bank credit to the credit of a special account kept by

the Bank of England entitled the " Clearing Bankers' Account ". If on the other hand the net result shows that the Lloyds Bank is entitled to claim this sum of £15,000 from the Clearing Bankers, the Clearing House Inspector has to give a request, or a certificate to that effect to the Lloyds Bank officer addressed to the Bank of England whereby the Clearing Bankers' Account will be debited and the Lloyds Bank Account credited in the Bank of England's ledger.

When some of the cheques thus cleared are returned unpaid, for one reason or other, they must be returned by 5 p.m. on the day of presentation in case of Town Clearing. They are in that case treated in the same manner as cheques drawn on the Lloyds Bank collected by the Bank returning.

The difference between the London clearing and the New York clearing is that, in the former, bundles of cheques are allowed to be gradually brought in all throughout the working hours of the day, but in New York a time is fixed when they are to be delivered at the " House " in one batch. New York has also a system of fines which are inflicted for various incidents, a peculiarity which is unknown to London.

Metropolitan Clearing.—This clearing was inaugurated in the year 1907 and opens at 9 a.m., on Saturday at 8-45 a.m. All bundles of cheques must be received here at the Clearing House by 10-30 a.m., on Saturdays 9-50 a.m. What actually happens is that each bank in the town receives from its branches and other banks situated in the Metropolitan area, bundles of cheques to be cleared at the Clearing House, which are sent up to the officer concerned and entered into summary sheets and dealt with in all particulars in the same manner as in the case of town clearing. The only point to be noted here is that if any cheque is not paid by any of the bankers to whom it is given at the Clearing House, that bank, or its branch, must return same by post, to the crossing bank direct, a slip being sent to the Clearing Agent. At the same time the bank which dishonours these cheques should send to the Clearing Agent, or bank, a slip informing them of it. The returned cheques are also on receipt of this notification dealt with in the same manner as in the case of returned cheques of the town clearing.

Country Clearing.—This clearing opens at 10-30 a.m., on Saturdays at 10 a.m. when all the Clearing Banks or Clearing Agents hand over bundles of cheques which they have received from the country side to the Clearing Agents of the bank on which they are drawn. The method of entering these in the summary sheet is similar in every respect to that applied in the case of Town Clearing. The cheques have to bear across them the name of the presenting bank as well as the name of the London agent. In case of cheques dishonoured, they should be returned direct in the same manner as in case of Metropolitan

Clearing and the respective clearing bankers informed of the same in due course.

Besides cheques, drafts as well as bills of exchange are cleared in course of this clearing.

The slips or requests used in this connection at the London Clearing House are made out in the following forms. The forms of replies sent by the Bank of England are also given :—

SETTLEMENT AT THE CLEARING HOUSE

London.....19

To the Cashiers of the Bank of England,

Be pleased to CREDIT our Account the Sum of..... ....out of the money at the credit of the account of the Clearing Bankers.

Per Pro.

.....

.....

Manager.

£.....

Seen by me,

.....Inspector at the Clearing House.

SETTLEMENT AT THE CLEARING HOUSE

BANK OF ENGLAND

.....19.

The Account of Messrs. .... .has this evening been CREDITED with the sum of..... of the money at the credit of the account of the Clearing Bankers.

For the Bank of England

£.....

.....

SETTLEMENT AT THE CLEARING HOUSE

London.....19

To the Cashier of the Bank of England,

Be pleased to TRANSFER from our Account the sum of. .. ..and place it to the credit of the Account of the Clearing Bankers, and allow it to be drawn for, by any of them (with the knowledge of either of the Inspectors, signified by his counter-signing the Drafts).

Per Pro.

.....

.....

Manager.

£.....

SETTLEMENT AT THE CLEARING HOUSE

BANK OF ENGLAND

London.....19

A TRANSFER for the sum of.....
.....has this evening been made at the Bank from the Account of Messrs.....to the Account of the Clearing Bankers.

For the Bank of England

.....

This Certificate has been seen by me.

.....Inspector.

Clearing Houses are to be found in different centres of England for the facility of local clearing. Scotland and Ireland have similar arrangements and facilities.

CLEARING IN INDIA

Clearing in India was attended to by the Imperial Bank of India up to the coming into working order of the Reserve Bank of India which has now taken the lead in this connection.

The Reserve Bank is entrusted with this work for the simple reason that it is now increasingly recognised all over the world, particularly on the Continent of Europe and the United States, that Central Banks are specially suited for the duty of acting as Clearing Houses because they are the currency authorities and have to arrange for provision of such currency and credit as the conditions of trading and commerce of a country require. It is necessary that they should set up a machinery for clearance of drafts and settlements of internal accounts which is expeditious as well as economical. The Reich Bank of Germany as well as other banks have made provision for these in the law governing them. The Commonwealth Bank Act of Australia also provides for a settlement of balances between Australian banks by cheques drawn on and paid into the Commonwealth Bank. The same is the case with Columbia, as well as in the United States of America. The Federal Reserve Banks in America have taken steps with a view to bring all districts into proper relation and expect soon to establish a clearing system which will be working on uniform basis all throughout the United States of America.

The " outstation " cheques are not cleared through these Clearing Houses and have naturally to be forwarded to the drawee Banks through Agents or Branches.

AMERICAN AND EUROPEAN CLEARING HOUSES

The American Clearing Houses command a much wider scope. They fix the minimum rates of interest to be paid to depositors, issue certificates to banks on the basis of which they can borrow, and, as we have already stated, all the Clearing Houses are worked in co-operation ultimately arriving at establishing correlated clearing centres all over the United States.

On the Continent of Europe the use of cheques generally has not developed anything to the extent it has in the United Kingdom, though they promise to develop in the near future. The crossed cheques are rather rare except in case of some banks in France. Almost all these Continental countries possess the Central Banking system in a highly organized form, and clearing is done through these Central Banks.

CHAPTER IV

BILLS OF EXCHANGE AND PROMISSORY NOTES

The Law relating to Bills of Exchange and Promissory Notes in India is covered by our Negotiable Instruments Act, 1881. The English Law on the subject is covered by the Bills of Exchange Act, 1882.

In this connection it is interesting to note that in *Virappa Chetty* v. *Vellavan Ambalam*, (1919) M.W.N. 780, it was held that our Negotiable Instruments Act of 1881 is based on the principles of English Law and where no special considerations arise with reference to Indian circumstances, the Courts are justified in construing the Statute conformably to the provisions of English Law. The Calcutta High Court in appeal has held that Law Merchant of England was never applied in the mofussil, while the Negotiable Instruments Act, 1881, is so applicable. (*Brojo Lal Shaha Banikya* v. *Budhlal and Co.* 54 Cal. 551 on p. 561.)

Definitions.—The definition of a bill of exchange has already been given in the chapter on cheques.

Peculiarities.—From the definition of a bill of exchange, it would be noticed that the bill must be in writing. It must also be unconditional. With regard to the expression " unconditional " the Negotiable Instruments Act says that the " promise or order to pay is not conditional within the meaning of Sections 4 and 5 by reason of the time for payment of the amount or *any* instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event, which, according to ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain." As, for example, if a bill is payable on the death of A, that event, according to the ordinary expectation of mankind, is certain to happen, and therefore, the bill would not be void on the ground of uncertainty. Thus a promissory note which was made payable by the maker six days after the death of his father was held to be a good note. [*Colehen* v. *Cooke*, (1742) Willes 393.] In another case a promissory note given to an infant which was made payable to him on his coming of age was held to be good. [*Goss* v. *Nelson*, (1757) 1 Bur. 226.] A note payable one year after notice would also be good. [*Clayton* v. *Gosling*, (1826) 5 B. & C. 360.] In the last case, however, the decision is doubtful as the notice may never be given and thus the note appears to us to be void because it is not payable within a determinable future time. In another case where a promissory note was made payable at a fair which

was certain to take place, though no date was fixed at the time, the instrument as made out was held to be good (see *Colehen* v. *Cooke* cited above). On the other hand, if a bill were to be payable on the marriage of A, it would be void on the ground that A might not marry at all. [*Beardesly* v. *Baldwin*, (1741) 2 Stra. 1151.] A note drawn as 90 days after sight or when realised was held to be bad. [*Alexander* v. *Thomas*, (1851) 16 Q.B. 853.] The other requirement is that it must be payable either on *demand* or at a *determinable future time*. There is of course no limit as to time for which a bill may be drawn. The bill ought to be also for a *sum certain*. With regard to this the Act says that the sum payable is certain within the meaning of Sections 4 and 5 although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due. The definition also requires that the person to whom the bill is payable ought to be a *specified person* or that the bill should be payable to *bearer*. With regard to this, the Negotiable Instruments Act lays down that a person should be taken as specified although he is misnamed, or is designated by description only.

Our Negotiable Instruments Act clearly lays down that its provision shall not affect any local usages relating to any instrument, in an oriental language, except so far as such usages are excluded by any words in the body of the instrument, or where the intention is indicated to the effect that the legal relations of the parties to a particular class of instrument shall be governed by the Negotiable Instruments Act (Sec. 1). It may be added, therefore, that this Act primarily deals with bills of exchange, promissory notes and cheques. There may be other types of negotiable instruments to which it would apply in the absence of legal usage to the contrary.

History.—This branch of law originally derived its authority from the Law Merchant which is an accumulation of the customs of trade which received the sanction of law through the decisions of judges. Cockburn, C. J., while speaking about the history of negotiable instruments in *Goodwin* v. *Roberts*, (1875) L.R. 10, Ex. 337-46, expressed himself as follows :

"Bills of exchange are known to be of comparatively modern origin, having been first brought into use, so far as is at present known, by the Florentines in the twelfth, and by the Venetians about the thirteenth century. The use of them generally found its way into France, and still later, but slowly in England. With the development of British commerce the use of these most convenient instruments of commercial traffic would, of course, increase, yet, according to Mr. Chitty, the earliest case on the subject to be found in the English books is that of *Martin* v. *Boure*, (1603) Cro. Jac. 6, in the reign of James I. Up to this time the practice of making these bills negotiable by endorsement has been unknown, and the earlier bills

are bound to be made payable to a man and his assigns, though in some instances to bearer. But about this period, i.e. at the close of the sixteenth century, the practice of making bills payable to order, and transferring them by endorsement took its rise. At first the use of bills of exchange seems to have been confined to foreign bills between English and foreign merchants. It was afterwards extended to domestic bills between traders and finally to bills of all persons whether traders or not."

Promissory notes also came into use almost at the same time but for a long time they were not treated as negotiable instruments. Lord Holt in the time of Queen Anne was much against these documents (promissory notes) being treated as negotiable, but in obedience to the force of mercantile opinion an Act was passed (Statutes 3 and 4 Anne, Ch. 9) by which the law was modified and promissory notes were declared negotiable.

Forms (Promissory Notes and Inland and Foreign Bills).— The simplest of these documents is a promissory note. Supposing that A borrows from B Rs. 100 or owes him that money, he may give to B a promissory note, in which he promises to pay B Rs. 100 on demand, or at some other future date, with or without interest, according to arrangement between them. The simplest form would be as follows :—

Bombay, 10th June 1945.

Stamp

On demand (or at three months after date) I promise to pay Mr. B the sum of Rupees One Hundred only. Value received.

(Sd.) A.

Rs. 100-0-0

This instrument puts the debt in what is called a " tangible form ", and B, the holder of it, has not only the consolation of having a written acknowledgment of this debt, but also, in case he is in want of money and the debt is not due (where it is to be paid after some time), he can raise money on this promissory note by discounting same with a bank, selling it for its value less a charge made by the banker by way of discount, or transfer it to some other person to whom he (B) may be owing money.

With regard to a bill of exchange, it may be an inland or a foreign bill. We shall first take a simple example of an inland bill. A, retailer, buys goods from B, a wholesale merchant, for, say, Rs. 150. The arrangement is that A should have a credit for one month after the date of delivery of the goods and that a bill should pass between them. Therefore, B, when delivering goods to A, presents an invoice for the goods he has sold and also a draft drawn on A. This draft would be known

as the draft of B which has to be accepted by A and returned to B, which makes it a complete document. The draft as drawn would be in the following form :

Bombay, 20th July 1945.

Stamp

One month after date pay to me or my order the sum of Rupees One Hundred and Fifty only, for value received.

(Sd.) B.

Rs. 150-0-0
To Mr. A.

The above draft, when accepted by A, would bear across the face of it the following writing :—

Accepted.

(Sd.) A.

Bombay, 20th July 1945.

The holder of this bill, i.e. B, can hold it till its due date, viz. 23rd August (which includes three days of grace) and recover Rs. 150 on that date from A, the acceptor. If B likes he may endorse it over to any one in payment of any debt owing, or if he happens to be in want of money before maturity of this bill, he may discount it with his banker, as in the case of the promissory note dealt with above. It would thus be noticed that in this case, though A obtains goods on a month's credit, B obtains an instrument which renders almost the identical service that ready cash would have rendered, because he can either hold it on, or discount it and obtain cash, or use it in payment of his own debt to others. If a bill of exchange is undated, it is not invalid for that reason and any holder can insert the correct date if he knows same. [Sec. 3 (4) and Sec. 12, Bills of Exchange Act.] This is the reason why bills of exchange, promissory notes and cheques are called mercantile currency. They here perform the same part as money performs, viz. act as mediums of exchange financing each transaction as if they were currency notes.

Foreign Bills and Forms.—In case of foreign bills, i.e. bills drawn on firms and individuals outside the country, they are generally drawn in sets of three, each of which is called a "*via*" and as soon as any of them is paid for, the others become inoperative. If, however, a person accepts or indorses different parts of a bill in favour of different persons he and the subsequent indorsers of each part are liable on such part as if it were a separate bill. (Sec. 132 of the Negotiable Instruments Act; Sec. 71, English Bills of Exchange Act.) Whether a bill is inland or foreign is a question of fact. Even if a bill is drawn

in a foreign language in England or India it will be an inland bill notwithstanding, if it answers the definition of an inland bill. [*Marseilles E. R.* v. *Land Co.*, (1885) 30 Ch. 598]. It must also be remembered that in case of foreign instruments (except in case of a contract to the contrary) the " liability of the maker, or drawer of a foreign promissory note, bill or cheque is regulated by the law of the place where he made the instrument and the liability of the acceptor and the indorser by the law of the place where the instrument is made payable. In case of dishonour of such an instrument, the law of the place of payment governs dishonour." [Secs. 134 and 135, Negotiable Instruments Act; Sec. 72(3), English Bills of Exchange Act.] This is of course subject to a contract to the contrary. It is further provided that whereas a foreign instrument is made out according to British Indian Law and is accepted or indorsed here, the acceptance and indorsement are good though the instrument was not according to the law of its origin. They are drawn in a set so that they can be sent by different mails, or through different routes, to ensure at least one reaching its destination. We shall take the following as an example :—

London, 21st July 1945.

Sixty days after sight of this First of Exchange (second and third of the same tenor and date unpaid) pay to the order of Messrs. Lyon, Sons & Co., Bombay, the sum of Rupees Two Hundred only. Value received.

Rs. 200-0-0 (Sd.) Lyon, Sons & Co

To Messrs Jamshedji and Framji, Bombay.

The second would read as :—

London, 21st July 1945.

Sixty days after sight of this Second of Exchange (first and third of the same tenor and date unpaid) pay to the order of Messrs. Lyon, Sons & Co., Bombay, the sum of Rupees Two Hundred only. Value received.

Rs. 200-0-0 (Sd.) Lyon, Sons & Co.

To Messrs. Jamshedji and Framji, Bombay.

An inland bill or instrument is defined as " a promissory note, bill of exchange or cheque drawn or made in British India, and made payable in or drawn upon any person resident in British India " (Sec. 11, Negotiable Instruments Act), whereas a foreign bill or instrument is defined as " any such instrument not so drawn, made or made payable ". (Sec. 12, Negotiable Instruments Act). In English Act, Sec. 4, " An inland bill is a bill which is or on the face of it purports to be (*a*) both

drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill."

The British Islands would include the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark and the islands adjacent to any of them being part of the Dominions of His Majesty.

Negotiable Security a Conditional Payment.—It may be noted that when a person gives a negotiable security, i.e. a bill or a promissory note, either by accepting, endorsing, or otherwise, to his creditor, it operates as a conditional payment only and not as a satisfaction of the debt, unless the parties agree to treat it as such. The usual presumption is that giving of such an instrument is a conditional payment. (*Cullianji* v. *Raghavji*, 6 Bom. L.R. 879).

CONSIDERATION

General Rules.—Negotiable instruments are presumed to stand on the basis of valuable consideration. The rules as to the consideration are the same as those laid down by the contract law except where the same is opposed to the provisions of this Act. This is so because the foundation of all bills of exchange is a simple agreement or contract and thus the rules as to consideration apply to them as strictly as to all agreements or contracts. A consideration is " which for what " something that a person receives or is going to receive for something he gives. When the goods are sold, goods form the consideration from the seller and cash paid as price, or to be paid in the future is the consideration moving from the buyer. The law requires that the consideration should be valuable consideration, i.e. one which can be valued in money, say a farthing or a pie. The other form of consideration known as " good " consideration does not support a simple contract and will not therefore support a bill of exchange. A good consideration is said to be so called because it is good for nothing and it consists of natural love and affection. All that the law requires is that there should be valuable consideration and the law will not interfere in order to decide whether that valuable consideration is adequate or inadequate, unless fraud is proved because the law leaves the parties to make their own bargain.

The consideration may be (1) Executed, (2) Executory, or (3) Past.

In English Law the executed or executory consideration would be sufficient to support a simple contract, but a past consideration would not, whereas, according to Indian Law, a past act is also sufficient to support a simple agreement. In English Law, however, there are two exceptions to the general rule as to past consideration, viz. (1) When the past consideration is

given at the request of the person who makes the promise, or (2) When a party, say, under some Act such as the Statute of Limitation, is not bound to pay a debt because six years have expired, gives a promise to pay same in writing, the agreement is binding though based on a past consideration. Again, in England the rule is that the consideration must move from the promisee, and therefore, strangers to consideration cannot bring an action on the contract and enforce it. This is not so in India, where the consideration may move either from the promisee, or any other person.

An Accommodation Bill is thus one which is drawn, accepted and endorsed, though no value has been given for it, that is the one for which the drawer or acceptor has received no consideration. According to Section 43, Negotiable Instruments Act, " a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to the holder for consideration, such holder and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto." Thus where a bill is drawn by A and accepted by B without consideration as between A and B, the want of consideration will be a good defence. If, however, A, the drawer, transfers the bill to C for a valuable consideration and C presents same on due date to the acceptor B, the original absence of consideration as between A and B cannot be urged against C by B as a defence. (*Sakharam Mansram* v. *Gulabchand Tarachand*, 16 Bom. L.R. 713.) The consideration must also be lawful, otherwise the bill cannot be endorsed between immediate parties. With regard to remote parties also it will invalidate the bill unless the holder is a *bona fide* holder in due course. The exception being that in case of an accommodation bill the party accommodated cannot recover the amount paid by him from one who accommodated him, e.g. if A draws a bill at the request of B, on B, and B accepts. A then discounts same and hands over the proceeds to B for whose accommodation, and to favour whom, he had drawn this bill. The bill on due date is presented for payment to B, B pays same, B has no claim or right to insist on A to make good the amount. On the same principle, an indorsement on a bill is presumed to have been made for valuable consideration. If it was not so made in fact the bill is not enforceable as between the parties immediately concerned; but it does not affect the right of an innocent holder in due course. Supposing A indorses a bill over to B without consideration and B indorses same to C for a valuable consideration and if it is dishonoured by the acceptor and drawer who are insolvents,

C can recover the amount from B but B cannot recover same from A. English Law as to consideration in this connection is given in Section 27 of the Bills of Exchange Act.

Presumptions as to Consideration.—In case of every negotiable instrument the presumption, until the contrary is proved, exists that the same was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. (Sec. 118, Negotiable Instruments Act; Sec. 30, English Bills of Exchange Act.) This presumption may be rebutted by showing that the instrument was obtained from its lawful owner by means of fraud or offence or that there was no consideration given. As the consideration here is presumed, the party denying same has to prove his case. This of course applies to instruments which are negotiable.

The consideration here referred to, is the " valuable consideration ". According to Section 2 (*d*) of the Indian Contract Act, 1872, " When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise." " Valuable " here does not mean precious, but that which can be valued in money, even for a pie or an anna. It is the usual practice to insert the words " value received " or a similar statement of consideration in bills of exchange and promissory notes though in law they are not necessary. It may be added that a person who holds a bill of exchange for collection with a lien on the bill is a holder of the bill for consideration. (*Royal Bank of Scotland* v. *Rahim Cassim & Son*, 27 Bom. L. R. 506.)

PARTIES

Capacity.—The capacity of a party to draw, accept, make or indorse a bill or a note is co-extensive with his capacity to enter into a contract. Thus a minor cannot incur liabilities on a bill by either drawing, accepting or indorsing same. Majority in India is determined by the law of domicile, as embraced by the Indian Majority Act, 1875, under which every person domiciled in British India attains his majority at the age of eighteen, but if before his completing this age, a guardian of his person and property was appointed by a Court, or the supervision of his property had been taken up by a Court of Wards, the period of majority would be extended to the age of twenty-one. The capacity of a person of unsound mind or a lunatic, to incur liability on a bill of exchange is the same as the capacity to contract of a minor. An agent duly authorized may make out, accept or indorse a cheque, bill or note

in the name of his principal and thus bind the latter. If the agent signs in his own name he will be personally liable.

In case of corporations and companies their capacity to incur liability on bills of exchange depends upon their constitution and nature of business.

In connection with the above remarks it would not be out of place to explain that according to the Indian Contract Act "a person is said to be of sound mind for the purpose of making a contract if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest." (See Section 12 of the Act). A lunatic differs from an idiot inasmuch as the latter hopelessly mad, i.e. he has no lucid intervals which a lunatic has. In connection with a lunatic he is allowed to enter into a contract during lucid intervals and such contracts are binding on his estates. This is laid down by the same section of the Act which says that "a person who is usually of unsound mind, but occasionally of sound mind may make a contract when he is of sound mind." However, when a lunatic after a judicial inquisition has been declared by a competent Court of Law to be of unsound mind, he cannot enter into contracts at all, i.e. even during his lucid interval when he is entirely sane. His contractual capacity will only revive when the same Court withdraws the order on being satisfied that he or she had completely recovered.

It may be added that in English Law a person is called an infant and not a minor if he has not attained 21 years of age.

The Parties to a Bill of Exchange are—

(1) The "drawer"—the person who draws the bill. He is known as the "maker" in case of a promissory note. It must be of course noted that the drawer must sign the bill because though there is no objection to the bill being accepted before the drawer places his signature on it, it remains incomplete and cannot be issued. [*M'Call* v. *Taylor*, (1865) 34 L. J. (C. P.) 865; Bills of Exchange Act, Sec. 3 (1); Negotiable Instruments Act, Sec. 5].

(2) The "drawee"—the person on whom the bill is drawn. He becomes the "acceptor" after he has signified his assent to the order of the drawer by writing the word "accepted" right across the face of the bill with his signature and date. Here it may be added that the bill is void if the drawer's name is not mentioned. However, if such a bill is accepted and the acceptor domiciles it with his bank, the bank would pay the same and would be quite justified in debiting the acceptor. The bill may be drawn on two or more drawees, whether partners

or not, but a bill drawn on two or more drawees in the alternative or in succession is not a bill of exchange. (Sec. 6, Bills of Exchange Act).

(3) The "payee" is the person to whom the bill is made payable. The drawer may make the bill payable to himself or may name another person in the bill to whom it has to be paid.

(4) The "holder" of the bill may be the original payee named in the bill, or one to whom the bill is indorsed over by the original payee. In case of a bill or a promissory note payable to bearer, the bearer is the holder.

(5) When the payee indorses the bill, he is also known as the "indorser" and the person to whom it is indorsed is the "indorsee". Indorsements are of various kinds, as we shall see later. (Sec. 7, Negotiable Instruments Act).

NEGOTIABLE INSTRUMENTS

Negotiable Instrument is defined by Section 13 of the Negotiable Instruments Act as follows :—

(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i). A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii). A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or in which the only or last indorsement is an indorsement in blank.

Explanation (iii). Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or to his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or more of several payees.

Judge Willis, in his work on Negotiable Settlements, defines a negotiable instrument as "one, the property in which is acquired by any one who takes it *bona fide*, and for value notwithstanding any defect in title of the person from whom he took it." It would thus be seen that by "negotiability" is meant that not only is the instrument transferable by indorsement or delivery, but that, apart from its transfer, the holder in due course of a bill, who has received it *bona fide* complete and regular on the face of it, for value, and without any notice as to the defect in title of a previous holder, acquires a good title, notwithstanding any defect in a previous holder's title. With regard to *bona fide* taking of the bill, the fact that he paid full value for it will go a long way to prove same, whereas

if much less than the actual amount of the bill is paid it will throw some doubt as to *bona fide* taking. In one case where a money-changer took a bank note twelve months after he had received notice of a robbery for full value, giving actual cash for it, it was held that the circumstances of his forgetting or omitting to look for the notice was no evidence of *mala fides*. [*Raphael* v. *The Bank of England*, (1865) 17 C. B. 161]. It may also be added that " a promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at the place." (Sec. 68, Negotiable Instruments Act).

The holder in due course of a negotiable instrument means " any person, who, for a consideration, becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of payee, before the amount mentioned in it becomes payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title." (Sec. 9, Negotiable Instruments Act).

The English Bills of Exchange Act, 1882, defines him as " a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely :—

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact.

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it."

This definition brings out the salient points more clearly on the status of the most important party to a negotiable instrument, without whose presence the question of negotiability would not arise.

It will thus be seen from the above definition that the holder should have become the possessor of the document " before the amount mentioned in it becomes payable ", and thus, if a person takes the document after it has already fallen due, he will not be called a " holder in due course ". Further, he should take the instrument " without having sufficient cause to believe that any defect existed." In English Law if it could be proved that the holder took the document " in good faith ", it would be sufficient, but in India under this section more than mere " good faith " is necessary, and therefore it would not be sufficient to show that he acquired the document honestly but was a little negligent. It has been held that an original payee is not a holder in due course and thus delivery of a

cheque or bill to the payee is not negotiation. [*Jones (R. E.) Ltd.* v. *Waring & Gillow Ltd.*, (1936) A. C. 670.] Where the holder takes a blank acceptance without enquiry and fills up same he cannot claim to be a holder in due course. [*Hatch* v. *Searles, Stanway's Cas. Conway's Cas.*, (1854) 2 Sm. & G. 147.]

With regard to the definition of a negotiable instrument, as discussed above, it would be noticed that a negotiable instrument can be negotiated until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity but not after such payment or satisfaction. From these words it is clear that when the drawee or acceptor gets the bill after paying it at maturity the bill is said to be retired, but if it is paid before maturity it can be re-issued by the acceptor before maturity. In other words, the bill is discharged by payment at or after maturity alone and that too by the maker, drawee or acceptor. If the bill happens to be paid to the holder in due course before maturity and if that holder transfers it for value to an innocent third party, that innocent third party may recover the money from any person liable on that bill or instrument.

The use of words " or assigns ", " or agents, ", or " or attorney ", " or representatives " would not be construed as having the same effect as the words " or order ".

An instrument drawn as " Pay A only " is not negotiable. Again, where an indorsement on an instrument runs as " Pay A " and does not include words " or order " or " or bearer ", the bill is negotiable in spite of this omission. The same rule applies to Government Promissory Notes, as under the Indian Securities Act of 1886, Section 6, the Negotiable Instruments Act is applicable to them. [*Hunsraj* v. *Ruttonji and Walji*, 24 Bom. 65.] In this case Government Promissory Notes had been stolen, indorsements forged thereon and sold. When the rightful owners claimed same from the holders it was found that some of the loans were renewed. The Court held that forgery gave no title, that Government Promissory Notes came under the Negotiable Instruments Act and that the plaintiffs should hand back all the notes, including those renewed.

ACCEPTANCES

An acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered same or given notice of such signing to the holder or to some person on his behalf, whereas an acceptor is the drawee who has signed his assent upon the bill and delivered same to the holder or has given notice of his so doing to the holder.

A bill should be presented to the drawee for acceptance because until he accepts same he is not personally bound to

pay same. In case of (1) bill payable after sight or where (2) the instrument itself stipulates that it should be presented for acceptance or where (3) the same is payable elsewhere than the place of business or residence of the drawee, the same must be presented for acceptance. The acceptance of a bill is the signification of the assent in writing by the acceptor of the bill. This assent is usually written on the face of the instrument and is made up of the word " accepted " and the signature of the acceptor, though in strict law it is not necessary to write same on the face of the document, neither is it necessary to write the word " accepted " there. A simple signature written with a view to accept would also answer the purpose. The Act requires this assent to be written on the bill and therefore an acceptance on a copy or a separate paper will not do. The bill should also be handed over or delivered by the acceptor to the holder before his liability on same commences. The same rule applies to an endorsement, i.e. the bill must be delivered after being indorsed to make the property pass. [Sec. 46, Negotiable Instruments Act. Also see *Thorappa* v. *Umedmalji*, 25 Bom. L. R. 604.] Sending a cheque after being indorsed through post is not delivery. (*Jagjivandas* v. *Nagar Central Bank*, 28 Bom. L. R. 226). This delivery may be either actual or constructive. A constructive delivery arises where, after acceptance the acceptor writes to the holder informing him of his having accepted the bill. If a bill was accepted before the date on which it is dated, i.e. if a bill dated 10th June 1938 is accepted on 3rd March 1938, it is not void, because according to the Act, a bill is not invalid by reason only that it is post-dated. *Hundis* may, on the contrary, be accepted orally by local custom. When the bill is presented to the drawee for acceptance, the presentor must leave it with the drawee for consideration for twenty-four hours if the drawee so desires. (Sec. 63, Negotiable Instruments Act). In case of bills payable after sight, presentment for acceptance is necessary in order to fix the maturity of the bill. [Sec. 39 (1), Bills of Exchange Act, and Sec. 61, Negotiable Instruments Act.] The same rule applies to promissory notes payable after sight. (Sec. 62, Negotiable Instruments Act.) Otherwise, unless a bill expressly stipulates or is made payable at a place other than the residence or place of business of the drawee, it need not be presented for acceptance. (Sec. 39, Bills of Exchange Act.)

When all the members of a partnership firm accept the bill, the natural presumption would be at law that the same was accepted for the purposes of the firm. [*Rossland Cycle Co.* v. *M'Creadie*, (1907) S. C. (1908)]. If on the other hand a single partner accepts it, it would be his acceptance personally and will not bind the firm unless the acceptance was in the firm's name and given in the regular course of its business. This would

be the case even though the bill is addressed to the firm. [*Owen* v. *Vanuster*, (1850) 10 C.B. 818]. Though a date on the acceptance is not necessary in all cases, it is necessary in case of a bill payable after sight and where in such a bill the date is not mentioned, the holder can insert the correct date himself. Generally speaking bills are drawn in business after due arrangement is made either in connection with the sale or purchase of goods or account due, etc. However, as far as the third parties are concerned if the bill which is drawn and discounted or transferred or endorsed by one person to another is not accepted by the drawee, the result is that the drawer must bear all the losses and expenses that may have been incurred through this non-acceptance as well as non-payment. He is of course liable to third parties to make good the amount though the drawee is not bound as he has not placed his signature on the bill whatever the claim of the drawer on the drawee may be in connection with the bill which he may have agreed to accept. *Once, however, the bill is accepted the acceptor of course* becomes primarily liable irrespective of the fact whether the other parties are discharged on the bill or not. [*Anderson* v. *Cleveland*, (1769) 18 East 43; *Smith* v. *Knox*, (1799) 3 Esp. 46]. In case the acceptor is dead and no place of payment is specified, the presentment of the bill has to be made to his personal representative, if any.

If the banker failed to present a bill for acceptance or payment on the due date, he would be liable for any loss, arising through this failure, to his customer. If the bill has shipping documents attached to it, such as a bill of lading, marine insurance policy, etc. the documents must be exhibited to the drawee at the time of presenting the bill for acceptance, though the banker should not leave same with the bill, if the drawee wants the regulation time for acceptance. If the documents are left and the drawee converts them to his use without complying with the agreement on the footing of which the bill is drawn, he would be guilty of a criminal offence. The documents according to the agreement may be delivered on " acceptance " or on " payment ". If the drawee is dead, an attempt should be made to find out his legal personal representative (executor or administrator) and present the bill to him for acceptance or payment, as the case may be; if not known, the bill should be presented at his residence. An executor is appointed by the will, whereas an administrator is appointed by the Court. If the drawee is insolvent the bill may be presented to his official assignee in India or trustee in bankruptcy in England. In case of foreign bills drawn in sets of two or three, each of them being called a " *via* ", the drawee must see that only one is accepted, otherwise if the holder were to fraudulently discount all of them with different bankers, or shroffs, he may have to pay twice or thrice

over. The holder also should see that he endorses only one of the " *via* " for the same reason. Of course, the banker should see that the bill is presented to the drawee, or a person duly authorised to accept on his behalf.

In connection with documentary bills as mentioned above where shipping documents are attached to the bill, it is the common practice to get these bills collected by either the shippers or holders. The bills known as D. A. bills are those where the instructions of the banker are to deliver the shipping documents to the drawee of the bill as soon as he accepts same, the letters meaning " Documents against Acceptance ". On the other hand the D. P. bills are those where the banker is not to part with the shipping documents until the bill is paid. What he is expected to do is to obtain acceptance of the drawee and then wait till the due date for payment. If the bill is duly honoured on the due date or even earlier the documents would be handed over to the drawee who has now become the acceptor.

PECULIARITIES AS TO ACCEPTANCE

We shall now proceed to discuss the various peculiarities as to " acceptance ". The " acceptance " may be *General* or *Qualified*.

General Acceptance.—A General acceptance is where the drawee signs his name on the bill with, or without, the word " accepted," thereby signifying his assent to the bill. The signature of the drawee, even though it was placed on the back of the bill, was held to constitute an acceptance. [*Young* v. *Glover*, (1857) 3 Jur. (N.S.) 637.]

The acceptance must not state that the drawee is to fulfil his obligation in any other consideration than a payment of money. [*Russell* v. *Phillips*, (1850) 14 Q.B. 891]. As a general rule the bill must always be accepted generally, and if the acceptor adds any qualification to it, it becomes a conditional acceptance, as we shall see later, in which case, the drawer may either agree to such an acceptance or treat the bill as dishonoured by non-acceptance. A banker who is given a bill by his customer to procure acceptance and ultimately collect, should not take a qualified acceptance without the consent of his customer.

Qualified Acceptance.—An acceptance may be *qualified* in various ways. It may be qualified *as to the amount*, e.g. a bill may have been drawn for Rs. 500, whereas the acceptor, perhaps arguing that he owes only Rs. 300, may accept for Rs. 300, as " Accepted for Rs. 300 (three hundred) only ".

It may be *qualified as to time*, e.g. where a bill is drawn payable one month after date, the drawee accepts it, as " Accepted payable three months after date ".

It may, on the other hand, be *qualified as to place* and made payable at a particular place, and there only, as " Accepted payable at the Lloyds Bank and there only ". If, however, the acceptance is worded as " Accepted payable at the Bank of India, Ltd.", it is not qualified, because here the holder is not bound to present same at the bank and may present same for payment at the acceptor's place of business. This acceptance is known as a *domiciled acceptance*, and as a general rule the bank would pay it without requiring any special instructions to do so from his customer, the fact that the bill is so domiciled by the customer being taken as a sufficient authority to pay. Where a bill was drawn in Poland on a firm in London and expressed to be payable in Amsterdam without qualification, i.e. without the words " and there only " and thus when it fell due the holder presented same to the acceptor in London for payment without presenting it in Amsterdam it was held that the acceptor was bound to pay as the acceptance was not qualified in the absence of the words " and there only ". [*Bank Polski* v. *K. J. Mulder and Co.*, (1942) 1 K.B. 497; (1942) W.N.77.] If a bill is accepted jointly by two drawees and made payable at X bank, and if the X bank has no instructions to pay same from the drawees, though the accounts of both these drawees are there, there are separate accounts of each of them, with sufficient credit, but there is no joint account of these parties, the bank here cannot pay the bill. It may be added here that if there was a joint account of the drawees with sufficient credit, the banker would pay because the fact of the bill being domiciled with him by his customers is in itself a sufficient authority to pay.

It may be accepted as payable in instalments, as " Accepted payable in monthly instalments of Rs. 50 ".

It may be conditional as " Accepted payable when in funds ", or " Accepted payable when goods consigned are sold ".

It may be partial as when a bill is drawn for Rs. 3,000 and is accepted for Rs. 1,000.

The drawer or holder of a bill is not bound to agree to an acceptance which is qualified. He can treat the bill as dishonoured. If, however, the holder of such a qualified acceptance acquiesce in the qualified acceptance, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him unless on notice given by the holder, they assent to such acceptance. [Sec. 86, Negotiable Instruments Act; Sec. 44 (2), English Bills of Exchange Act.] The English Act further lays down that if after notice the drawer or endorser does not express his dissent within reasonable time, he shall be deemed to have assented. If the acceptor wishes to qualify his acceptance he should do so in the " clearest language " so that any person who sees it

may not have the slightest doubt as to the nature of the acceptance.

When the drawee qualifies his acceptance, he must take care to do so in so many clear and unequivocal terms so that there cannot be any doubt in the mind of any person taking the bill thereafter as to the nature of the qualification. [*Meyer and Co.* v. *Decroix, Verley et cie*, (1891) A.C. 520.]

Liability of Acceptor or Maker.—With regard to the liability of the maker of a pro-note or the acceptor of a bill, Section 32, Negotiable Instruments Act, says as follows :—

"In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

"In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default."

(See Sec. 54 of the English Bills of Exchange Act.)

It will be seen here that the maker of a promissory note is bound to pay according to its tenor mainly because he has signed it and bound himself thereby. In case of a bill of exchange, however, the drawee is not bound on it either to the payee mentioned in it, or to a holder unless and until he accepts it. In case a drawee refuses to accept, the only remedy open to the payee or holder is to sue the drawer or the previous indorser.

The " acceptor for honour " is defined as " when a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called ' an acceptor for honour '." (Sec. 7, Negotiable Instruments Act.)

Acceptor for Honour.—No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance. (Sec. 33, Negotiable Instruments Act.) Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority. (Sec. 34, Negotiable Instruments Act.)

After the acceptor for honour has accepted the bill the holder at the due date has to present the bill against the drawee for payment and if it is also dishonoured by non-payment by the drawee and noted or protested as the case may be it should then be presented to the acceptor for honour for payment,

Section 108, Negotiable Instruments Act, further amplifies this by stating that " where a bill of exchange has been noted or protested for non-acceptance or for better security, any person, not being a party already liable thereon, may, with the consent of the holder, by writing on the bill, accept same for the honour of any party thereto." [Sec. 65 (1), English Bills of Exchange Act.] As to how this acceptance for honour must be made, Section 109, Negotiable Instruments Act, lays down that this must be " by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour." When the acceptor does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer. [Sec. 110, Negotiable Instruments Act; Sec. 65 (4), English Bills of Exchange Act.]

The " payee " is defined as " the person named in the instrument to whom or to whose order the money is by the instrument directed to be paid." (Sec. 7, Negotiable Instruments Act.)

Besides the " case in need " any one who has interest in the bill such as the endorser or endorser's agent may accept the bill for honour but here he must make clear for whose honour he accepts.

A " Case in Need " and Protest.—In case of foreign bills, a " case in need " is generally stated on the bill. This " case in need " is to be referred to by the holder, in case the drawee refuses to accept the bill or hishonours same by non-payment after acceptance. This " case in need " is generally the agent of the drawer in the foreign country where the bill is made payable. When, therefore, the bill is dishonoured either by non-acceptance, qualified acceptance, or by non-payment, the holder refers it to the " case in need ". The " case in need " either gets the proper acceptance, or failing that gets the bill protested for non-acceptance and accepts same himself " for the honour of the drawer ". This is known as an " acceptance for honour *supra* protest ". The holder then holds it till the due date, when he presents it again to the drawee for payment, which must be done because in case of an acceptance for honour this is an implied condition precedent without fulfilment of which the acceptor for honour is not bound to pay the bill. The other condition is that the bill must be protested by the holder before he comes to the acceptor for honour. Here also the person paying for honour must declare before a Notary Public, the name of the party for whose honour he pays and the said declaration must be recorded by the Notary. If payment of the bill be also refused, he should first get it protested for non-payment and then present same to the " acceptor for honour " who pays same for the honour of the drawer.

Protest is defined by Section 100 of the Negotiable Instruments Act as follows :—

"When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment the holder may, within a reasonable time, cause such dishohour to be noted and certified by a Notary Public. Such certificate is called a protest."

The notice of protest must also be sent in the same manner and subject to the same conditions as in the case of notice of dishonour, the only difference is that this notice may be given by the Notary Public who makes the protest (Sec. 102). The bill generally must be protested at the place where it is dishonoured except where it is presented through the post office and returned by post dishonoured when it may be protested at the place to which it is returned and on the date of its return if received during business hours and if not received during business hours, then not later than the next business day.

The object served by this acceptance and payment for honour by the " case in need " is to save expense by way of interest and loss on exchange which would necessarily follow, as these foreign bills are generally drawn and discounted in the country of their origin. In the absence of such an arrangement, on the drawee's refusal to accept or pay the bill, the banker's foreign agent or branch office would refer the bill back to the office through which it was sent to him for collection. This would mean waste of time during the whole of which banker's interest keeps running, not to speak of the great inconvenience to the drawer and loss on exchange, whereas it may be that the refusal to honour was based on grounds which could easily have been settled by an agent on the spot.

In case of the acceptance for honour, the said acceptor binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill, if the drawee does not, and such party or all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance. [Sec. 111, Negotiable Instruments Act; Sec. 66 (1), English Bills of Exchange Act.] He, virtually speaking, steps into the shoes of the party for whose honour he accepts as regards rights and liabilities.

It may be noted, however, that protest is only necessary in case of foreign bills, specially when they appear to be such, but if there is nothing on the face of the bills to indicate their foreign origin, they need not be protested. This is because the laws of some foreign countries make protest compulsory. The protest is not necessary in case of a foreign promissory note.

Presentment for Acceptance.—A bill of exchange payable after sight must be presented to the drawee thereof for

acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and during business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

A bill of exchange which is payable after date on the contrary may not be presented for acceptance until the due date of payment, i.e. it can be presented for acceptance and payment on the same date, i.e. the due date. In practice, however, the holder gets the bill accepted at the earliest opportunity.

If the bill is directed to the drawee at a particular place, it must be presented at that place. If no particular place is mentioned it must be presented at his usual place of business, if any, or at his residence. If at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured. When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient. (Sec. 61, Negotiable Instruments Act; Secs. 39-40, English Bills of Exchange Act.)

The necessity of presentment for acceptance lies in the fact that there the holder is in a strong position. Before acceptance he was in a position to enforce payment from the drawer and the prior indorsers in case the drawee failed to pay, but he cannot enforce payment from the drawee who has not accepted because in law no person who has not signed the bill himself or through a duly empowered agent can be made liable on it. The holder thus is under no legal obligation either to the drawee or drawer or indorser (unless he has specifically agreed to do so) to present the bill for acceptance, as he is to present same on due date for payment, except in case of a bill payable after sight. To put it briefly, the presentment for acceptance in case of bills other than those payable after sight, though not obligatory, is desirable, being in the interest of the holder. If the drawee has died the presentment may be made to his legal representative and where he is insolvent to the Official Assignee. [Sec. 75, Negotiable Instruments Act; Sec. 41 (*c*) and (*d*), English Bills of Exchange Act.] In England to the Official Receiver.

The holder of a bill must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it. (Sec. 63, Negotiable Instruments Act.) This section is based on English Common Law rule.

BILLS RETIRED AND REBATE

A bill is said to be retired when it is paid before its due date. Here the acceptor of a bill left with a banker for collection offers payment, to the banker less interest for the balance of days should consult his customer before taking the payment. Frequently " rebates " are allowed on bills retired with the consent of the holder which is an allowance made to the acceptor for early payment. There is one other meaning of the word " rebate ". In case of bills discounted by banker at the closing accounts period, the balance of discount, which is not earned during the year for bills not yet due is carried over to the next year and is called in the accounts as " Rebate on bills discounted ".

PRESENTMENT FOR PAYMENT

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and during business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. (Sec. 62, Negotiable Instruments Act.)

Promissory notes, bills of exchange, and cheques must be presented for payment to the maker, acceptor or drawee thereof, by or on behalf of the holder as hereinafter provided. In default of such presentment the other parties thereto are not liable thereon to such holder. (Sec. 64, Negotiable Instruments Act.) Here of course the acceptor still remains liable unless otherwise provided in the instrument itself as we have already seen. The same rule applies to *hundis* if they are not presented for payment on due dates, i.e. the acceptor remains liable. [*Benares Bank, Ltd.* v. *Hormasji Pestonji,* (1930) 52 All. 696.]

The presentment must be made during the usual hours of business, and if at a banker's, during banking hours. (Sec. 65, Negotiable Instruments Act.) Though a banker is not protected if he pays a bill other than a cheque with forged endorsement, he cannot refuse to pay same if domiciled to him, on the ground that the holder was unknown to him, if otherwise in order.

In English law, in case of a non-trader the presentment is required to be made at any time before the hours of rest in the evening, but this does not apply to India. Where the presentment is made at an unreasonable hour, but payment is refused on some other ground, the bill is taken to be duly and properly presented.

A promissory note or a bill of exchange made payable at a specific time must be presented for payment on maturity. If the presentment is not made on the due date, all parties

except the maker, acceptor or drawee are discharged. (Sec. 64, Negotiable Instruments Act.) It was held in *Jhandu Lal Mithulal* v. *Wilayati Begam*, (1925) 47 All. 572, that no presentment for payment is valid unless it is made after the bill has reached maturity. It may be added that provisions of the Bills of Exchange Act as well as those of Negotiable Instruments Act do not apply to crossing on bills other than cheques, and therefore if a crossed bill is presented for payment over the counter, the banker is bound to pay same, if otherwise in order. Again if a cheque is offered in payment to the banker who collects a bill, he should not part with the possession of the bill until the cheque is cashed. In fact he should not take a cheque unless his customer consents to his doing so.

It may be noted that, according to " Biles on Bills ", if in payment of dishonoured bills, other bills be given for the sums due, and the first bill remains in the hands of the holder, should the later bills be not paid, the liability of the parties on the first bill revives.

If a promissory note is made payable by instalments, it must be presented for payment on the third day after the date fixed for payment of each instalment, and non-payment on such presentation will have the same effect as non-payment of a note at maturity. (Sec. 67, Negotiable Instruments Act.)

If the instalment is made payable at a specified place, it must be presented for payment at that place in order to make the maker or drawer liable thereon, or where it is not made payable at any specified place, it must be presented for payment at the place of business, if any, or at the residence of the maker, drawee or acceptor as the case may be, but if the acceptor or maker has no known place of business or fixed residence and no place is specified in the indorsement, the presentment may be made to him wherever found. (Sec. 71, Negotiable Instruments Act.)

In case of mutilated bills, if they are divided in two parts for the purpose of transmission, they must be paid, otherwise in case of doubt, the banker with whom they are domiciled should refer to the acceptor.

When a banker gets an order from his customer to retire a bill payable at his branch or agency, he debits his customer and credits his branch or agency, instructing them in due course to pay same on the due date on presentation. If the bill is not presented within a reasonable time of its being due, the banker obtains instructions from his customer. If his instructions are to cancel the original order, he immediately writes to his branch or agency to that effect and as soon as he hears from them the entry is reversed.

Frequently a customer pays in money with instructions that the amount is to be utilised to meet certain bills. In such cases the banker is bound to strictly carry out these instructions. *Bankers of course do not undertake to retire acceptances of strangers.* Death or insolvency of the customer cancels his authority to retire his acceptance.

To summarise as to presentment for payment :—

(1) When the bill is payable on demand, the presentment must be made within reasonable time.
(2) If payable after the expiry of some time, it must be presented at the due date.
(3) It must be made at a reasonable hour and place.
(4) If made at a proper time and place and no person found, no further presentment need be made.
(5) In case the acceptor be dead, it should be presented to his legal personal representative.
(6) If there are two or more acceptors not partners, it should be presented to all.

Many bankers, when they collect payment on a bill they endorse same with the word " Received " prior to the signature, thereby converting the endorsement into a receipt. This saves them from personal liability and also prevents it from being further negotiated.

When Presentment for Payment Unnecessary.—In this connection Sec. 76 of the Negotiable Instruments Act lays down as follows :—

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument; or
if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours; or
if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours; or
if the instrument not being payable at any specified place he cannot after due search be found;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented; he makes a part payment on account of the amount due on the instrument;

or promises to pay the amount due thereon in whole or in part;

or otherwise waives his right to take advantage of any default in presentment for payment;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Note.—In connection with the last clause, viz. 76 (*d*) it has been held in a Calcutta case that where the note has not passed through other hands but is still in the hands of the drawee, it is not open to the drawer to argue to the effect that failure of presentation by the drawee of the said note on the due date made him suffer damage, particularly where no hardship has been shown to the satisfaction of the Court. [*Panchkowri Sadhukhan* v. *Satya Dhendu Ghosal*, A.I.R. (1936) Cal. 489].

In this connection it has been decided in *Cornelius* v. *Banque Franco-Serbe* (1942), 1 K.B. 29 that a cheque payable in enemy occupied country cannot be presented being impossible and illegal presentment for payment is dispensed with under the Bill of Exchange Act Sec. 46 (2) (*a*) leaving the holder of the bill at liberty to recover the amount of the bill from the drawer.

SHORT BILLS

When bills are handed to a banker for being collected for his customer, there is a custom in England to enter such bills in the pass book with the amounts entered short of the cash columns. They are called " short bills ".

AT SIGHT OR ON DEMAND

In case of a promissory note or a bill of exchange, when the same is made payable " at sight " or " on presentation ", it is equivalent to payable on demand. A bill payable on demand is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time. [Sec. 36 (3), Bills of Exchange Act.] It was also held in *D. N. Shaho & Co.* v. *The Bengal National Bank, Ltd.*, (1920) 47 Cal. 861 that where a promissory note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

MATURITY

In case an instrument is made payable " after sight ", it means, in case of a promissory note, after presentment for sight, whereas in case of a bill of exchange, it would mean either after the same is accepted, or if not accepted after the

same is noted or protested for non-acceptance. (Sec. 21, Negotiable Instruments Act.) In calculating the maturity of a promissory note or a bill which is not payable on demand, at sight, or on presentation, three days, known as the days of grace, must be added to the date on which the same is expressed to be payable. [Sec. 22, Negotiable Instruments Act and Sec. 14 (1), Bills of Exchange Act.] This rule applies not only to the amount of the bill when payable in full, but in case the amount is payable in instalments the three days of grace should be added in calculating the due date of each instalment. Our Act makes the addition of these days of grace compulsory, though originally the addition of these days in England and other European countries was purely voluntary. This voluntary custom is now made compulsory both in England and India by legislation, though in the principal European countries as well as in America the days of grace are abolished. The question, therefore, whether these days are to be added or not will be decided by the law of the country where the instrument is payable. We have seen that when the amount covered by the bill is payable in instalments the three days of grace have to be added after the date on which each instalment falls due, and this is so even in cases where the words " in punctual payments " were used in connection with the payment of instalments. [*Schaverien* v. *Morris*, (1921) 37 T.L.R. 366.] In case the word payable " punctually " appears in a promissory note which is payable by instalments that fact will not deprive the maker of the days of grace. [*Schaverien* v. *Morris*, (1921) 37 T.L.R. 366]. In case an instrument is presented earlier than the third day of grace the presentment would be invalid. [*Wiffen* v. *Roberts*, (1795) 1 Esp. 261, 262].

Again, the corresponding section of the English Act (Sec. 14, Bills of Exchange Act) permits the drawer or maker to make the bill or note payable at a date to which the days of grace are not to be added by clearly expressing same in the body of the instrument, but our Indian Act does not give such a power.

How to calculate Maturity?—While calculating the date on which a bill or promissory note which is made payable so many months after date or sight falls due, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or sighted, or accepted, or noted, or protested for non-acceptance. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. (Sec. 23, Negotiable Instruments Act.) This last sentence practically means that where months are stated, calendar months are to be reckoned. Thus if an instrument dated 29th January 1878 is payable one month after date,

it falls due on the 3rd day after 28th February 1878, and an instrument dated 30th August 1878 made payable three months after date is due on 3rd December 1878. There is of course in law no limit as to period for which a bill may be drawn.

Indian and English Law Calculations Distinguished.—In case where an after-sight bill is accepted for honour in India, the period is to be calculated from the day on which it was so accepted, and not, as in England, from the date of noting for non-acceptance. If the date on which the instrument falls due is a public holiday, the instrument shall be deemed to be due on the preceding business day. (Sec. 25, Negotiable Instruments Act). Here our Indian Act makes no distinction between bank holiday and other holidays as is done by the English Act where it is laid down that when the last day of grace is a Sunday, Christmas Day, Good Friday or a day appointed by Royal Proclamation as a public fast or thanksgiving day the bill is payable on the preceding business day, but when the last day of grace is a bank holiday or a Sunday, and the second day of grace a bank holiday, the bill is due payable on the succeeding business day.

In this connection what should be noted, particularly by a banker, is the distinction between the English and Indian sections. Here, as we have already stated above, all holidays are placed on the same footing because in the explanation of Section 25, it is clearly laid down by the Indian Act that "public holiday" includes Sundays, New Year's Day, Christmas Day, and if any of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the Official *Gazette*, to be a public holiday. The wording of the English Section 14, quoting sub-sections (*a*) and (*b*), is as follows:—

(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day.

(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday), under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

It may be added here in case where a bill is payable in instalments, the three days of grace, as far as British India and United Kingdom are concerned, have to be added to the due date of each instalment. To make the computation of the days clear the following table will serve:—

Table showing varying calculations of due dates

	Due Date
A Bill drawn on December 29th, 1937, at 2 months after date.	March 3rd, 1938.
A Bill drawn on December 29th, 1938, at 2 months after date.	March 3rd 1939.
A Bill drawn on February 29th, 1938, at 2 months after date.	May 2nd, 1938.
A Bill drawn on February 28th, 1939, at 2 months after date.	May 1st, 1939.
When the last day of grace falls on Christmas Day.	In England it would be payable on 24th December. In India it would be payable on 23rd as 24th is generally a bank holiday.
When the last day of grace is Sunday, January 2nd and January 1st is a bank holiday.	In England it would be payable on January 3rd. In India it would be payable on December 30th as 31st is also a holiday.
A Bill payable 30 days after sight is dishonoured by non-acceptance on March 3rd, noted on March 4th and accepted *supra protest* March 5th.	The period of 30 days will be calculated from the date of noting, viz. March 4th which with three days of grace would come to April 6th.

INCHOATE INSTRUMENTS

When a person signs and delivers to another a stamped paper in accordance with the law relating to negotiable instruments then in force in British India in blank, or partially written, he is thereby taken to give ' prima facie ' authority to the holder to make or complete upon it a negotiable instrument for any amount specified therein, and not exceeding the amount covered by the stamp, and thus, the person so signing shall be liable upon the instrument in the capacity in which he has signed to a holder in due course. A person who was not a holder in due course cannot recover any amount in excess of that intended to be paid thereunder by the person signing and delivering. (Sec. 20, Negotiable Instruments Act.) The corresponding section of the English Bills of Exchange Act is Section 20. This section is based on the rule of estoppel. Here the person by signing the document and delivering to others in blank or incomplete form, lays himself open to this risk through his own act. The necessary condition present here is that the document ought to be stamped according to rules applying to negotiable instruments and should have been

given to a holder apparently with a view to be converted into a negotiable instrument. Not only the original holder, but even a subsequent holder may fill same up, but a mere agent for safe custody cannot. Besides, the document must be filled in before it can be enforced.

In case of Inchoate documents the most important principle is that the person to whom it was given in an incomplete form must fill it up and deliver same to the third party who seeks to sue the party signing same. Thus where a blank acceptance was stolen from the acceptor and thereafter filled in as a bill and was negotiated to holder in due course it was held that as he had not delivered it to anybody the thief had no authority to fill the same in. [*Baxendale* v. *Bennet*, (1878) 3 Q.B.D. 525].

In another case where two blank forms of promissory notes were delivered by the maker with his signature to his agent with instructions to the agent to keep the said notes until authority was given to him (the agent) by the signor to fill same up as promissory notes and to raise money thereon with a view to make certain payments and the agent without receiving such instructions of authority filled up the notes and discounted them, it was held that the signor of the note was not liable because there had been no delivery of the instrument by him as required in law. [*Smith* v. *Prosser*, (1907) 2 K.B. 735]. Here what actually occurred was that the signed notes or blank forms of promissory notes were entrusted to an agent as custodian only and thus the agent did not derive the authority until the principal ordered him to fill up the notes.

In a Patna case of the High Court in appeal where the defendant passed a blank stamped paper duly signed which according to him was given as an additional security on a loan given to a relative but the paper was filled and negotiated as a handnote the Court held that defendant was bound to pay. [*Hariday Singh* v. *Kailash Singh*, (1940) Patna 404.]

AMBIGUOUS INSTRUMENTS

When an instrument is so made out that it can be construed either as a promissory note or a bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforth treated accordingly. (Sec. 17, Negotiable Instruments Act.) This occurs when drawer and drawee are the same person or where the drawee is a fictitious person or not having capacity to accept the bill or to contract. Once the holder makes his election, however, he is bound by it.

USANCES

In some European countries bills are drawn at usances, i.e. payable after a period fixed by custom for payment of a draft

drawn in one country on another and made payable there. The usances have to be proved in each particular case by the person who pleads usance.

CAPACITY

Every person capable of contracting, according to the law to which he is subject, may bind himself, and be bound by making, drawing, accepting, indorsing, delivering and negotiating of a note, bill of exchange, or cheque. A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself. (Sec. 26, Negotiable Instruments Act; Sec. 22, English Bills of Exchange Act.) We have already seen as to who is a minor and have considered the capacity of various persons to contract. The same rules as to capacity apply here as to bills of exchange and their negotiation by various parties. Here what the Negotiable Instruments Act lays down is that in case a bill is drawn or indorsed by a minor it is not void for that reason. It can be enforced against all parties except the minor himself. If the minor accepts the bill, or makes a promissory note, he himself on the same ground will not be liable on it, but the drawer or indorser of the instrument will be liable. On the same principle, an adult who joins with a minor in drawing or accepting a bill will not be discharged from his liability though the minor will not be liable. On the other hand, if a minor is a payee or an indorsee of a bill or note, he can enforce payment of same through his next friend. [*Warwick* v. *Bruce*, (1813) 2 M. & S. 205.]

In case of a joint stock company or corporation its capacity to draw, accept or indorse a bill of exchange or make and indorse a promissory note, depends on its constitution or the nature of the business on the same principle as its power to contract as well as borrow and lend money is determined. This point is more fully dealt with later.

INDORSEMENTS

Definition.—An indorsement is defined as—"When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the 'indorser'." (Sec. 15, Negotiable Instruments Act.) It will here be seen that the indorsements, though they are usually written on the back of a document, may be on the face or on a separate paper attached to the instrument. It is of course desirable that the endorsement be in ink though one in pencil is not bad and has been held as within the custom of merchants in England. (*Geary* v. *Physic*, 5 B. & C. 234.)

Effect of an Indorsement.—When a negotiable instrument is indorsed and delivered to the indorsee, the property therein, together with the right of further negotiation, passes to the indorsee. It must be noted that the endorsement on a bill of exchange, promissory note or a cheque made payable " to order " must be made on the instrument itself and that a transfer by means of a sale deed alone is not a negotiation nor is the transferee a holder thereof within the meaning of S. 8 of the Negotiable Instruments Act and cannot claim the rights of a holder under S. 43 of the Act. [*Jang Bahadur Singh* v. *Chander Bali Singh*, (1939) All. 419.] But it is quite open to the indorser to restrict or exclude such right, or merely to constitute the indorsee an agent to indorse the instrument for some other specified person. (Sec. 50, Negotiable Instruments Act.) Thus when the indorsements are placed as " Pay the contents to C only "; or " Pay C for my use "; " Pay C or order for account of B "; or " The within must be credited to C ", the indorsements exclude the right to further negotiate.

An indorsement is not bad simply because, besides the statement transferring the instrument, it adds a statement as to the payment of consideration, e.g., " Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to me ". [Ill. (*g*), Sec. 50, Negotiable Instruments Act.]

In case a person who is not a party to the bill indorses it, he is in the position of a surety or guarantor to all subsequent holders.

With regard to the indorser, his position is that unless he excludes his liability by making it *sans recours*, as we shall see later, he is bound to make good to every subsequent holder for value, in case of dishonour, the loss or damage caused to such subsequent holder through such a dishonour by either the drawer, acceptor or maker. This is, of course, subject to the condition that the holder has done all he is bound to do as to presentment, and had given proper notice of dishonour. Such liability of the indorser shall be payable on demand as soon as it accrues. (Sec. 35, Negotiable Instruments Act.) Thus indorsers are in the position of sureties to all subsequent parties for the prior indorsers and the acceptor and maker who are the principal debtors. [Secs. 37 and 38, Negotiable Instruments Act; Sec. 55(2)(*a*), English Bills of Exchange Act.]

An indorsement by a rubber impression or in any other form of the facsimile signature is valid at law, if placed by the person whose signature it purports to be or through his authority, but the banker naturally refuses to accept same. The indorsement in pencil is not also accepted by bankers, though it is quite valid. In *Lewis* v. *Clay*, (1897) 67 L.J., Q.B. 224, where Clay was asked by a brother officer to sign a document as

a witness, declaring that it was a private document about divorce, which was in fact a joint and several promissory note, but which Clay was not allowed to see, being private, by a blotting paper being held over it, it was held, when the money-lender with whom it was cashed by that officer sued Clay, that Clay was not negligent under the circumstances and was not liable, because the action of the other officer in obtaining Clay's signature was equivalent to forgery.

The indorsement may be " in blank " or " in full." If the indorser signs his name only, the indorsement is said to be " in blank ", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be " in full."

" Indorsee " is the person to whom the bill is indorsed, i.e. the person specified to receive the amount mentioned in the instrument. (Sec. 54, Negotiable Instruments Act.)

Blank Indorsement.—If the instrument is indorsed in blank, it would be payable to the holder thereof even though originally payable to order. A blank indorsement is effected by the holder writing his signature on the document. This makes the instrument transferable by delivery and equivalent to " payable to bearer." (Sec. 16, Negotiable Instruments Act; Sec. 34, English Bills of Exchange Act.)

An instrument which bears a blank indorsement may be afterwards indorsed in full by the holder and in that case the amount of it cannot be claimed from the indorser except by the person to whom it has been indorsed in full or by one who derives title through such person. (Sec. 55, Negotiable Instruments Act; Sec. 34, English Bills of Exchange Act.) This now applies to a bill of exchange which is not a cheque as we shall see presently.

Here the position is that in case of a bill of exchange being indorsed in blank in the first instance and then if it is indorsed specially, the bill remains transferable by delivery in connection with all parties prior to the special indorsement, but with regard to the special indorsement the person to whose order it is drawn should indorse it to give it further negotiation, e.g. in *Walker* v. *Macdonald*, (1848) 2 Ex. 527, a bill was indorsed in blank and afterwards the same was indorsed by the defendant specifically to " Barber and Walker and Co." The plaintiffs, who carried on business both as " Barber and Walker and Co." as well as " Eastwood Company ", indorsed same as " Eastwood Company." The bill was dishonoured on presentation as it was not endorsed by " Barber and Walker and Co." It was held that the bill being indorsed in blank, its negotiability could not afterwards be restrained by a special indorsement, and that the presentment was such as to render the defendant liable on his

indorsement to the plaintiff. The custom of English bankers, based evidently on this decision, according to Mr. Sheldon in his book entitled *Practice and Law of Banking* (p. 88, 2nd edition) is that if a cheque is originally drawn payable to bearer and thereafter there is a special endorsement on it, the banker does not take the trouble to examine it as there is no necessity for the special indorser to indorse same.

The Indian law now according to the Negotiable Instruments Amendment Act of 1934, Section 85 (2), is brought on lines with the English law on this point. This sub-section 2 runs as follows :—

> "Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation."

Thus now in India, according to the above sub-section, a bearer cheque remains a bearer cheque notwithstanding any endorsement appearing thereon. This relieves the bankers in India of the responsibility of examining endorsements on bearer cheques. As a matter of fact the amendment was brought about with this object in view.

Partial Indorsement.—If the indorsement is for part of the sum due, i.e. a partial indorsement, such a writing on a negotiable instrument is not valid *for the purpose of negotiation*, but where such amount has been partly paid, a note to that effect may be indorsed on the instrument which may then be negotiated for the balance. [Sec. 56, Negotiable Instruments Act; Sec. 32 (2), English Bills of Exchange Act.]

If, therefore, a bill for Rs. 100 is indorsed in favour of A for Rs. 50 only, it is a partial indorsement and therefore invalid for negotiation, but if the whole amount is indorsed over to A and B jointly, the indorsement would of course be good for the purpose of negotiation. If a bill for Rs. 100 is indorsed " Pay Rs. 20 to A and Rs. 80 to B ", the same also would be invalid for negotiation though here the full amount is transferred.

Indorsement by a Person Deceased.—In case of a negotiable instrument payable to order which has not been indorsed by the person deceased, or which has been indorsed by the deceased, but *who died before delivery*, the same cannot be negotiated by delivery by his legal representative. (Sec. 57, Negotiable Instruments Act.) If X, in whose favour a bill is drawn, indorses it and dies before delivering it, his executor or administrator cannot negotiate it on the indorsement of the deceased, but should re-indorse same themselves in their legal capacity as executors or administrators.

Indorsement Forged or Unauthorised.—Again when a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder, by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found it or obtained it by such unlawful means is entitled to receive the amount due thereon from the maker, acceptor, holder or any party prior to such holder, unless such holder was the holder thereof in due course. (Sec. 58, Negotiable Instruments Act.)

Under this section would fall instruments obtained by theft, forgery, fraud, and unlawful consideration. In case of stolen instruments, the thief of course gets no title and cannot enforce same against parties to it, but if the instrument happens to be payable to bearer, or indorsed in blank by a rightful holder, and the thief delivers same to an innocent holder in due course for value, the said holder would get a good title and would be protected. If, however, the instrument is payable to order and the thief forges the indorsement of the payee and then delivers it to some one for valuable consideration, the transferee will not be able to enforce payment from the parties to the bill, and in case he has obtained payment by some inadvertence the same can be reclaimed from him. This is because of the rule, viz. " forgery gives no title ", and this rule applies equally to a transferee for value of a bill of exchange as to the transferee of any other document. (*Thorappa* v. *Umedmalji*, 25 Bom. L.R. 603.) The plea of fraud is good only against the party who is guilty of it, or against his transferee who knew of the fraud when he took it. It will not affect the rights of a holder in due course. The same rule applies to instruments obtained for an unlawful consideration. The English Act, however, by Section 24 specifically lays down the rule that " forged or unauthorized signature is wholly inoperative ".

Transferee after Maturity or Dishonour.—The holder of a negotiable instrument who has acquired it after dishonour, whether by non-acceptance or by non-payment, with notice thereof, or after maturity, has only, as against the other parties, the right of his transferor. [Sec. 59, Negotiable Instruments Act; Sec. 36 (2), English Bills of Exchange Act.]

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill, if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

It will thus be seen here that a transferee who takes a bill after the date of maturity, even though he does so for a

valuable consideration, is not a holder in due course. The same rule applies to one who takes it after it is dishonoured, provided he had notice of dishonour.

This does not mean that a negotiable instrument cannot be negotiated or transferred after maturity. Section 60 clearly lays down that it can be transferred or negotiated except by the maker, drawee, or acceptor after maturity—any number of times after the due date of payment. Its negotiability terminates on payment of discharge of this document at maturity or after it. If the same is paid before maturity, it can still be negotiated by the person who paid for it, as the payment is not made in due course according to law in such a case. (See also Sec. 36, English Bills of Exchange Act.)

If a bill is made payable to more than one payee, they must all indorse unless they are partners in a trading firm, when one of the indorsees can sign on behalf of all. When the payee's name is wrongly spelt the indorsement should be in the same spelling as in the instrument, but the payee may add thereafter his correct signature.

DIFFERENT CLASSES OF INDORSEMENTS

The indorsement may be either—

(1) *Blank*, i.e. only a signature, or

(2) *Special* or *Full*, e.g.

Pay to John Smith or Order.
(Sd.) *William Green.*

(3) *Partial*, e.g. where only a part of the amount of the bill is transferred. This does not operate as a negotiation of the instrument; but may authorize the indorsee to receive payment of the amount specified. The law lays down that an indorsement must relate to the whole instrument.

(4) *Restrictive*, i.e. (*a*) where it prohibits further negotiation as "Pay to M only" or (*b*) restricts the indorsee to deal with the bill as directed by the indorser, as "Pay to M or order for collection." (Sec. 50, Negotiable Instruments Act; Sec. 35, English Bills of Exchange Act.)

(5) *Sans recours*, i.e. where the indorser makes it clear that the indorsee, or the subsequent holders, should not look to him for payment in case of the bill being dishonoured, e.g. if A indorses a bill "*Sans recours*" to B, and if B agrees to take it with such an indorsement, he takes it with the understanding that in case he (B) fails to recover money from the acceptor, or any of the previous indorsers to A, he (B) cannot sue A for the bill. (Sec. 52, Negotiable Instruments Act; Sec. 16, English Bills of Exchange Act.) There is no objection to words such as "notice of dishonour waived" being placed on the endorsement. In one case where the stipulation in the

endorsement was " no time given to, or security taken from, or composition or arrangement entered into with, either party hereto, shall prejudice the right of the holder to proceed against any other party " it was held overruling all other old and prior cases that the said endorsement was not invalid. [*Kirkwood* v. *Carroll*, (1903) 1 K.B. 531.]

(6) *Conditional*, in case some condition is attached to the indorsement. In English law, the person paying may ignore the condition, but in India if an acceptor accepts a bill after it was conditionally indorsed, he should respect the condition. There is no decided case on the point, and the question, according to Chalmers, may be regarded as an open one.

Signature.—It is necessary that the drawing, accepting and indorsing of a negotiable instrument should be made through the signature of the drawer, acceptor and the indorser, respectively. The signature may be in any form so long as it indicates the intention and the identity of the person who signs. If the signature is misspelt or not placed in the usual form that will not of itself invalidate the instrument. [*Leonard* v. *Wilson*, (1834) 2 Cr. E. M. 589.]

The signature or the indorsement on a bill is the name of the party so placing his signature, or that of the firm which he represents with proper authority. The law says that in case of a partnership, a bill or a note can be drawn, accepted, and indorsed in the regular course of business of the partnership, by any of the partners in the firm's name, or if the partnership agreement specially provides, by the partner who has charge and management of the firm under this agreement. In case of a private firm the proprietor or any of the partners if there are more than one proprietor can sign in the name of the firm. Any servant or agent to whom they have given a power-of-attorney can also sign indicating that he signs under such a power. In case of a company under Indian Companies Act, 1913, a director, manager, or secretary may sign for and on behalf of a company by virtue of his office. Any other servant of the company may sign under a special power-of-attorney given to him. The manager of a firm or company may draw, accept, and indorse bills of exchange in the regular course of the business of the firm or company. In case of partners they sign in the name of the firm, whereas a manager or assistant holding a power-of-attorney would sign as :—

per pro Smith & Co.,
JOHN ROBINSON.

A manager, agent or secretary of a company would sign as—

For the Lending & Borrowing Corporation, Ltd.
L. RAJARAM,
Manager.

If, on the contrary, L. Rajaram signs as—

L. RAJARAM,
Manager,
The Lending & Borrowing Corporation, Ltd.

the signature would not be reckoned as one by the manager of the company on its behalf, but would be considered at law as the personal signature of L. Rajaram. It must also be borne in mind that in case of *per pro* signatures, it is clear that the person placing such a signature, claims his authority to sign under a power-of-attorney. This power-of-attorney may be either very limited, or very wide and general, and therefore, before accepting this type of signature on any important document, or on a bill for a large amount, care should be taken to inspect the power-of-attorney with a view to ascertain whether the signature on such a document falls within the scope of the authority of the person signing. It must also be noted that if John Smith holds a power-of-attorney from the firm of, say, Messrs. Ralli Bros., and if he happens to have granted a power-of-attorney to his friend Thomas Williams, Williams cannot sign for Ralli Bros., and, therefore, a signature such as the following should not be accepted :—

Ralli Bros.,
per pro John Smith,
THOMAS WILLIAMS.

On the same principle, directors of a company when they sign ought to sign as—

For the Lending & Borrowing Corporation, Ltd.
HIRJI NATHOO,
HAROON KHALILL,
Directors.

But if they sign as—

HIRJI NATHOO,
HAROON KHALILL,
Directors,
The Lending & Borrowing Corporation, Ltd.

the signatures would bind them personally, and would not be considered as their signatures on behalf of the company.

In case of a private individual he can sign through a duly authorized agent on the same footing as a corporation, or a joint stock company. Here the agent may either sign the name of a principal without adding his own name, or stating that he acts for him, or the agent may sign his own name and then make it clear that he signs for the principal named. An authority to draw a bill will not necessarily imply an authority to indorse. Again, an authority to transact business and to receive and discharge debts does not by itself confer a power to accept or indorse bills of exchange. (Sec. 27, Negotiable

Instruments Act; Sec. 91, English Bills of Exchange Act.) If, however, the agent signs his own name only and does not indicate that he signs for his principal, he would be personally liable on the instrument to all except those who induced him to sign upon the belief that the principal will only be liable. (Sec. 28, Negotiable Instruments Act.) If a person purports to sign for another without authority, the signature will be inoperative as a forgery. (*Bank of Bengal* v. *Mcleod*, 5 M. I. A. 1). But where an agent signs in excess of authority a holder in due course will be protected.

Acceptor, Maker and Indorser.—In the absence of a contract to the contrary, the maker of a promissory note, and acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. (Sec. 32, Negotiable Instruments Act; Sec. 54, English Bills of Exchange Act.) If they fail to do so, they will be liable to compensate the holder for loss, or damage sustained, as we shall show hereafter. This liability is absolute and unconditional. They are liable even though the instrument was not presented to them for payment on due date. The only case contemplated by the words " contract to the contrary " is that of an accommodation acceptor of a bill or maker of a note who is not bound to pay same if presented by a party to the accommodation, though he would of course be liable to a *bona fide* holder in due course. Again, only a drawee or one or all or some of the several drawees, or " cases of need " as mentioned in the instrument, or an acceptor for honour, can accept and be bound on a bill. (Sec. 33, Negotiable Instruments Act.) If the bill is accepted by a stranger, he cannot be rendered liable as such.

In determining whether the signature is that of the principal or the agent, the construction most favourable to validity has to be adopted. [*Elliot* v. *Bax Ironside*, (1925) 2 K.B. 301.]

With regard to the liability of the indorser, Section 35, Negotiable Instruments Act, lays down that " In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to or received by such indorser." This liability after dishonour is as upon an instrument payable on demand. [Sec. 55 (2), English Bills of Exchange Act.] The indorser not only transfers the document and his right, title and interest in it to

the indorsee, and in case of the *bona fide* holder even a better and complete title though his own title may be defective, but he also undertakes that in case the bill or note is not paid when duly presented for payment according to its tenor, he (the indorser) will himself pay same. The condition precedent being that it should be presented for payment on due date and in case of dishonour due notice be given to him. Thus every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. [Sec. 36, Negotiable Instruments Act; Sec. 55 (2) (*a*), English Bills of Exchange Act.] The maker, drawer and acceptor are principal debtors to a holder in due course, whereas the other parties are liable as sureties for either maker, drawer or acceptor. (Sec. 37, Negotiable Instruments Act.)

The holder, however, must see that he does not impair any of the prior indorser's rights because if he does so, the said indorser will be discharged from his liability, e.g. A is a holder of a bill of exchange made payable to the order of B which contains the following indorsements in blank :—

First indorsement	...	" B "
Second indorsement	...	" Peter Williams "
Third indorsement	...	" Wright & Co."
Fourth indorsement	...	" John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario. [Sec. 40, Negotiable Instruments Act; Sec. 63 (2), English Bills of Exchange Act.] This is because every indorser undertakes to indemnify his subsequent indorser or holder under him, provided his rights are left unimpaired so that he can step into the shoes of the party he indemnifies as far as his right of recovery from prior indorsers is concerned.

Again, if a drawee accepts a bill on which there is a forged indorsement, of which he knows or has reason to believe that the same is forged, he cannot refuse to pay on that ground. It would, of course, be otherwise if the acceptor did not know that the indorsement was forged. [Sec. 41, Negotiable Instruments Act; Sec. 54 (2) (*b*) and (*c*) English Bills of Exchange Act.]

LOST BILL

In case a bill of exchange is lost before it is overdue, the holder may apply to the drawer to give him another bill of the same tenor giving security to the drawer, if required, to indemnify him against all persons in case the lost bill should again be found, and in case the drawer refuses, he may be compelled to do so. (Sec. 45A, Negotiable Instruments Act, also Sec. 69, Bills of Exchange Act.) The English Act by Sec. 70 further

provides that " in any action or proceeding upon a bill, the Court or judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or judge against the claim of any other person upon the instrument in question." This rule only applies to bills and not to promissory notes and the right to claim a new bill is only against the drawer, but the section is silent as to whether the acceptor and indorser can be compelled to accept and indorse respectively.

DISCHARGE

The maker, acceptor, or indorser of a negotiable instrument is discharged from liability thereon under any of the following circumstances :—

(1) By payment.
(2) By cancellation.
(3) By release.

(1) Payment.—In case payment is made at maturity and if it is the exact amount due on the bill, note or cheque, and if it is made to the holder of the instrument, it would discharge every party to the bill from his liability to pay the amount. Payment by a stranger, if made on behalf of the party liable, will also be a discharge as if authorized by the party. An instrument made payable to bearer may be paid in due course as according to its apparent tenor. If, however, it is payable to a specified person or to order, it should be paid to the legitimate holder. In case where a bill or cheque has been materially altered either in the body or in the crossing, or where a crossing is obliterated, even then, in case the alteration or obliteration is not apparent and the instrument is paid *bona fide*, such a payment shall discharge the party liable thereto. It should, however, be remembered that if a bill which is not a cheque is crossed, in spite of that crossing it may be paid to any one who is not a banker, as the crossing only applies to a cheque, a postal order or a dividend warrant. If a payment is made to a wrong person, the same may be recovered from the wrong person by the person who made such a payment. The acceptor has a right of set off for any amount due to him by the holder and tender of the balance is good payment. In the *Indian Specie Bank* v. *Nagindas*, 18 Bom. L.R. 689, where a bill drawn in favour of the bank by N was accepted by M and the bank went into liquidation, it was held that the liquidator was not entitled to be paid in cash for the full amount, but that M can set off the amount due by the bank to him against the amount of his acceptance and tender the balance in cash. As soon as that was done, the drawer N was discharged.

In connection with payment the following rule laid down in Sec. 81, Negotiable Instruments Act, is important :—

" Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange, or cheque, is before payment entitled to have it shown, and is on payment entitled to have it delivered up to him, or if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him." [Sec. 81, Negotiable Instruments Act; Sec. 52 (4), English Bills of Exchange Act.]

Interest on Amount.—The amount due on the bill must include the interest, if any, at the specified rate expressly agreed upon which is to be calculated on the amount of principal money from the date of the instrument until tender or realization of such amount, or until such date after the institution of a suit to recover the amount as the Court directs. (Sec. 79, Negotiable Instruments Act.)

If, however, no rate of interest is specified in the instrument, interest on the amount due thereon is to be calculated at the rate of 6 per cent per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs. In case of an indorser, however, who has to pay a dishonoured instrument, he is liable to pay interest only from the time he receives notice of the dishonour. (Sec. 80, Negotiable Instruments Act.) The English Bills of Exchange Section dealing on the point of interest in Section 57, when it provided that on dishonour of a bill interest may be added from the time of presentment for payment if the bill is payable on demand and from maturity in any other case. It also provides for re-exchange with interest thereon in case of foreign bills. It, however, in all cases leaves it to the discretion of the Court to permit interest at such rate as it likes, and in case of a rate provided in the bill, leaves it to the Court's discretion whether interest by way of damage is to be allowed at that or any other rate.

In one case where six *hundis* were drawn by the defendant upon himself in favour of the plaintiff, the *hundis* were silent about interest, but it was proved that according to custom there was a collateral agreement for payment of interest at thirty per cent. It was held that Section 80 of the Negotiable Instruments Act, 1881, does not deprive the freedom of contract, and therefore this interest could be recovered (*Goswami* v. *Ram Narain*, 9 Bom. L.R. 1.) Of course even when there is a stipulation in the negotiable instrument for payment of interest at a fixed rate the Court may reduce it under powers given by

the Usurious Loans Act of 1918 if the interest in its opinion is excessive and the transaction substantially unfair after taking all the surrounding circumstances in calculation. Interest on a demand promissory note begins to run from its date and not the date of demand. (*Framroze* v. *Mohammed Essa*, 29 Bom. L.R. 141.)

How should it be Paid ?—Of course, the payment ought to be made in the current legal tender of the realm and a tender by cheque is not a legal tender and will be accepted at the creditor's option. When the creditor accepts a cheque in payment, he is presumed to have taken same as conditional payment. The bill must be paid to the holder or his duly authorized agent, and for this purpose it has been held that the fact that a person possesses the document as apparently payable to him is presumed to be the holder in absence of other evidence. It has been held that not only where a fictitious name is inserted the bill is to be deemed to be payable to bearer, but that even the fraudulent insertion of the name of a real person may also constitute a fictitious payee [*Vagliamo* v. *Bank of England*, (1891) A.C. 107], but that in case the payee is known to be the acceptor, who accepted with full intention that he or his transferee should receive the money, then the payee is not fictitious. [*Macbeth* v. *North and South Wales Bank*, (1908) A.C. 137.] In case, however, of a person who holds the instrument under a forged indorsement, the acceptor should not pay same as otherwise he may have to pay once over again to the rightful owner. This rule does not apply to cheques, as under Section 85, Negotiable Instruments Act, " Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course." In case an instrument is paid before maturity it can be reissued, and thus it is not discharged in such a case. The payment again should be made in legal tender money, and in this regard the ordinary rules applicable to agreements, will apply. In England the legal tender is payment upto any amount in Bank of England notes or in gold sovereigns when gold currency was in circulation, up to 40 shillings in silver and 12 pence in bronze. In India, the legal tender is payment upto any amount in Reserve Bank notes or Government Currency notes or in silver rupee or silver half-rupee pieces and up to one rupee only in silver four-anna pieces or in nickel or bronze coins. If the holder, however, agrees, the bill may be discharged by delivery of goods or cancellation of a debt or issue of a fresh bill, note, or cheque. The payment should be made by or on behalf of the acceptor or maker because in case the payment is made by an indorser or drawer or a stranger, the bill is not discharged for obvious reasons unless it is an accommodation bill.

In case of bills drawn on foreign currency the same is to be paid at the rate of exchange for demand drafts on the country in whose currency same are drawn, and not according to the rate prevailing on the date the decree was passed. (*Muller Maclean and Co.* v. *S. M. Ataullah and Co.*, 51 Cal. 320.)

(2) **Cancellation.**—If the holder of a negotiable instrument cancels the acceptor's or the indorser's name with the intention to discharge him then such an acceptor or indorser is considered discharged with regard to his liability to such holder and all parties claiming under such holder. (Sec. 82, Negotiable Instruments Act; Sec. 63, English Bills of Exchange Act.) Also where the holder destroys or impairs the indorser's consent, as we have already seen, that indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. (Sec. 40, Negotiable Instruments Act.)

It is also open to the holder to dispense with or to meet wholly or in part the performance of the promise made to him either by tearing up or cancelling the instrument if done so with that intention.

Of course, the cancellation must have been made deliberately and not under any mistake. The best method of cancelling a negotiable instrument is to cancel the signature by drawing a line through them or by writing the word "Cancelled" across it. Cancellation of any one signature out of the lot will discharge the party whose signature is cancelled as well as parties subsequent to it. Thus cancellation of the signature of the drawer will discharge all indorsers.

(3) **Release.**—On the same principle, as in the case of cancellation, the holder of an instrument may release or discharge its maker, acceptor or indorser. Also where the holder accepts satisfaction in any form other than a payment in cash, such a substitution of a new contract, or an alteration of the old one, will be an ample discharge or release as far as the old instrument is concerned.

We have also seen that if the holder of the instrument allows it to remain with the drawee for more than 24 hours without the consent of the previous parties, they are released by such conduct of the holder.

ALTERATION

It may also be noticed that any material alteration of a negotiable instrument renders same void as against any one who is a party thereto at the time of making such alteration, and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Such an alteration, if made by the indorsee discharges his indorser from all liability to him in respect of the consideration thereof.

(Sec. 87, Negotiable Instruments Act; Sec. 64, English Bills of Exchange Act.) There is, of course, no doubt on the question that if words such as " Payable in London " were written in the body of the bill, an alteration of the place would be a material alteration, but it is also asserted that the position would be the same if those words were added at the foot of the bill or beneath the name and address of the drawee.

Must be Material.—It may, however, be added that the alteration in order to come under the rule must be a material alteration, and the mere fact that the alteration was made with dishonest intention will not render the instrument void.

Alterations are material when (1) it is of the date made with a view to reduce or increase the period of its currency, (2) it is of the sum payable, (3) the period for which it is drawn is altered, e.g. where a bill to run for three months is made to run for six months, (4) a new party is added, (5) the rate of interest is altered, (6) the place of payment is altered.

Alteration if made by a stranger will have the same effect as if made by the party himself, as it is the duty of the holder of a negotiable instrument to preserve it and safeguard same against such frauds.

Alterations such as (1) conversion from order into bearer or bearer into order by the rightful party, (2) addition of the words " on demand " in instruments where no time of payment is mentioned, (3) subsequent addition of the signature of a witness to a signature by a party, (4) alteration to correct a mistake, are not material alterations and will not vitiate the instrument.

Alterations such as (1) crossing of cheques, (2) conversion of blank into special indorsements, (3) filling in of blank in case of inchoate instruments, (4) with qualified acceptance, are permitted by the Negotiable Instruments Act.

In a Bombay case [*H. Pestonji and Co.* v. *Cox and Company* (1928) 30 Bom. L.R. 1503], it was held that in case of bills where the due date was entered on the top right-hand corner of the bill, which date on due presentation for payment was extended, at the request of the acceptor, and marginal due date was struck off and the new due date substituted, there was no material alteration. It was also added that if the due date on the face of the bill was altered the alteration would have been material, but what was done here did not in fact affect the bill, nor was it done with that intention; that the marginal date was a mere docket for office purposes and formed no part of the bill.

In a Madras case *P. R. Subramania Pattar* v. *Porthana Andi* (1943) Mad. 143 it was held that (1) the alteration would be material within the meaning of Sec. 87 of the Negotiable

Instruments Act because the fact that the alteration did not ultimately involve any change in the rights and liabilities of the parties was not relevant. (2) Any alteration would be material which would alter the business effect of the instrument if used for any ordinary business purposes.

Alteration Unapparent or by Accident.—Again, if an alteration has been made by accident that would not be a ground to avoid the instrument. The parties seeking to enforce would have to show the circumstances under which the accidental alteration came to be made. We have, of course, seen that alteration such as making a bearer cheque into an order cheque, or converting an order cheque into a bearer cheque, by the proper party is permissible. Besides, as we have already noted above, where a promissory note, bill of exchange or cheque has been materially altered, but such an alteration does not appear on the face of it, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated and if such a document has been paid by a person or by a banker liable on it according to the apparent tenor thereof at the time of payment and otherwise in due course, such a person or banker shall be discharged from all liability on that instrument and such a payment shall not be questioned by reason of the instrument having been altered or the cheque crossed. (Sec. 89, Negotiable Instruments Act.) In English law such protection is given only to a banker who pays an altered crossed cheque, whereas in India it is extended to persons who pay bills and notes also. Of course, the alteration should be such as is not apparent on the instrument. [*London Joint Stock Bank* v. *Macmillan and Arthur*, (1918) A.C. 777.]

An acceptor or indorser is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Again, if a bill of exchange, after going through its regular course of negotiation, happens to come back at or after maturity into the hands of the acceptor in his own right, all rights of action are extinguished thereon. (Sec. 90, Negotiable Instruments Act.)

DISHONOUR

A bill, as we have seen, is said to be dishonoured when the drawee refuses to accept it when duly presented, or when it has been accepted and the acceptor fails to meet it on the due date. A bill must be presented for payment to the acceptor on the due date, at his business place, and at a reasonable hour. If he has no place of business it may be presented at his residence. The presentment must be made to the acceptor or his agent duly appointed. If a bill is dishonoured by non-acceptance, the

party can move for his remedy without waiting for the time of maturity in order to present same for payment. (*Ram Rauji Jambhekar* v. *Pralhaddas Subhkaran*, 20 Bom. 133.)

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured. [Sec. 19, Negotiable Instruments Act; Sec. 41(1), English Bills of Exchange Act.] In English Act, Sec. 5(2), it is laid down that where the drawee is incompetent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

When a bill is dishonoured the holder should (1) give notice of dishonour to prior party or all prior parties for his own safety and (2) in case it is an inland bill he may get it noted and if it is a foreign bill he must get it protested.

The Banker and Notice of Dishonour.—As soon as a bill is dishonoured, the holder must give notice of dishonour to the drawer and all previous indorsers. (Sec. 93, Negotiable Instruments Act.) The notice, though not required to be in writing at law, must be a written notice for safety. In strict law notice by a telegram or on telephone would most probably be sufficient. The notice must be given within a reasonable time, i.e. if both the giver and the receiver of the notice reside in the same place, it should be given to reach at least on the day after dishonour. If, on the other hand, they live in different places, the notice must be posted not later than the day after dishonour. If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid. (Sec. 94, Negotiable Instruments Act ; Sec. 49, English Bills of Exchange Act.)

Anyhow, the holder must give notice of dishonour within a reasonable time. Of course, if for some reason the notice could not be given, or did not reach any of the parties, through no fault of the giver of the notice, he would be excused. Otherwise, failure to give notice within a reasonable time would release all indorsers previous to the party failing to give notice, as well as the drawer.

The notice has to be given with a view to warn the parties of their liabilities, and not with a view to demand payment. The notice has to be given even though the party is aware of the dishonour. This notice has to be given in case of the dishonour of *hundis* also, and if any local usage to the contrary in connection with these *hundis* exists, the same has to be proved. [*Krishna Shetbin Ganeshet Shetye* v. *Hari Valji Bhatye*, (1900) 24 Bom. 488.] The notice has to be given at the place of business of the party concerned, and in case the party has no such place, at the residence of such a party. (Sec. 94, Negotiable Instruments Act; Sec. 49, English Bills of Exchange Act.)

The notice should be given either by the holder, his agent or any party liable on it. A notice by a stranger will be inoperative. This is important in case of a banker who has to collect a bill. He usually returns the bill on the same day of dishonour, or the next day with an intimation of its dishonour, when he is given the bill only for collection. The customer must give the notice on the day the bill is returned by his banker with intimation of honour or on the day immediately following. Where a bill is discounted with a banker and is dishonoured, he first debits his customer's account and then returns same as above. If, however, the customer's account is not in sufficient credit, the banker holds the bill himself and gives notice to all the parties to the bill unless he is prepared to give overdraft credit to his customer for the amount. If the banker is not prepared to give an overdraft credit to his customer he should open a suspense account and debit same, keep the bill as well as retain the balance that may be lying to his customer's credit and claim payment from the customer. The notices should be sent to addresses if given on the bill, if not to the known addresses of business. If the bill is protested for non-acceptance it should also be protested for non-payment. If the notice of dishonour is not given to the drawer, or an indorser, they would be discharged from liability except in cases where the law dispenses with such a notice, as we shall show hereafter.

The Period Allowed.—The holder should give notice to all the parties he can so as to be on the safe side. He should, as we have seen, at least give notice to the party immediately prior to him, or his agent, within a reasonable time in order to bind him, and that party should give it to the party prior to him, and so on. If the holder and the party to whom this notice is to be given carry on business or live in different places, such notice is given within a reasonable time if it is despatched by the next post, or on the day next after the day of dishonour. If they live or carry on business in the same place, the notice should be despatched in time to reach its destination on the day next after the day of dishonour. (Sec. 106, Negotiable Instruments Act.) The party receiving notice has the same time within which to notify prior party or parties. (Sec. 107, Negotiable Instruments Act.) The notice may also be sent by a special messenger. The notice of course, should be properly addressed. The notice should state the fact of the bill having been dishonoured and in what way the party to whom it is given will be liable thereon. If the notice is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice. (Sec. 96, Negotiable Instruments Act.)

In case where the instrument is payable at a foreign place, the law of the place of payment will determine what constitutes dishonour and what notice of dishonour is sufficient.

When the party to whom the notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient. (Sec. 97, Negotiable Instruments Act.) Sec. 49 of the English Bills of Exchange Act exhaustively deals with all these points within its fifteen subsections on the same footing.

The party who receives a notice of dishonour is allowed, at the same time after the receipt of such a notice, to warn by notice his prior holders.

Notice when Unnecessary.—Under the following circumstances notice of dishonour is unnecessary :—

(*a*) when it is dispensed with by the party entitled thereto ;
(*b*) in order to charge the drawer when he has countermanded payment;
(*c*) when the party charged could not suffer damage for want of notice;
(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own, to give it;
(*e*) to charge the drawers when the acceptor is also a drawer;
(*f*) in the case of a promissory note which is not negotiable;
(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument. (Sec. 98, Negotiable Instruments Act; Sec. 50, English Bills of Exchange Act.)

The above section lays down the circumstances under which notice of dishonour is excused. The party who has not given notice, and wants to be excused for it, should prove that his case falls under any of the above-named exceptions. In one case where the drawer and acceptor were partners and the holder failed to give notice of dishonour to the drawer and afterwards pleaded that as they were partners, and, under Sec. 98 (*c*) of the Negotiable Instruments Act, no notice of dishonour was necessary when the party charged would not suffer damage for want of notice, no notice was necessary, here it was held by the Court of Appeal that the *onus* lies on the holder to establish that the drawer could not have suffered damage, because the mere fact that the drawer and acceptor of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill. (*Jambu Rameswami* v. *Suranderaja Chetti*, 26 Mad. 239.) The notice may be waived before or after date on which the notice ought to have

been given. The omission of notice may also be excused when it is due to death, illness, accident to the holder, or any other unavoidable circumstance. Ignorance as to the address of the party to whom the notice is to be given is also an excuse, provided due diligence is shown in trying to trace his whereabouts.

NOTING

Besides giving the notice, as above referred to, the holder must get the bill "noted." This is done through a notary who presents the bill, notes down in his register the fact of its dishonour and the reason, if any, given by the acceptor for so doing. Such noting must be made within a reasonable time after dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges. (Sec. 99, Negotiable Instruments Act; Sec. 51, English Bills of Exchange Act.)

The rules with regard to noting and Notaries-Public are to be found in G. O. No. 1133, dated 30th September 1886, and may be summed up as follows :—

The Notaries-Public shall keep books or registers in which they shall record declarations of payment for honour (Sec. 118, Negotiable Instruments Act), and shall also register noting and protests made by them. The copies of all the letters which they may write presenting bills for acceptance, or payment, or better security, as well as that of all bills noted, or protested, or paid for honour, together with all indorsements thereon (including that made by themselves to the effect that the bill has been noted or protested for non-acceptance or non-payment or want of better security), shall also be recorded in these registers. Each entry shall have to be signed by these Notaries, or in case the demand for acceptance or payment or better security has been made by a clerk, they shall cause the clerk also to affix his signature. The pages of these registers should be consecutively numbered. These registers shall be open for inspection of the District Judge or such other officer as the Local Government shall, from time to time, appoint.

FORM OF NOTING

(To be made upon the instrument or upon a paper attached thereto, or partly upon each.)

Reference to page in Notarial Register.
Date of presentment and dishonour.
Reason, if any, assigned for dishonour (or, if the instrument has not been expressly dishonoured, reason why holder treats it as dishonoured).
Date of note.
Notary's charges.

(Sd.) A. B.,
Notary-Public.

PROTEST OF FOREIGN BILLS

When the bill is a foreign bill, it requires both to be "noted" and "protested".

The protest must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the Notary-Public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(*e*) the subscription of the Notary-Public making the protest;

(*f*) in the event of an acceptance for honour, or of a payment for honour, the name of the person by whom, or the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A Notary Public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk, or where authorized by agreement or usage, by registered letter. (Sec. 101, Negotiable Instruments Act; Sec. 51, English Bills of Exchange Act.)

In case of Inland Bills noting alone is sufficient.

It may be added here that foreign bills of exchange must be protested for dishonour only when the law of the place where they are drawn requires such a protest. In case of a banker who handles a foreign bill for his customer he must get same protested in proper form, otherwise he would be personally liable for neglect. If a Notary Public is not available, what is called a "householder's protest" will be sufficient. Sometimes such a bill is only noted and thereafter on receipt of further instructions protested. Here the protest may be extended as that of the day of noting. The protest must of course be properly stamped.

HOUSEHOLDER'S PROTEST

Know all men that I, A. B. [householder], of in the country of , in the United Kingdom, at the request of C. D., there being no Notary Public available, did on the day of 1931 at demand payment [or acceptance], of the bill of exchange hereunder written, from E. F., to which demand he made answer [state answer if any], wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Sd.) A. B.

G. H. } Witnesses.
J. K. }

Note.—The bill itself should be annexed or a copy of the bill and all that is written thereon should be underwritten. (English Bills of Exchange Act, Schedule I.)

Protest for Better Security.—When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a Notary Public to demand better security of the acceptor, and on its being refused, may, within a reasonable time, cause such facts to be noted, and certified as aforesaid. Such a certificate is called a protest for better security. (Sec. 100, Negotiable Instruments Act; Sec. 51, English Bills of Exchange Act.)

COMPENSATION

The amount payable in case of dishonour of a bill or cheque by any party liable to the holder, includes the amount due upon the instrument with interest plus the expenses properly incurred in noting and protesting it. When the person charged resides at a place different from that at which the instrument is payable, the holder is entitled to receive such sum at the current rate of exchange between the two places on the day the bill was due. [*Willans* v. *Ayers*, (1877) 3 App. at p. 146.] Here in a case where it was agreed that " Draft to be paid at the current rate for bank demand draft at the date of payment " and the bill was dishonoured by the acceptor, it was held that the rate of exchange was to be of the actual due date of payment and not of any other day when the acceptor chose to pay. (*Muller Macleans & Co.* v. *Kaderbhoy*, 25 Bom. L.R. 177.) In one other case where a decree was obtained in England in sterling and a suit was filed here for enforcing the demand, it was held that the rate of exchange at which this decree was to be converted in Indian money was that prevailing in England on the day that the English decree was passed and not that prevailing on the day when the confirming decree in Bombay was pronounced. (*Madhavji* v. *Ramniklal*, 25 Bom. L.R. 173. Also see *Manilal Virchand* v. *Bussel*, 27 Bom. L.R. 515.) If an

indorser of a bill has paid the amount due on it, he is entitled to the amount so paid *plus* expenses with interest at the rate of 6 per cent per annum from the date of his paying to the date of his receiving back the amount; and where the indorser and the person charged reside at different places the indorser would be entitled to receive such a sum at the current rate of exchange between the two places. It is also open to the party entitled to compensation on dishonour of such a bill, note, or cheque, to draw a bill on the party liable to compensate him making it payable at sight or on demand for the amount due to him together with all expenses properly incurred by him. Such a bill must be accompanied by the instrument dishonoured and the protest thereof, if any. If such a bill is dishonoured, the party dishonouring same is liable to make compensation thereof in the same manner as in the case of the original bill. (Sec. 117, Negotiable Instruments Act.)

PRESUMPTIONS IN CASE OF NEGOTIABLE INSTRUMENTS

The following presumptions shall be made in the case of negotiable instruments until the contrary is proved. (Sec. 118, Negotiable Instruments Act) :—

(1) that every negotiable instrument was drawn, accepted and indorsed, made or transferred for consideration. (Sec. 30, English Bills of Exchange Act);

(2) that the date it bears is the date on which it was made or drawn;

(3) that it was accepted within a reasonable time after its date and before its maturity;

(4) that every transfer was made before maturity;

(5) that the indorsements appearing upon it were made in the same order in which they appear;

(6) in case of a lost instrument that it was duly stamped;

(7) that the holder of it was a holder in due course. (Sec. 30, English Bills of Exchange Act.)

In case of negotiable instruments, contrary to the ordinary law of agreements, consideration is presumed, and the party who denies same must prove his case. This applies to drawing, accepting as well as indorsing. The next presumption is the correct date. Also that both its acceptance and transfer were made before maturity. That the indorsements were placed in the order in which they appear on the bill and that in case of lost instruments the presumption is that it was properly stamped. All these presumptions can be rebutted by evidence, but the party challenging them must prove his case.

BILLS HELD AS SECURITY AGAINST OVERDRAFT

When a banker holds bills as security against an overdraft he may prove in bankruptcy of the customer for the full overdraft, i.e. without deducting the amount of these bills. Thereafter he can claim and recover the amounts of the bills from parties other than his bankrupt customer who may be liable on them. In the aggregate he should not recover a sum greater than the overdraft, and if so recovered, he cannot retain the excess.

ESTOPPEL

Estoppel is a rule of law by which a party is estopped from denying that which he previously asserted to be true either orally or by writing or by a deed or in evidence in a Court of Law.

A maker of a promissory note, or the drawer of a bill of exchange or cheque, or an acceptor for honour, is estopped from denying the validity of the instrument made or drawn to holder in due course. A maker of a note, or an acceptor of a bill payable to the order of a specified person, is similarly estopped from denying the payee's capacity at the date of the note or bill to indorse the same. An indorser of a negotiable instrument is not permitted to deny either the signature or the capacity to contract of any prior party to a holder in due course. (Secs. 120-2, Negotiable Instruments Act; Sec. 54, English Bills of Exchange Act.)

FORGED SIGNATURES ON BILLS

We have already seen that the Indian as well as the English Acts protect the paying bankers against forged indorsement, provided they appear regular on the face of the document. This protection, however, does not extend to indorsements on bills of exchange made payable at the bank by the acceptor. This is because in such a case the payment is made to a person other than the one indicated by the customer who has so domiciled the bill in the acceptance and therefore it is made contrary to his mandate. [*Roberts* v. *Tucker*, (1849) 16 Q.B.D. 560; also *Vagliano* v. *Bank of England*, (1891) A.C. 107.] Of course a forged document gives no title to any one holding under it as it has been obtained by " offence or fraud ". (Sec. 58, Negotiable Instruments Act; Sec. 24, English Bills of Exchange Act.) It is of course the opinion of many Indian Law experts that this Section 58 is not meant to cover forgery and that the original rule of Law Merchant that " forgery gives no title " applies. [*Bank of Bengal* v. *Fagon*, (1869) 7 Moore, P.C.C. 61-7.] Of course, ordinarily, forgery cannot be ratified, but there are cases where a person can be estopped from putting forward a defence of a forgery as when the acceptor admits the authenticity of his signature and there after pleads it to be

forgery. [*Leach* v. *Buchanan*, (1802) 4 Esp. 226.] The other case is the one laid down in Section 41 of the Negotiable Instruments Act, viz. "An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew, or had reason to believe the indorsement to be forged when he accepted the bill." If a person knew, or has reason to believe that his name on a bill or a cheque has been forged and that the same is likely to be presented to a banker for payment it is his duty to warn the banker. If he fails to do so and the banker's position is prejudiced he is taken to have adopted the bill or cheque. [*M. Kenzie* v. *British Linen Bank*, (1881) 6 A.C. 82. Also *Morrison* v. *London County and Westminster Bank*, (1914) 3 K.B. 356.] In case of a forged cheque where the rules of the bank concerned laid down that the customer should keep all bank cheques under lock and key and the forgery was due to not keeping the cheque book so locked, it was held that this only negligence did not entitle the bank to debit the customer with loss. [*Pirbu Dayal* v. *Jwala Bank*, (1938) All. 634.]

Forged Endorsements on Debentures.—In this connection two Bombay cases are rather important, viz. *Mercantile Bank of India, Ltd.* v. *A. J. Mascarenhas*, (1928) 30 Bom. L.R. 1210, and *Mercantile Bank of India, Ltd.* v. *Capt. Vincent L. D'Silva*, (1928) 40 Bom. L.R. 1925. In the first case the Debentures issued by the Bombay Improvement Trust were declared to be Promissory Notes and as such negotiable instruments. These debentures originally belonged to one M. who handed it over to his broker F. for collecting interest as M. was living out of British India F. forged the indorsement of M. and transferred them in his own favour and then indorsed them over to Alliance Bank of Simla as a security for a loan. The Alliance Bank sent out the debentures to be consolidated and renewed into new debentures. F. then arranged a loan with Mercantile Bank with which Alliance Bank loan was paid off and debentures were indorsed over by Alliance Bank to Mercantile Bank. Here it was held that though a forged indorsement was no indorsement, the old debentures being consolidated and renewed, there was a new contract for payment by the Improvement Trust in favour of the Alliance Bank which was valid. Under the circumstances they were not concerned with the invalidity of the old debentures, and, therefore, the Mercantile Bank got a good title.

In the second case though the decision was almost similar to that in case of Improvement Trust Debentures, the Court held that it was not proved that Bombay Municipal Debentures were negotiable by custom of the market.

With regard to forged acceptance we have already seen that in case of a forged acceptance on a domiciled bill, the

banker gets no protection. On the other hand, if in case of such a bill the drawer's signature is forged, though the acceptance is genuine and bankers pay same, the customer is bound to recoup the banker because it is held that the customer who accepted the bill and domiciled it with the banker, ought to have known the drawer's signature. [*Bank of England* v. *Vagliano Bros.*, (1891) A.C. 107, per Lord Macnaghten, page 158.]

PRECAUTION TO BE TAKEN WHEN A BANKER PRESENTS A BILL FOR ACCEPTANCE

When a banker holds an unaccepted bill either on behalf of himself, or on behalf of a customer, he should present it as early as he can, because the acceptor's signature gives additional security both to himself as well as to his customer. If any neglect in presentment or acceptance entails any loss to his customer, the banker is liable for same. Frequently the banker cannot himself present a bill for acceptance and has to get same presented through an agent who is generally some other banker. In this case also, a loss entailed by any negligence on the part of his agent will make the banker himself responsible. Only in case where a bill has to fall due in two or three days, presentment for acceptance is sometimes delayed until due date. This practice, however, is rather undesirable for the simple reason that it is risky.

We have seen that qualified acceptance, if it is taken by the holder without the consent of the drawer and the indorser, releases them. The banker, therefore, must not take qualified acceptance without consulting his customer on whose behalf he is getting the bill accepted. Frequently, when a bill is presented for payment, a cheque may be offered by the drawee. This is also a risky way of accepting payment, because if the cheque is dishonoured, the drawee or acceptor is released on the bill, and the only remedy which remains open to the banker is to sue on the cheque. This must not be very valuable under the circumstances. The best course is to take the cheque as a conditional payment and not to part with the bill till the cheque is cashed. The banker should remember that the only person who has a right to accept the bill is the drawee, or his accredited agent. If drawn on a trading partnership any partner can sign, but he should sign it in the name of his firm and not in his personal name. If there are more than one drawee, all should accept it, particularly when they are not partners.

PRESENTMENT FOR PAYMENT BY BANKER

We have already seen that it is most important that a bill should be presented for payment on the due date, and if the holder does not present same on due date the drawer and the

previous indorsers are released. When bills are handed to bankers to be collected, the usual practice is to note them in a diary kept for the purpose, so that presentment may not be missed by an error, otherwise the banker would have to make good the loss, if any, to the customer. Of course, if the delay in presentment for payment is due to circumstances which are beyond the control of the banker, he will not be responsible. If the banker himself is not going to collect money for the bill, he must send it up a few days in advance to the other banker who acts as his agent for collection. If the acceptor has not domiciled the bill at the bank, the banker has to present it at his place of business or office, and where the acceptor fails to pay, a note is usually left with the acceptor containing proof of the bill and stating that the same is awaiting payment at a particular bank. It should also be noted that if the acceptor wants to pay the bill he must do so before the close of the business day on which it has fallen due. Here, as a matter of precaution, the accepted bill itself should not be left at the acceptor's place of business. If the banker is offered a part of the money and not the whole, he should accept it but should not part with the bill until the balance is paid. If the balance is not paid before the close of the same day, the usual steps should be taken in connection with the balance as if the bill was dishonoured. This is, of course, dishonour for the part of the amount of the bill. A banker or any person who holds a bill of exchange for collection with a lien on the bill is a holder of the bill for consideration. (*Royal Bank of Scotland* v. *Rahim Cassum & Son*, 27 Bom. L.R. 506.)

RETIRED BILLS

When a bill is paid before it is due and thus taken out of its usual course of circulation, it is said to be " retired ". When the acceptor or any other party liable on the bill retires same before maturity an allowance is given to him which is known as " rebate ". This rebate is computed on the amount of the bill for the balance of period which is still to run at an agreed rate.

DOMICILED BILL

Frequently a banker's customer while accepting a bill makes it payable at his bank and thus the bill is said to be domiciled at the bank. Special arrangement has to be made with the bank by his customer for paying such bills. Here, the relationship between the banker and the customer is that of the principal and the agent. The usual practice is for the acceptor to give notice, or intimation, to his bank every time he accepts a bill domiciling it with his banker. This is a desirable course to follow so that by some inadvertence forged acceptances may not be honoured. Here much depends on the

established course of practice. The English banks would pay an acceptance domiciled with them by a customer even without advice if everything was in order. According to Mr. Hart in his *Law of Banking*, " the fact of making an acceptance payable at the acceptor's bank amounts to an authority to the banker to pay it even though there is not a sufficient balance to the credit of the customer." This point was also dealt with by the House of Lords in the *Bank of England* v. *Vagliano Bros.*, (1891) A.C. on page 157, where Lord Macnaghten laid down that (1) " The relation of banker and customer does not of itself, and apart from other circumstances, impose upon a banker the duty of paying his customer's acceptances " (*Roberts* v. *Tucker*, 16 Q.B. 560), (2) " If the banker undertakes the duty of paying his customer's acceptances, the arrangement is the result of some special agreement, express or implied." In connection with the paying of these bills, as far as the customer's signature is concerned, the position of the banker is the same as that in the case of a cheque, viz. that he is responsible for the genuineness of his customer's signature and in case he pays a bill on which the acceptor's signature is forged, he cannot debit the account of his customer. The banker has also to take care to see that the bill is regular and is properly stamped. The banker has got to take care and see that endorsements on these domiciled bills he pays are also genuine, because the protection given against forged endorsements by Section 60 of the English Act and Section 85 of the Negotiable Instruments Act only applies to cheques. If the banker were to receive a bill from the holder through post, requesting him to remit the money to him, he should decline to do so and insist upon presentation in the ordinary course.

PROMISSORY NOTES

In case of promissory notes, practically speaking, the same principles of law apply as in case of a bill of exchange, except that the maker of a promissory note stands in the position of an acceptor of a bill of exchange. (Sec. 89, English Bills of Exchange Act.) Thus a promissory note is inchoate and incomplete until it is delivered by the maker to the payee or bearer. There can be joint and several promissory notes, and when a promissory note begins with the words " I promise to pay " and is signed by two or more persons it is deemed to be their joint and several note. (Sec. 85, Bills of Exchange Act.) If, however, the promissory note begins with the words " We promise to pay " it will be only a joint note and not a joint and several note. There is no objection to a promissory note containing pledge of a collateral security which it authorises the holder to deal with or sell off. [Sec. 88 (3).] Promissory note must be presented for payment on the due date just as the bill of exchange in order to make the indorser liable. If it is made

payable at a particular place it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. (Sec. 87, Bills of Exchange Act.) The particular place or "specified place" as laid down by Sec. 69 of the Negotiable Instruments Act means a place which is clearly stated in the instrument so that the holder must know exactly where to present same for payment. In one case where a promissory note provided that it was payable "at Poona, Bombay, or elsewhere" it was held that no specified place was laid down by the instrument and therefore no presentment for payment was necessary under the Act. [*Dorabji Nowrosjee* v. *Jamshedjee Pestonjee*, (1936) 60 Bom. 796; 38 Bom. L.R. 395.] It is a well-established practice among bankers and money-lenders to take a promissory note for the amount lent and side by side take a collateral security in the form of a deed to the Government loan, etc. in deposit. Frequently these instruments refer to these deposits and the question is whether in such a case they retain the characteristic of negotiable instruments. This point was decided by the Madras High Court in Appeal in *Ramchandra & others* v. *Sesha*, 17 Mad. 85, where an instrument signed and bearing one anna stamp ran as "On deposit of title deeds I promise to pay you or Order Rs. 160 for value received", it was decided that the instrument was a negotiable instrument, because "the deposit of title deeds as a collateral security does not make a promissory note the less a negotiable instrument." Here there was nothing to show that "the intention was to qualify the operation of the note as a negotiable instrument." Promissory notes passed by a Managing Member of a joint Hindu family are binding on the members, only when the money is borrowed for a family purpose. There is, however, one exception, viz. where the family carries on a business or a profession, there is an implied authority to the Managing Member to incur debts for the purpose of the family business or firm and the creditor is not bound to inquire into the purpose of the debt to bind the whole family. Whether this debt was incurred for the business, profession or not, it binds the members. A minor member's share in the firm is also liable. (*Raghunathji Tarachand* v. *The Bank of Bombay*, 11 Bom. L.R. 255.) In a recent Bombay case [*Manchershaw Ardeshar* v. *Govind Ganesh Joshi*, (1930) 32 Bom. L.R. 1025], it was held that a suit based on a promissory note passed by one member of a joint Hindu family for the purpose of the family can be allowed to be converted into a suit on the original debt against all the members of the family.

It has been further held that an instrument purporting to be a promissory note in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon

by a third party. [*Jogeshchandra Dhat* v. *Mahommad Ibrahim*, (1930) 57 Cal. 695.]

There are cases where there is a question on construction as to whether a document is a promissory note or a receipt. In one case a document was given acknowledging receipt and stating the time after which the amount is to be repaid and also mentioning the interest and where the document was not drawn on paper with an impressed stamp, though a stamp was affixed which would pass for a receipt stamp the Court held that the document was not a promissory note but was merely a receipt enumerating the terms on which the amount was to be refunded. It was here emphasised that the document being primarily a receipt, it remained a receipt in spite of the fact that it was coupled with a promise to pay. Here the English case of *Mortgage Insurance Company* v. *Commissioners of Inland Revenue*, (1888) 21 Q.B.D. 252, was followed and 8 Cal. 645 overruled. [*Mohomed Akbar Khan* v. *Attar Singh*, (1936) 17 Lah. 557.] A " holder in due course " of a promissory note, even though he may be a money-lender is entitled to recover on same without any obligation to prove that the original holder took it from the maker of the note on valuable consideration. [*Baqar Khan* v. *Ram Lal*, (1948) Lahore 53.]

HUNDIS

As we have already seen in the beginning of this chapter, the Negotiable Instruments Act generally does not apply to instruments in any oriental language (*hundis*), but where by any words in the instrument itself the usages regarding such instruments are excluded, or where the writing expressly indicates an intention that the legal relations of the parties thereto shall be governed by the Negotiable Instruments Act, the Act will apply. In the absence of either of these indications, *hundis* in oriental languages shall be governed by local usages applying to such documents. *Hundis* are principally divided into two classes, viz. (*a*) the *Shah Joghi hundis*, and (*b*) the *Jokhmi hundis*.

The Shah Joghi Hundi is drawn by one merchant on some other merchant asking the latter (drawee) to pay the said *hundi* to a " shah ", i.e. a respectable holder, after making proper enquiry and taking the usual precautions taken by merchants in that line of business. It usually states the name of the person on whose account the *hundi* is drawn, or who has (as is usually the case) deposited money with the drawer against the *hundi* in question. The documents are generally used for the purpose of remittances. The drawer never accepts this *hundi*, but generally they are presented to the drawer at the time of payment by the holder. These are not instruments which come under the designation of those " payable to bearer ", but

are " payable to a respectable holder " or " shah ", and the usage throws this duty on the drawee, i.e. the duty of ascertaining that the payee is a " shah ". In case the *hundi* is indorsed as payable to a particular person named in the indorsement, the drawee must see that he pays to that person and no other. As long as the drawee pays the said *hundi bona fide* to a " shah ", he is entitled to recover the amount from the drawer. In case the *hundi* turns out to be bad because it was forged or obtained by fraud, the " shah " collecting same has to make good the money or to present the guilty party to the drawee. If the " shah " makes a mistake in collecting the *hundi* for a wrong party, he has to make good the amount with interest at the rate of 6 per cent from the date of payment to the date of refund. It has also been decided recently that in case of a *shah joghi hundi*, the drawee paying to the Shah is not absolved from liability to the owner of the *hundi*, if the Shah had no title to the *hundi* owing to a forged endorsement. [*Madhavdas Jethabhai* v. *Dindas Vardasa*, (1934) Bom. L.R. 929.]

Arising from this case when the drawee wanted to be indemnified by the Shah for money he had to pay to the holder and thus to recover back from the Shah the money paid to the Shah on the Shah Joghi Hundi with a forged endorsement, it was held by the Appeal Court that the cause of action against a Shah who receives payment under these circumstances is to re-imburse the drawee for money had and received to the use of the drawee, based either on the money having been paid under a mistake of fact, or without consideration and does not arise upon any implied covenant for indemnity. [*Madhavdas Jethabhai* v. *Sitaram Ram Narayan*, (1934) Bom. L.R. 941.]

It has been held in an Allahabad case, that a Shah Joghi Hundi is not a Bill of Exchange under the definition of the Negotiable Instruments Act. [*Mangal Sen Jaideo Prasad* v. *Ganeshi*, (1936) A.I.R. All. 396.] It was also held in the same case that a Shah Joghi Hundi is a Negotiable Instrument independently of the provisions of Negotiable Instruments Act in spite of the fact that it does not fall under the definition of a Bill of Exchange under that Act.

The Jokhmi Hundi.—In the words of Bayley, J. (*Raisey Amerchand* v. *Jusraj Vizpal*, Bom. 25th July 1871) : " A *Jokhmi hundi* is in the nature of a policy of insurance, with this difference, that the money is paid beforehand, to be recovered if the ship is not lost." It is in fact a mode of insuring goods shipped, peculiar to the native Indian merchants. There are here three parties—the drawer or shipper of the goods, the *hundiwala*, i.e. the underwriter, and the *malwala*, the consignee. The consignor consigns the goods, say from a port in Cutch or

elsewhere to his agent or vendor in Bombay. He then draws a *hundi* on the consignee or *malwala* for the value of the goods and sells same to the insurer for cash, which is the value *less* the insurance premium charged. The *hundiwala* sends the *hundi* either to his branch office or agent in Bombay. The *hundi* is then presented after the goods arrive safe in Bombay to the consignee or *malwala* who pays same and takes delivery of the goods, or in case he does not wish to take up the goods, he may hand over the goods to the *hundiwala* and leave him to fight the matter out with the consignor. The *hundiwala*, by this peculiar custom has no right to sue the *malwala* or consignee in case of non-payment or non-acceptance. His remedy is to recover the amount from the consignor. In case the goods are lost totally, the *hundi* cannot be presented, and the loss has to be borne by the *hundiwala* or underwriter. In case of partial loss or damage, the *hundiwala* is entitled to be paid in full. In case of general average loss the *hundiwala* or underwriter receives payment for so much loss as may be computed towards the general average loss on these goods by the Average Adjusters (4 Bom. 344-45).

The form in which these *Jokhmi hundis* are generally drawn, as given in the above reference (4 Bom. 344), is the following :—

FORM OF JOKHMI HUNDI

"To wit : here have been kept and retained from Shah..... Rs..... in full ; so the *hundi* is *jokhmi* on board the vessel....., nakwa ..... owner ..... After the fixed time 4 (four) days after the vessel shall have arrived safely from the seaport town of ..... at the seaport town of ..... do you pay to Shah ....."

Zikri Chits.—As per Chalmers' " Negotiable Instruments " *hundis*, according to the custom of Marwari merchants, " are accepted for honour by means of ' Zikri Chits ' which are furnished by a party liable on the *hundi*, to the holder, and are addressed to some other person who is thereby directed to pay the *hundi* if the drawee does not; the latter accepts by writing on the chit." The *hundis*, according to the custom of shroffs, are not required to be noted or protested.

Dhanijog Hundi.—This is a *hundi* which is payable only to a Shah, but it may be cashed by the *dhani* or holder of same.

Purja.—A *purja* is a written request, addressed to the lender and signed by the borrower, to pay the amount mentioned in the instrument, and is stamped with one anna stamp. The rate of interest is as mentioned in the body of the *purja*, and the period for which the loan is granted is never mentioned in it, but

is either understood to be the period settled by the prevailing practice, or entered in a separate slip pinned to the *purja*. The *purja* is not attested by witnesses but is merely an acknowledgment of a debt. The name of the person through whom the sum is received is mentioned. These documents are generally used in connection with short loans, not exceeding three months. Frequently *purja* is also given in a different form, that is, in the form of acknowledgment by the borrower, declaring that he has credited the amount borrowed in his own account books in favour of the creditor.

FORM OF PURJA

(*Transliteration*)

Bhai Sri Nathuram Tekal Chand Selikhe Bhuramal Gopinath ka Ram Banchiyo upranch Ru 500 Akhre Panch So tumhare paslya kjaara beyaj dar 6 as hissab bhejachh so laileja Rupaiya jamadarne diadejo miti 30 karohcee 1986 sal miti Mshag.

Dastkhat,

(Sd.) SAWANLAL NAHATA.

(*Translation*)

Honoured brother Nathuram Tekal Chand be pleased to accept the greetings (Ram Ram) of Bhuramal Gopinath. Further Rs. 500, in words rupees five hundred, is being taken from you the interest on which at the rate of 6 as. is sent herewith. Please accept it and pay the money to Jamadar, dated 30th day of Magh 1986 Sal.

(Sd.) SAWANLAL NAHATA.

(*Note.*—Bengal Provincial Banking Inquiry Committee's Report).

Hatchita.—This is a sheet bound in the account book of a creditor and entered in the form of a ledger, bearing one anna stamp and the signature of the borrower.

Khatapeta.—This is an account in the creditor's book, showing on the debit side all amounts advanced to the debtor and interest accrued, and on the credit side all payments as well as interest paid. No receipts are given for the repayment of interest. *Khatapeta* is itself considered sufficient, as it is of the account and money given. The debtor makes written requests from the creditor for all advances he wants, and has to go and see that all his repayments as well as payments of interest are duly entered to his credit, in the same *khatapeta*. This form is generally maintained by Marwari bankers.

Darsani and Nadappu Vaddi Hundis.—These are sight *hundis* payable at sight, but the second has this peculiarity, that it carries interest at the *nadappu vaddi* rate from the date of presentation.

DARSANI HUNDI FORM

(*Transliteration*)

(Obverse)

Hundi leni bheji Ammad Haji Sale Muhammad Bhai Sohanlal Munshilalijoga.

Hundi leni bheja Sohanlal Munshilal Jog Thakurdas Agyaram.

Sri Hari.

Motilal Paramananda Wardha.

No. 426.

D/Paramananda ka Hundi likhe Mujab sakardena 1" Siddha Sri Kalkatta Bandr subhasthane Bhai Sitalprasadji Kharag Prasadji Jog Sri Wardha se likhi Motilal Paramananda ken Sri Jayagopal Banchijo uparancha Hundi Nag 1 Ru 500—Akhare Rupia Panch Sauka neeme rupia Arhai sauka Duna Pura ithe Rakhya Ammad Sale Muhammad Kacchi Pas Miti Magsarbad 5 Pahuncha Turanta Naube shahjog Rupia Company Chalan ka Dijyo 1 Sm. 1986 Miti Magsir Badi 5 Gurubar Ta : 21st November 1929.

(Reverse)

Rs. 500

Neeme ka neeme sawasau ka chauguna Pura Ru Panch sau kar Dijyo.

(Sd.) THAKURDAS AGYARAM.
Hundi Bharpaya Sibkumarsing.
Ta. 26th November 1929.
Magasarbadi 10.

Bhai Sitalprasad Kharagprasad jog
No. 30, Burtolla Street, Calcutta.

(*Note.*—Madras Provincial Banking Inquiry Committee's Report, p. 268).

(Translation)

(Obverse)

Rs. 500.

Ammad Haji Sale Muhammad sends brother • Sohanlal Munshilal to receive the value of the hundi.

Sohanlal Munshilal sends Thakurdas Agyaram to receive the value of the hundi.

Sri Hari.

Motilal Parmanand Wardha.

No. 426. Please accept according to writing in the Hundi of Paramanand.

In the prospectus, beautiful and auspicious port of Calcutta, to honoured brother Sitalprasad Khargprasad written from Wardha by Motilal Paramananda whose greetings (Jay Gopal) you may be pleased to accept. Further, one hundi for Rs. 500, in words rupees five hundred, full twice of Rs. 250 is drawn in favour of Ammad Haji Sale Muhammad Kachhi on the 5th day of Magsir Badi ; immediately on the arrival of this *hundi*, you will (please) pay the amount thereof in current coin of the Company to the presentor after ascertaining his respectability. Sambat 1986, 5th day of Magsir Badi, Thursday, dated 21st November 1929.

(Reverse)

Half of half Rs. 125 four times, of which Rs. 500.

(Sd.) THAKURDAS AGYARAM.

Received the full amount of hundi.

(Sd.) SIB KUMAR SINGH.

Dated 26th November 1929.
Margasir Badi 10.

Brother Sitalprasad Khargprasad,
No 30, Bartola Street, Calcutta.

HUNDI BEARING NADAPPU INTEREST FROM DATE OF ISSUE

Sivamayam

RAKTEAKSHI ARPISI 10th—KANADUKATHAN—ABC Avergal—*Cr.*,

KILASIVALPATTI XYZ .. .. *Dr.*

I owe ABC above Rs 3,000 on account of cash taken for the purchase of *samans*. This sum of Rs. 3,000 please pay to ABC or order with current rate of interest and debit my account after payment is made.

To B S. T. Rangoon One anna. 1 anna X 1 anna Y 1 anna Z

(Sd.) ABC.

Skshaya Adi 1st—Principal of this *hundi*—Rs 3,000—interest Rs. 451-8-0 = Total Rs 3,541-8-0 Rangoon B. S T. Firm.

No. Madras *hundi* 1—Rs 2,883-8-0 cash Rs. 568 received.

All accounts settled.

(Sd.) ABC.

(*Note.*—Madras Provincial Inquiry Committee's Report, p. 268.)

Muddati Hundi.—It is a *hundi* which is not payable on demand like the *darsani hundi*, but is payable according to usance or custom.

Hundis payable to order are called *Firmanjog hundis*.

Paith.—When the original *hundi* called *khoka* is lost, a duplicate or second copy is given, known as *Paith*. If the second is lost, a third is given which is known as *Parpaith*, and in the event of all three being lost, a fourth *hundi* called *Maijar* or *Panchyati* is given. The last is called *Panchyati*, because five leading bankers of the place of issue have to draw it.

PARPAITH

(Translation)

To pleasant and prosperous town Bombay Port, the abode of merit (therein to) *Bhai* (brother) Manohar Lal Hira Lalji written from Lalitpur by Mansukh Das Virdhi Chandji whose greetings you be pleased to read. Further a *hundi* for Rs. 500, rupees five hundred, twice of rupees two hundred and fifty, the double of which was drawn upon you by us in favour of Ram Chand Beni Ram on *Chait Sudi* 14, to be paid on demand in current coin with due regard to (the qualifications) the respectability, title and address of the payee. And a *paith* was also drawn on *Vaisakh Badi* 1. Now the payee of the *hundi* informs us that the *paith* is also lost. Therefore this third document is being drawn upon you. Of these we shall be responsible for the payment of one only. You will (please) consult each book, day book, and other account books, before making payment. If the *hundi* has been paid, then the *paith* and the *parpaith* are to be regarded as cancelled, if the *paith* is paid the *hundi* and *parpaith* are to be taken as void. This *parpaith* is drawn on *Jeth Badi* 2, *Samvat* 1983.

(*Note.*—Indigenous Banking in India by Jain)

MAIJAR

(Translation)

To pleasant and prosperous town Bombay Port, the abode of merit (therein to) the *Pancha* (five leaders of the bankers) written from Lalitpur by the *Pancha* (the five leaders of the bankers). Further a *hundi* for Rs. 500, rupees five hundred, was drawn here by Mansukh Das Virdhi Chandji on *Bhai* (brother) Manohar Lal Hira Lalji in favour of Ram Chand Beni Ram on *Chait Sudi* 14, to be paid on demand in current coin with the due regard to (the qualifications) the respectability, title and address of the payee. And a *paith* was drawn on *Vaisakh Badi* 1 and a *parpaith* on *Jeth Badi* 2. Now the payee of the *hundi* informs us that the *hundi*, its *paith* and *parpaith*—all *the three* are lost. Therefore if the *hundi*, the *paith* and *parpaith* are all lost, please consult the drawee's day book, ledger cash and credit books, and then have this fourth document paid. If the *hundi*, or *paith*, or *parpaith* has been paid, then this *maijar* is to be regarded as cancelled and to be returned after perusal. This fourth document is drawn on the aforesaid drawee and we hold ourselves responsible for only one of the four documents.

(Sd.) 1.....
Dated *Jeth Sudi* 1, 2.....
Samvat 1983. 3..... } The Pancha.
4.....
5.....

(*Note.*—Indigenous Banking in India by Jain.)

Nakal.—Generally, the advice of the *hundi* is given by the shroff or banker who draws the *hundi* to the party on whom the *hundi* is drawn, as separate letter. This is called *nakal*.

NAKAL

(*Translation*)

Shri

To pleasant and prosperous town Bombay, the abode of merit (therein to) *Bhai* (brother) .... written from Amraoti by Singhai Moti Lal Khub Chand whose greetings you be pleased to accept. Further a *hundi* payable on demand is drawn for Rs..... in favour of *Bhai* (brother) ..... on .... So on its presentation please make due payment thereof. Please write to us, if we can be of any service to you.

Dated.....

(*Note.*—Indigenous Banking in India by Jain.)

CHAPTER V

SIMPLE BANKING OPERATIONS

Banker and Customer.—A banker when he deals with his customer is primarily in the position of a debtor to his creditor, or *vice versa*. This can be well understood by bearing in mind the principal functions of a banker which come within the sphere of banking proper. These functions are (1) receipt of deposits both on current account and fixed deposit account, (2) discounting of bills and promissory notes, (3) granting of loans, (4) issuing of drafts, letters of credit, circular notes and acting as acceptor on behalf of his customers of bills drawn on the authority of letters of credit, and (5) issuer of bank notes, a function which is now no longer performed by bankers except by Central Banks in all modern countries. The Reserve Bank of India is now given the exclusive right of issuing notes in India. In case of voluntary liquidation of a company where it was sought to attach the bank account of the voluntary liquidator for a debt due to the company it was held that there was no relationship of a banker and customer subsisting between the bank and the company in voluntary liquidation but that that relationship only existed between the bank and the liquidator. [*Lancaster Motor Co., Ltd.* v. *Brewith Ltd.*, (1941) W.N. 82.]

Over and above these functions proper, a banker also acts as an agent of his customer in connection with (1) buying or selling of securities. (2) making periodical payments as instructed by his customers, (3) collecting interest and dividend on securities lodged by his customers, and (4) receiving in safe custody valuables and securities from his customers.

BANKER DISTINGUISHED FROM MONEY-LENDER

The difference between a banking company and a merely financing corporation has now been carefully defined by our Indian Companies (Amendment) Act of 1936, S. 277F. However, the distinction between "Banking" business and money-lending business had not been judicially or legally defined till quite recently when the High Court of Allahabad in Appeal in the case of *Gordhan Das* v. *Anand Prasad*, (1942) All. 247 laid down to the effect that there was a broad distinction between money-lending business and banking business though in case of our so-called "native bankers" or "indigenous bankers" as we generally call them, some modification of the strict definition of a banker may be necessary. This is because many of these indigenous bankers take deposits and allow their customers to draw against same on demand either by cheques or by other means. However, where a money-lender did not operate in this manner, that is keeping demand deposit accounts and allowing

customers to draw cheques, that form of business does not come within the sphere of banking and the party cannot be called a banker doing banking business. In England, however, there is no well defined definition of a banker or bank or banking company.

CURRENT AND FIXED DEPOSIT ACCOUNTS

Current Accounts.—In case of current accounts, or what are also called demand deposits, the banker incurs the obligation of paying all cheques drawn against him so long as there is enough money to the credit of his customer. The customer on the other hand pays money in form of cash, cheques, drafts, postal orders, money orders, etc. into the current account. This he does by filling up pay-in slips which are supplied either loose or in book form by the banker. These pay-in-slips have to be signed by the customer, or his agent, who pays same in. When the slips are in book form there are counterfoils which the cashier of the bank rubber-stamps, or initials, after receiving cash. The legal effect of this stamping is a mere acknowledgment to the effect that the slip was in order and that the effects when cleared would be credited to the customer. It is not a receipt that would require a revenue stamp if the amount happens to be over the limit fixed by the Stamp Act.

The current account is a running account and in practice never becomes statute barred, because the limitation does not run until a demand is made from the banker for payment by the customer. Supposing that a customer allowed a balance of his current account to remain dormant for more than three years in India or more than six years in England that will not make the account time-barred because limitation does not begin to run unless and until the amount becomes due. In case of the current account the amount becomes due only when the customer demands payment either by drawing a cheque or writing a letter. [*Joechinson* v. *Swiss Bank Corporation*, (1921) 3 K.B. 110.]

Overdraft.—It may be here added that frequently arrangements are made in connection with the current account to allow an overdraft on same. This overdraft may be granted in form of a fixed loan for a fixed period in which case the banker debits the customer's loan account and credits the customer's current account with the whole amount. Here naturally the limitation begins to run from the date when the loan falls due and not from the date of granting of the loan. On the other hand, if an overdraft pure and simple is granted without any agreement as to the time for which it was so granted and on condition that interest from day to day should be debited on the debit balance, if any, of the account and credited on the credit balance, the position in law is that the limitation begins to run in such case

when the last balance is struck and six years in England or three years in India have expired from the date of that last balance. [*Hartland* v. *Jukes*, (1868) 1 H. & C. 667; 32 L.J. Ex. 162.] However, in a later case, viz. *Parrs Bank* v. *Yates*, (1898) 2 Q.B. 450, Smith, L.J., in his dicta (not judgment) held the view that each debit item in the account must be looked at as a separate advance which is satisfied by credits in their order of date. This being a dicta has naturally not the binding force of a judicial decision.

With reference to the current account, bankers frequently allow customers to overdraw that account in case they also happen to have a fixed deposit account relying for their security on the right of set-off between the current and the deposit accounts. This right of set-off may be exercised although the customer after drawing the said overdraft cheques becomes insolvent.

Fixed Deposit.—In case of fixed deposits or what are also called time deposits, the rule is that the depositor agrees not to withdraw it for a specified time, say six months or a year. The usual practice in India is not to take fixed deposits for more than a year. They are of course renewable at the end of the year by mutual consent at a fresh rate of interest that may be agreed upon. The fixed deposit may not be for a fixed period, but may have been effected on an agreement that it may be withdrawn after giving a notice of so many days, say a week's or a fortnight's.

DEPOSIT RECEIPTS

The Form.—When fixed deposit is placed with a banker, the banker gives a receipt in more or less the following form :—

[*See next page.*]

Its Transferability.—It will be seen from the above deposit receipt that all that it professes to do is to acknowledge the amount as being paid to the banker. The receipt is not transferable, as it is usually marked, still less is it negotiable. The debt covered by it, however, can be assigned. The deposit receipt, according to Sir John Paget, " represents the money deposited, lent to the banker, is a debt or chose in action assignable like any other debt or chose in action, independent of the receipt and despite any restriction on the transferability of the receipt." The safest method by which a debt covered by a deposit receipt could be transferred is the handing over of the receipt by the depositor to a third person, having discharged same, together with a letter written and signed by the depositor addressed to the banker informing him that the debt or claim as evidenced by the deposit receipt has been assigned, and asking the banker to pay the money on the due date of the deposit to the third party named in the said letter. The third party

THE INDUSTRIAL BANK, LTD.

Subscribed Capital Rs. 500,000,000 — Paid-up Capital Rs. 200,000,000

Reserve Fund Rs. 100,000,000

Head Office : Mathews Road, Bombay,
Dadar Branch,
..... 19 .

Not Transferable

No.....

Rs.....

Received from .....
the sum of Rupees.....
..... on Deposit Account to be accounted for with interest at the rate of ..... *per cent* per annum from the date hereof subject to seven days' notice of withdrawal.

For the Industrial Bank, Ltd.,
.....*Manager.*

Entered.

This Deposit Receipt is not transferable and is subject to seven days' notice of withdrawal.

No interest will be allowed if the money is deposited for less than fourteen days, and interest will cease at expiration of notice of withdrawal.

This Deposit Receipt must be given up on repayment of the amount.

also, in order to make his position safe, should give a notice to the bank of this assignment of the debt to him. A simple signature on the deposit receipt does not give authority to the banker to pay over the money. (*Evans* v. *National Provincial Bank*, 13 T.L.R. 429.) In a Bombay case, *R. D. Sethna* v. *Hemmingway*, 16 Bom. L.R. 534, it was held that though the deposit receipt is neither negotiable nor transferable, but where the money mentioned in the receipt is immediately payable and the receipt is presented duly endorsed together with an order to pay a given individual, that individual becomes the owner of the money upon payment by the banker or his promise to hold it at the disposal of the payee.

Some banks have a cheque form printed at the back of the deposit receipt. In such cases, when the cheque is presented on the due date of the deposit duly signed, the same will be paid as an ordinary cheque.

Cheques against Deposit Accounts.—The deposit accounts particularly in India are for a fixed period and repayable only after the expiry of that period. In England there are deposits

withdrawable after a certain notice or on demand also. The question thus arises whether a customer can draw a cheque against his deposit account as distinguished from his current account. The answer is simple that in case of a fixed deposit account the customer is not entitled to draw cheques, neither is he so entitled if the deposit is repayable after the expiry of the period of notice which has been stipulated should be given. In case, however, of deposits repayable on demand there is no decided case and the authorities such as Sir John Paget and Dr. Hart are of opinion that the same most probably cannot be done in spite of the fact that there is a dictum of Vice-Chancellor Malin in *Hopkins* v. *Abbot*, (1875) 19 Eq. 222 to the effect that in such cases cheques can be drawn.

Where money on deposit account is due on a Sunday the same falls due on a succeeding business day, whereas the interest stops running on the day of the expiry of the said deposit if for a fixed period or that of the notice of withdrawal if the deposit is subject to termination after notice.

Deposit in Joint Names.—When the deposit is in joint names, of course, both the parties should combine in withdrawal except where one has died, in which case the property in the usual course passes to the survivor, whom the banker can safely pay, provided he has no knowledge of any trust.

Depositor Insolvent.—When the depositor becomes an insolvent, the amount on deposit vests in the Official Assignee in India and the Trustee in Bankruptcy in England. When the deposit is in the joint names of husband and wife, the same rule will apply as in the case of ordinary deposit which we have dealt with later at some length.

Subject of " Donatio Mortis Causa ".—A deposit receipt has been held to be a good subject of a ' donatio mortis causa ', and on the death of the donor the gift will pass to the donee although expressed to be not transferable. [*Amis* v. *Witt*, (1863) 33 Beav. 619.] If a deposit receipt is lost or stolen, the amount can safely be paid on obtaining an ordinary indemnity as not being a negotiable document, the holder does not get a perfect title.

Production for Payment Necessary.—The deposit receipt is so worded that the banker undertakes to pay on production of the deposit receipt duly discharged. It is thus necessary to produce the receipt duly discharged at the time of asking for payment on the due date. But from this it should not be thought that the banker can decline to pay in case the deposit receipt should have been lost or destroyed. All that the banker would be in such a case entitled to is to ask for an indemnity with a proper security, or guarantee, from the customer. When the deposit is placed in the name of a minor, the party so placing can withdraw and the banker runs no risk, if the pay-

ment be made before the minor comes of age, because in such cases the ordinary rules of justice and equity shall prevail. (See Paget, p. 28, 4th Edn.)

The Third Party Holder.—When a third party takes assignment of the deposit money he should take care to give immediate notice to the bank as we have seen above, but the banker would be entitled to recover from the deposit amount such money as may be owing to him from the depositor in connection with some other transaction prior to his receipt of the notice. This is but fair, because frequently bankers advance money or allow current accounts to be overdrawn relying upon the fixed deposit money as a security or a lien for this advance. When the holder of a deposit receipt wants a loan from the banker, the banker usually takes the receipt in deposit as well as a separate memorandum of charge, stating the object with which the deposit receipt is left with the banker. The deposit receipts do not require to be stamped both in India and England.

A deposit receipt may be offered as a security for an advance. Here the banker should see that the same is discharged by the depositor and a memorandum of deposit is taken setting forth the conditions under which the same is lodged with the banker.

Cheque Form on Receipt.—Frequently a deposit receipt is issued with a cheque form at the back. Here where the cheque was filled in for the whole amount, it was held that it was a device to ensure a receipt for the money when withdrawn. (*In re Dillon*, 44 Ch.D. 76.) When this cheque was filled in for a part only of the amount, the amount was treated by the Court only as a cheque. (*In re Mead*, 15 Ch.D. 651.) It may be added that it is not necessary that a person should be a customer before a fixed deposit is taken. The deposit itself would be sufficient to make the man a customer. According to the Institute of Bankers (Eng.), a deposit receipt in form " Pay to A or on his death to B " is objectionable, as it seems to make use of a deposit receipt for the purpose of a testamentary disposition.

DISCOUNTING BILLS AND PROMISSORY NOTES

In this case the banker credits the customer's account for the full amount of the bill or promissory note which he discounts and debits him for the amount of discount. The result is that the customer can now withdraw the amount at his pleasure. Though postdated bills are valid, bankers would not discount them.

It should, however, be noted that the banker discounts bills for his own customers, as well as retires bills domiciled by him also under the same conditions. He does not as a rule act in this capacity for non-customers as that is very risky. Drawers

of Bills of Exchange who discount them with a bank are bound in case of dishonour by non-acceptance to compensate the bank unless there was an express bargain that the transaction was without recourse. In case where the bills discounted with shipping documents attached were D/A (documents against acceptance) and were dishonoured after acceptance and handing over of documents, it was held that the drawers were liable to reimburse the banks. [*Sassoon & Sons, Ltd.* v. *International Banking Corporation*, (1928) 29 Bom. L.R. 1181.]

GRANTING OF LOANS

Fixed Loan or Overdraft.—A loan may be granted either for a fixed amount, say Rs. 50,000, or for a fixed period, say one year, at a fixed rate of interest. It may, on the other hand, be given on an overdraft arrangement where though the limit of overdraft is fixed at a fixed amount, say Rs. 50,000, the interest is to be charged on the actual amount overdrawn from day to day.

In the case of the first arrangement, viz. that of loan, the banker immediately places the full amount of loan to the credit of current account of his customer opening a separate loan account which is debited for the full amount. Interest on loan thus runs on the full amount from the day on which it is granted. There is, however, one compensating factor, viz. that in case of a loan for a fixed amount, the rate of interest charged is little lower than that on overdraft on the day to day balance.

With reference to the note issued by the Reserve Bank, an interesting case was decided in 1944 by the Allahabad High Court, viz. [*Radha Krishna & Another* v. *The Reserve Bank of India* (1944) All 685] where it was laid down that the governing clause of S. 28 states that a mutilated note is one from which a portion is missing. Therefore, where two halves of a currency note are placed before a currency officer, when they both are identifiable as parts of one note, the currency officer should allow the claim. It was further held under Reserve Bank of India (Note Refund Rules, 1935) Rule 2(E), before a note can be described as a mutilated note, it is an essential condition that a portion of that note should be missing. If that is not so, the note cannot be regarded as a mutilated note.

TYPES OF CUSTOMERS

In connection with loans to be granted, three types of customers have to be dealt with, viz. (1) individuals who are not businessmen, (2) individuals and groups of them in the form of firms and partners who are trading, and (3) joint-stock companies registered under the Companies Act.

Private Individuals.—In case of private individuals who are not in business, but who are either professional men, Government servants or landed aristocrats, the banker has to take care to see that he does not discount any bill on their behalf, for the simple reason that, bills of exchange are instruments which arise out of business transactions. Again, where the customer's account shows a large turnover, a banker may sometimes be induced to give a loan, or overdraft, without security. In case of professional men, or Government servants this turnover may be made up of large income, but the party may not be saving much and in case of death may leave no money. No doubt if the customer possessed landed property, Government loans, shares, etc., and was in the habit of paying in cheques, interest or dividend warrants to his credit, that may give an indication to the banker of his private wealth. Very likely they are also deposited with the banker himself in safe custody with power given to him to collect interest and dividends when they become due. In such a case, he will have what is known as a " banker's general lien " on the securities.

Commercial Men.—With regard to commercial men or traders, whether dealing as sole traders or in partnership, the turnover of the current account is also a very unreliable guide, because it may not exactly mean so much genuine business. It may mean speculation. When loans and overdrafts are granted against deposit of securities, there is no difficulty. The difficulty only arises where these customers approach bankers with a request for a temporary overdraft for a certain amount without security, and frequently a banker has to oblige them. Here, the balance-sheet of the firm, if signed by a first-class firm of accountants, no doubt would form a good guide.

In case of a trading firm, every partner in law has a right to enter into contracts for borrowing and lending on behalf of the firm and in the name of the firm, and if a banker takes signature of one of these partners in the firm's name, that would bind all partners.

Joint-Stock Companies.—With reference to a joint-stock company, if the same is incorporated as a trading company, the power to borrow is implied. If it is a non-trading company, the company cannot borrow unless specifically authorized by its constitution, i.e. the memorandum and articles of association. The banker should, therefore, take care to study these documents before he enters into money dealings, particularly of lending and mortgage, with these joint-stock companies. When a company is a brand new company, which has just been incorporated and a banker has been appointed the banker of the company, the banker should remember that any loan granted to the company after incorporation, and before the company obtains a certificate from the Registrar of Companies entitling

it to commence business, is a provisional contract only, which does not come into force until the company obtains a certificate. The result is that if the company were to go into liquidation before obtaining such a certificate, the banker's position would be jeopardised. Of course, lending money to a company which has not been incorporated, i.e. which is not come into proper legal existence, should never be done, as the money cannot be recovered even though the shareholders were to ratify the contract after incorporation. It has been held in *Natal Land and Colonization Co., Ltd.* v. *Paulin Colliery and D. S. Ltd.*, (1904) A.C. 120, that when certain acts are done by certain persons claiming to act on behalf of the company as its agents, and that the company was not incorporated at the time the acts were done, they could not be recognized after incorporation, because at the time the acts were done the principal, that is the company, was not in existence. The only course here would be to make a new contract after incorporation in terms of the old contract.

The other obvious point is that in case of a limited company the liabilities of shareholders being limited to the face value of the shares they hold, the banker before advancing without security should take care to see whether there are sufficient assets of the company out of which he can recover the money. Usually he takes care to get some sort of a personal guarantee, either in the form of promissory note, or a guarantee bond, from the directors, before he makes a temporary advance without the deposit of stock exchange or other securities. Frequently mortgage debentures are also given to bankers as security by a customer.

DEBENTURES AS SECURITY

Debentures are issued for loan of money by joint-stock companies generally giving charge on the assets of the company. These debentures may be either redeemable or irredemable, and the difficulty arises when a banker is offered these debentures as security by joint-stock companies against loans they are asked to advance. Here, therefore, the following point should be noted :—

Redeemable and Irredeemable Debentures.—Redeemable debentures are those which are repayable at the end of a specified period as per the terms of their issue, whereas perpetual or irredeemable debentures are those which are irredeemable, i.e. the company does not bind itself to repay the capital, but engages to keep on paying interest thereon at fixed intervals. Thus the rights of perpetual or irredeemable debenture-holders arise only when interest falls in arrear, or where liquidation supervenes, or where the receiver is appointed for the property of the company. Formerly, there was some doubt as to whether

an irredeemable debenture could be re-issued by a company, but Section 126 of the Indian Companies Act, 1913 (following a corresponding section of the English Act) makes it clear that "A condition contained in any debenture or in any deed for securing any debenture, whether issued or executed before or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long." This point has been fully dealt with in Chapter X.

It may be added that the word 'irredeemable' is frequently used in case of debentures which the holder cannot force the company to redeem, but by the terms of the issue, the company is left open to pay off same whenever convenient to it.

Re-issue of Redeemed Debentures.—Before our Act of 1913 and the English Companies Act of 1907, the law was in a very unsatisfactory condition as to the re-issue of debentures, as the company after it had once paid off its debentures or any part of them could not keep them alive so as to re-issue them, nor could it issue fresh debentures with rights ranking *pari passu* with the holders of the original series, unless the terms of the original issue authorized this to be done. This caused great hardship because the practice of borrowing on debentures from bankers and others is most common among companies, particularly trading companies, with the result that the law was amended by Section 15 of the English Act of 1907, re-enacted in Section 104 of 1908 which was bodily taken up in our Section 127 of the Indian Companies Act of 1913. Now where either before or after the commencement of this Act (thus making the law retrospective as well as of future application) a company has redeemed debentures which it had issued previously, it can, with certain exceptions, keep them alive for the purposes of re-issue, and where a company shall have power and shall be deemed always to have had power to re-issue the debentures either by re-issuing the same debentures, or by issuing other debentures in their place, and upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same right and priorities as if the debentures had not previously been issued.

The two exceptions are where (1) articles or the conditions of issue expressly otherwise provide, or (2) the debentures have been redeemed in pursuance of any obligation on the company so to do, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns.

The first point is easy to follow, viz. when the articles expressly forbid such a re-issue. In the second case say, where the agreement is that so many per year shall be paid off they cannot be re-issued. "Not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns" cover the case where the debenture has been

deposited to cover a temporary advance and the loan is called in. Here the company can keep same alive and re-issue.

Similar provisions are also to be found in the English Companies Act. (See Chapter X for further details.)

Note.—Issuing of drafts, letters of credit, circular notes and acceptances on behalf of his customers of bills drawn on the authority of letters of credit, have been dealt with at some length in Chapter VII.

BANKER AS AGENT

A banker acts in various capacities as we have stated above. He carries out the orders of the customers for purchase or sale of securities charging his own commission and other expenses. He accepts what are known as " standing orders " by which he is asked to make periodical payments either of customer's club fee, life assurance premium, etc. A standing order must bear the same stamp as cheques, i.e. 2*d.* stamp in England. The banker should see here that he does not miss the payment, but that the same is made on the due date, otherwise any loss entailed will have to be made good by him. He therefore keeps a diary in which record is kept of same.

Collecting Interest and Dividend.—Here, the banker has securities entrusted to him not only for safe custody, but also for the additional purpose of collecting interest and dividend as the same falls due. This gives him the dual capacity, viz. that of a bailee as well as that of banker, and enables him to claim successfully to exercise the right of general lien of a banker over the securities for any debt which may be due to him by his customer. He does not get this right of general lien in case where valuables, such as jewellery, were deposited in safe custody, because there the banker acts in the capacity of a custodian, pure and simple, and these valuables have not come into his possession in the regular course of his business as a banker. (*Brandao* v. *Barnett*, 12 Cl. and Fin. 787.) The same position would arise if the securities were simply kept with him in safe custody in a box, interest and dividend on which was not collected by the banker, but by the customer himself, who occasionally took away some of the securities for the purpose of collection of dividend and interest himself. In other words, to acquire a general lien of the banker on these securities, the banker has to prove that they came into his possession in the regular course of his business as a banker.

General v. Particular Lien.—It may here be added that where a banker has a particular lien, he cannot also claim a general lien because of the principle that a particular lien defeats a general lien. To take an illustration, supposing that securities of the value of Rs. 50,000 were deposited with the banker to secure a debt of Rs. 40,000. Here the banker gets a special or conventional lien to the extent of Rs. 40,000 *plus* interest.

In case the customer fails to pay this amount, the banker can recover this amount out of these securities of Rs. 50,000, but he cannot claim a general lien on the balance of Rs. 10,000 for some other debt which the customer owes him.

In other words, the customer was entitled to have securities deposited for specific advances returned to him on payment of the particular advances for which the securities were deposited. [*Wilkinson & others* v. *London & County Banking Co.*, (1884) 1 T.L.R. 68.] If, however, the securities are allowed to remain with the banker after the specific loan is paid up, the banker will acquire general lien. [*In re London & Globe Finance Corporation*, (1902) 2 Ch. 416 at p. 424.] If, however, a specific pledge cannot be proved under Section 171 of the Indian Contract Act, 1872, a general lien will apply. (*Kunhan Mayan* v. *Bank of Madras*, 19 Mad. 284.)

Lien and Power of Sale.—It may be here added that mere lien gives no power of sale. The only way to utilize this security would be to obtain a decree for the debt and then to attach these securities on execution, the only exception being where rules of Stock Exchange attach a power of sale to the lien. [*Foster* v. *Bernard*, (1916) 2 A.C. 154.] When money is paid specifically to be utilized by the banker for a specific purpose, say to meet certain bills, or to purchase securities, etc., the same is not subject to a lien. (*Symons* v. *Mulkern*, 46 L.T.N.S. 763.) The bankers get a general lien on cheques and bills given to them for collection and a clearing banker, in absence of a special notice, has a lien on the proceeds for debts of the correspondent, even though the bills belonged to the customer of the correspondent. [*Johnson* v. *Robarts*, (1875) L.R. 10 Ch. 505.]

Liability for Jewellery and Plate in Safe Custody.—We have seen that jewellery and plate is also received by a banker in safe custody and that in such a case, he only acts as a custodian and not as a banker. The other point to be noted is that he is here in a position of a bailee with a bailee's liability. In English law the rule is that the bailee may be either a gratuitous, or a paid bailee. In case of a gratuitous bailee, that is, a bailee who does not charge for his services, he is liable only for loss caused through gross negligence, whereas in case of a paid bailee, he would be liable for ordinary negligence. In India, however, there is no such distinction made, and according to Section 151 of Indian Contract Act, 1872, all that he is bound to do is " to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed." Section 152 further states that in case this care required to be taken under Section 151 has been taken, " the bailee, in the absence of any special contract, is not

responsible for the loss, destruction or deterioration of the thing bailed." This liability of the bailee is not confined to the loss caused through his own negligence, but also for that caused through the negligence of his servants in the regular course of their employment. Thus the banker would be liable for the negligence of his servants and officers in case of loss, but on the other hand if the loss is caused through an act or default of a third party, the bailee would not be liable if he can show that the same could not have been prevented even with reasonable care and diligence. The same would be the case if the loss was caused by a bailee's or banker's servants while acting outside the ordinary course of their employment. In India, the question of gratuitous bailment is primarily of an academical interest because all our banks make a charge for taking valuables in safe custody, and even if they did not, the law applicable to them in connection with loss through negligence is the same.

Wrong Delivery of Box in Safe Custody.—All these articles when taken in safe custody are no doubt entered into a special register kept for the purpose and a receipt or acknowledgment is given to the customer. The banker in case of pure and simple safe custody receipt takes no cognisance of the contents of the box. All he is bound to do is to return the box with all the seals intact. Where a banker delivers by mistake, even without being negligent, a box of valuables deposited with him in safe custody to a wrong person even on a forgery on the discharge of the receipt, he would be guilty of conversion and would have to make good the value. In *Hirot* v. *London and North-Western Railway Co.*, (1879) 4 Ex.D. 188 at page 194, Brambwell, L.J., held that " if a man disposes of property, and in law if he without authority delivered it to somebody not entitled to receive it, he might be charged with converting it to his own use. A misdelivery by a carrier was a conversion; I cannot see therefore why a misdelivery by a warehouseman is not a conversion." In *Bristol and West of England Bank* v. *Midland Railway Co.*, (1891) 2 Q.B. 653 at page 756, Lopes, L.J., has laid down that delivery to a wrong person would be conversion. The committee of the Central Association of Bankers, after legal advice issued a statement to the effect that in cases where these safe custody boxes are issued to wrong persons, the banker would be liable as a bailee for negligence. In case of fraud or wrongful removal by a bank servant or official, it would be a case of conversion.

BANKERS' OPINIONS

Opinion in General.—Frequently a banker is requested to give his opinion as to the credit and standing of a customer. This information should only be given to a brother banker,

unless the customer himself has authorized the banker to give this information to a non-banker with whom he proposes to deal. Besides this, in giving this information, as far as possible, he should give only general opinion and should not refer to details as to the state of his customer's account, dealings, etc. He is not bound to make any outside inquiries, but all that he is bound to do is to speak from his personal knowledge of the customer and that of his account. [*Parsons* v. *Barclays & Co. and another*, (1910) 103 L.T. 196.] Formerly in English law it was held that unless the opinion was in writing and signed by the banker no liability or responsibility was incurred, but that view of law is now altered by the House of Lords' decision in *Banbury* v. *Bank of Montreal*, (1918) A.C. 626, in which it is now held that Lord Tanterden's Act on which this English position of law was supposed to rest, had really no bearing whatever on questions such as these. Thus whether the opinion is given orally, or in writing, it makes no difference now both in England and India. Negligence in this connection may involve the banker into damages, but innocent representation constitutes no cause of action according to Lord Wrenbury in *Banbury's* case.

Duty as to Secrecy.—As to the duty of the banker towards his customer to observe secrecy as to the state of his account, the same arises out of contract with his customer, and if he fails in this duty, he will be liable to damages which may be substantial if serious injury has resulted. The case of *Tournier* v. *National Provincial and Union Bank of England*, (1924) 1 K.B. 461, is one which deals exhaustively with this position. Here Tournier was a customer of the National Provincial and Union Bank. A cheque was drawn by another customer of the same bank in favour of Tournier, but instead of paying it to his own account, Tournier endorsed it to a third person who had an account at another bank. On return of the cheque to the National Provincial and Union Bank, the manager of this bank inquired of the other bank as to who the person was to whom the cheque had been paid, and was told that he was a book-maker. The manager of the National Provincial and Union Bank disclosed the information to outsiders, viz. that Tournier was a book-maker. When sued, it was held that the disclosure constituted a breach of duty on the part of the National Provincial and Union Bank to Tournier, their customer, for though the information was acquired not through Tournier's account, but through that of the drawer of the cheque, it was acquired by the National Provincial and Union Bank during the currency of Tournier's account and in their character as his bankers. In the opinion of Sir John Paget, this duty of secrecy not only continues during the course of the currency of customer's account, but enures after the customer's death, and it does not

make any difference whether the account is in credit, or overdrawn, because the confidential position is not confined to the actual study of customer's account, but actually extends to the information derived from the account itself.

When Released of this Duty ?—In the above-quoted *Tournier's* case, Banks, L.J., classified the cases where the banker would be released from his obligation to secrecy regarding his customer's affairs. They are (1) when compelled by law to disclose; (2) when public duty forces him to disclose; (3) when the bank's own interests require disclosure; and (4) when disclosure is made with the consent of the customer, expressed or implied.

To sum up the points made in the above two cases (*Tournier* and *Parsons*), the banker is bound by his duty as to secrecy in all cases except :—

(1) Where the customer consents expressly or impliedly, i.e. by giving a reference to the banker.
(2) When the banker is compelled by law.
(3) When the banker has to disclose with a view to protect his own interests.
(4) When the interests of the State require same.
(5) When he gives this opinion to a brother banker in confidence according to banking practice, and confines his remarks to facts disclosed by books of account.
(6) When it is given honestly and in good faith.

Care while Declining Opinion.—When an outsider who is not a banker asks for information, or opinion, from a banker as to his customer's financial position without any authority from the customer concerned, the banker should of course decline to give it. While declining, care should be taken to see that anything which is likely to injure the customer's credit is not said, but it should be made clear that there would be no objection to give the opinion, if authorized by the customer to do so.

MONEY LENT AT SHORT NOTICE OR CALL

From what we have seen above, it is evident that the banker's obligations are mostly to pay cash on demand whether they be in connection with current accounts, bills discounted, loans and overdrafts granted or notes issued. Thus the bank manager is constantly between two conflicting aims, the one being to make such profits as he can by keeping the bulk of his funds properly invested and at the same time arranging his investment in a manner that would ensure sufficient loose cash being available in case of an unexpected run on the bank. Of course, under the normal circumstances, if there was an unreasonable rumour against the bank which caused the run, other banks will be ready to accommodate on proper security and guarantee, but in the times of financial stringency when all

bankers are more or less pressed for loose cash, the banker has largely to depend upon his liquid resources. One of these resources is made up of what is known as the " Short Loan Fund ". This amount is the unemployed cash of a banker for such emergency which is lent out by him " at call or on short notice ". This money is generally borrowed by stock exchange operators, shroffs, bill brokers, etc. and is lent for the short period of twenty-four or forty-eight hours, and in some cases from afternoon to afternoon when it is known as " overnight money ".

SECURITIES AGAINST WHICH BANKER ADVANCES MONEY

A banker advances money against various securities, the details of which will be considered in Chapter XI. It may be mentioned here that the most familiar securities are Government Stock, Loans and other First Class Paper, commonly known by the denomination of " gilt-edged " securities. Generally they are deposited with a memorandum acknowledging the debt and recording the transaction of loan.

Shares of Companies.—The other securities are shares of joint-stock companies. Here, share certificates are frequently deposited together with blank transfer forms, against the banker's advances. The idea is that in case the borrower does not pay the loan in time, the banker can sell the shares and recover his principal and interest out of the proceeds, handing over the surplus to the borrower. But the danger of taking blank forms of transfer lies in the fact that the borrower may by some fraud obtain duplicate certificates and pledge them twice over with some other banker. If the other banker gives prior notice to the company of this pledge, he obtains priority over the original lender. The other risk the banker runs is that, generally speaking, in case of good many joint-stock companies, a clause is to be found in the articles of association to the effect that the company itself will have a first and paramount lien over all that is due to it by the shareholder. If, therefore, the borrower, as a shareholder of the company concerned, owes money to the company and the banker, without making investigation, happens to advance money on these blank transfers, he may ultimately find that his security is either worthless or not of much value, owing to the fact that the company has a first and paramount right over the proceeds. The safest course, therefore, is to get the shares mortgaged, whereby they are transferred to the name of the banker, or one of his nominees, subject to repayment of the loan. He thus secures what is known as a legal as against an equitable right, and thus the question of lien as discussed above does not arise. In advancing money on this footing, care should also be taken to see that the shares are not partly paid, or that the company

is not an unlimited company, otherwise the banker instead of recovering money may be saddled with liability on the calls for the balance which the customer may not be able to make good. While accepting shares as security, care should be taken to see that the companies concerned are substantial institutions and that their business is not of a speculative character.

Title Deeds.—When title deeds or property are offered, they may be offered by way of equitable mortgage, or legal mortgage. An equitable mortgage is a mere deposit of title deeds against the loan or advances made, and, generally speaking, a modern banker would only advance on an equitable mortgage, because a legal mortgage means a long term loan which a commercial bank does not, generally speaking, advance. Of course, before deciding to lend, the title deeds should be carefully examined by an expert, say, the bank's own lawyers, as the matter is highly technical. The property concerned should also be valued by expert valuers such as architects or engineers, and in case of leasehold properties, proper allowance should be made for the expired period of the lease. The borrower should also be asked to regularly produce the receipt for payment of ground rent on his own property, and in case of all properties, the banker should see that they are kept fully insured for which the borrower should be called upon to produce insurance premium receipts at regular intervals. The banker should accept first mortgage only. Second mortgages should never be accepted, unless having made an indiscreet advance, he wants to fill in his security by way of making the best out of a bad bargain.

Life Policies.—Life Assurance Policies are also frequently offered to banks as securities against advances, though, generally speaking, Life Assurance Companies themselves make a speciality of this type of business. However, when a banker is called upon to advance money on these policies, he must do so on the footing of their " surrender value " i.e. the value which the policy has acquired on the footing of total number and amount of premiums paid. This fact can be ascertained from the company concerned. Of course, while making the advance, a margin must be maintained. Here the usual practice is to lend up ninety per cent of the surrender value. Life Assurance Companies themselves make advances to the extent of ninety-five per cent of the surrender value.

Guarantee Bonds.—The other usual form of security is a guarantee from another person or persons. For this purpose the banker has to get special guarantee forms signed where all the incidents are properly provided for, from the point of view of the banker himself. We shall no doubt deal with these documents at some length later. For the present purpose it is quite sufficient to state that if these guarantees are of substantial parties, and are properly drafted, they form a good security

from the banker's standpoint. In one Madras case, it was decided that in case of a guarantor who has agreed to stand security for a bank's customer for advances made, the bank was under no legal obligation to volunteer to the guarantor any information as to the extent of the customer's indebtedness. But if the bank gives information and the same turns out to be false or wrong, it might vitiate the contract of suretyship. (*Imperial Bank of India* v. *Avavasi Chettiar*, 53 Mad. 826.)

Shipping Documents.—In centres such as shipping ports, etc. shipping documents which are made up of bills of lading and insurance policies are frequently offered to the banker as security against which advances are made. In this case, the bills of lading are generally drawn in a set of three, and therefore, when the banker advances money, he should take care to see that he takes possession of all the three parts, otherwise it is quite open for the borrower to commit fraud by endorsing any part left with him over to any innocent party, thereby jeopardising the banker's security, because here the man who presents the bill of lading first to the shipping office gets his goods, though in law the person to whom the bill of lading is transferred first in order of time gets priority. Litigation and loss are threatened in this connection and the banker should never take the risk of advancing money on bills of lading unless all three parts are handed over to him. If these bills of lading are in the hands of the rightful owner of the goods or that of his agent or factor, the banker has complete security both under the English Factors Act of 1889 and under our Indian Sale of Goods Act of 1930.

RATE OF INTEREST

The rate of interest quoted on the money market, generally speaking, is the bank rate, i.e. the advertised minimum rate at which the Bank of England or the Reserve Bank of India are prepared to discount bills of exchange. The Bank of England or the Reserve Bank loan rate is a little higher than the discount rate which is also quoted on the market. The market itself has a special rate for discounting bills, known as the market rate of discount, which is the rate charged by various joint-stock banks, bill brokers and hundi shroffs. Bank deposit rates are also quoted for interest allowed by banks on current account as well as on fixed deposit account. They constantly vary with the fluctuation of the market. Both the Bank of England and the Reserve Bank of India do not allow any interest on current account deposits. The interest charged on call money is known as " bankers' call rate." This call money may be for overnight or day to day or seven day or weekly loans and the interest on this fluctuates or varies with the demand and supply of loanable funds on the money market.

When money is lent by clearing banks to discount houses and bill brokers in London, it is generally left permanently with them though the condition is that the same may be called up immediately at the option of the lender. The money so lent is known on the money market of London as " good " money. On the other hand, clearing bank funds which are available only on two days a week are known as " bad " money. Naturally all these rates are more or less interdependent, and the whole money market generally follows the indication of the central banks, viz. the Bank of England in England and our Reserve Bank in India. These central banks also manipulate the money market frequently with a view to maintain their rates of interest for one purpose or other.

MINOR'S ACCOUNT

In case of a minor, i.e. a person who has not attained 18 years of age in India, or 21 years in England, the question is *whether the bank would be safe in opening a current account* for him. It is held that " the disability of a minor, or infant, goes no further than is necessary for the protection of the infant." [Per Pearson, J., in *Burnaby* v. *Equitable Reversionary Interest Society*, (1885) 28 Ch.D. 116 at page 424.] From this it follows that an infant cannot give an effective discharge. A receipt by him for an obligation which has already been performed would be good. (*In re Brickle Bank*, 6 Ch.D. 358.) In actual practice, however, this is more or less an academic question, as a banker generally would not open a current account with a minor, but it seems to be the opinion of those best qualified that, there is not much danger in opening a current account with a minor, provided care is taken to see that the account is not overdrawn, because any dealing which savours of a loan of money to the minor would be void.

MINOR AS AN AGENT

Though the position of a minor as far as his capacity to contract is concerned is much restricted, there is no objection to a minor being appointed as an agent by an adult to deal on his behalf. Here the minor can, provided he is given proper power, do all that his adult principal can do including borrowing and lending of money, and the transaction would be binding upon his principal. Thus a minor can overdraw his principal's current account and the principal would be bound by same. There is also no objection to a minor being a witness to a signature.

JOINT ACCOUNT

In case of joint account by people who are not partners, much depends as to how and under what instructions their account was opened. If the instructions to the banker were

that all the parties should join in signing cheques, on the notice of death of one of them, cheques drawn prior to his death will be paid. The question then arises what would become of the account and the answer is that in case of pure and simple joint account for business transactions, the property vests in the survivor. If, however, the instructions to the banker are that any one of the parties may sign cheques, on the notice of death of that party, the banker should stop payment of all cheques signed by the deceased. This point has been dealt with fully in Chapter X.

JOINT ACCOUNT BETWEEN HUSBAND AND WIFE

Intention Governs Survivorship.—There is, however, a distinction between the joint account in the name of husband and wife. Here when the husband dies, the question whether the wife should take money by survivorship is a question of intention. If the intention was that the husband opened such account with the deliberate object of leaving his money to his wife, she would no doubt come in by survivorship, but if it was shown that this was only a method of keeping and working the account for convenience, the position would be different. In order to avoid any difficulty of this character, the wisest thing the banker could do is to take in writing from the parties declaring the intention as to disposal of the balance to the credit of the account, in case of the demise of one of the parties. Failing that, and failing proper proof of intention, the chances are that it may be decided that the balance belonged to the husband's estate in case of demise of the husband, as in *Marshall* v. *Curtwell*, (1875) L.R. 20 Eq. 328. If the wife dies first, and the intention of the parties is not express or clear, the husband would take the balance by survivorship.

Joint Account of a Hindu Couple.—It may be here added that a deposit in India in the joint names of a Hindu husband and wife in a bank, on the terms that the same is payable to either or survivor, does not on the death of the husband constitute a gift to his wife. (*Guran Ditta* v. *Ramditta*, 55 Cal. 944.) In this case a Hindu deposited with the Alliance Bank of Simla a lac of rupees which formed part of his self-acquired property. The deposit was made in the joint names of himself and his wife. The husband died in 1920, leaving as survivors his wife and three sons. The wife withdrew the money with interest through her son G, whereupon the other brothers filed a suit, objecting to his withdrawal. It was held that though this money was a deposit by a Hindu in the joint names of himself and his wife, on the terms that the same was to be payable to either or survivor, that fact did not constitute a gift by the Hindu husband to his wife. The position in law was that there was a resulting trust in the husband's favour in the absence of

proof of a contrary intention, because in India there was no presumption of an intended advancement in favour of a wife. Lord Parmoor, who decided this case in the Privy Council, stated that the English law made an exception by which under the circumstances as existing in this case a gift to the wife is presumed, but in Indian law, under the different conditions which attach to family life, and where social relationships are of an essentially different character, the principle was different according to a series of old Indian decisions.

BANKER'S BOOKS EVIDENCE ACT

When Bank not Party.—In early days, bankers, like all other traders, had to produce their books of account in Courts of Law, in case they were summoned to do so by any of the parties to a suit. This practice naturally entailed great hardship, as banks have to continuously work on their books during working hours. This hardship has been got over, as far as suits, in which the bank itself is not a party, are concerned, by the Bankers' Books Evidence Act of 1879 in England and a similar Act of 1891 in India. These acts lay down that " a certified copy of any entry in a Banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extent as the original entry itself is now by law admissible, but not further or otherwise." (Sec. 1.)

What is Certified Copy ?—The certified copy means " a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the banker and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank ". [Sec. 2 (8).] The certificate has to be dated and signed by the principal accountant or the manager of the bank with his official title.

Bankers' books include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank. [Sec. 2 (3).]

A bank officer cannot be compelled in any legal proceeding " to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts, therein recorded, unless by order of the Court or a Judge made for a special cause ". (Sec. 5.)

For the purpose of this Act " bank " or " banker " is defined to mean either (*a*) any company carrying on the business of bankers, or (*b*) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided.

When Bank is a Party ?—From the above, it must have been noticed that the concession of proving by production of a certified copy, instead of by actual books, applies only to cases where the banks are not parties to the suit concerned. If they are, they would be compelled to produce the books under *subpoena*.

Inspection of Books.—The Court concerned may also permit any party to the legal proceeding to inspect or take copies of any entries in a banker's books for any of the purposes of such proceedings. [Sec. 6(1).] In this connection it has been held in *Tricumlal* v. *Lakhmidas*, 5 Bom. L.R. 865, that where this inspection is wanted by a party on his own behalf, the same may be granted *ex parte*, but when he applied against the other party, the Court ought not to make the order without notice to the other party. The application, of course, should also be for inspection within ordinary rules of procedure.

CHAPTER VI

CURRENCY, ENGLISH AND INDIAN

In this chapter it is proposed to deal with the principles on which English Currency is based first and thereafter Indian Currency will be dealt with in a separate section.

From the earliest the necessity for selection of some suitable medium of exchange for the purpose of sale or exchange of commodities as well as for being used as a measure of value was felt. As civilization advanced, various articles were used as money. Ultimately, the precious metals were found to be the most convenient media for being used as money and were universally adopted by all civilized nations as the basis, or foundation, of their currency.

BRITISH CURRENCY

British Currency is made up of gold, silver and bronze coins.

Gold Coins.—British gold coins as they existed in the days prior to the year 1931 were known as sovereigns. Each sovereign contained 113.0016 grains of fine gold and including the alloy, weighed 123.27447 grains of standard gold. It was an unlimited legal tender, which means that a debtor in England could pay his debt to an unlimited amount in gold sovereigns and compel his creditor to accept same in satisfaction of his debts. Formerly anyone could take gold to the Royal Mint in England and get same coined at £3-17-10½ an ounce troy free of charge, provided he took gold bars of the value of £20,000, in other words the Royal Mints were open to the free coinage of gold. The Gold Standard Act of 1925 relieved the Royal Mint from this obligation to purchase gold, except that which is brought to it by the Bank of England. Under the present law, however, any person can sell gold to the Bank of England. The Bank by the terms of its Charter was bound to buy all standard gold offered at the rate of £3-17-9 an ounce. The Bank of England was also bound to sell, under the same Act, to any person, against payment of any legal standard, standard gold bullion at £3-17-10½ an ounce troy in bars containing approximately 400 ounces troy. The sovereigns, as we have seen above, are legal tenders, but only so far as their weight has not diminished through wear and tear, or otherwise, below 122½ grains, and in case of half sovereigns below 61.125 grains. In law every one to whom a sovereign or half-sovereign of lesser weight is offered is expected to deface same and return it to the offerer failing which he is liable to a penalty under the Act.

Silver Coins.—The principal English silver coin is the shilling, whose standard weight is 87.272 grains. It is a token coin in

the sense that it does not contain sufficient silver to represent its value and is legal tender up to forty shillings.

Bronze Coins.—The bronze coin in use in England is the penny which should weigh 145.833 grains, half-penny 87.500 and farthing 43.750. The pennies are a limited legal tender up to twelve pence.

Both silver and bronze coins are issued as token coins for the purpose of being used as small coinage.

Notes.—In case of " notes " in England, at one time there used to be two denominations of notes issued by the English Banks, viz. (1) " bank note " which was issued by the Bank of England, and (2) " country note " issued by banks situated outside the radius of sixty-five miles of London. There is now no issue of country notes except that of the Bank of England notes, because the note issue of country banks has lapsed. It may be added here that in the year 1914, after the outbreak of the Great War, British Government issued its own notes for the first time in English History. The object was to save the reserve of gold. The notes issued by the British Treasury were ultimately fused with the fiduciary issue of the Bank of England by the Currency and Bank Notes Act of 1928 as we shall see later.

A BRIEF HISTORY OF ENGLISH METALLIC CURRENCY

Originally in England there was a silver standard which was based on a Saxon pound of weight of silver. This Saxon pound was divided into twenty parts; each making up a shilling. Gold coins were originally put into circulation about the beginning of the fourteenth century and used to circulate at varying rates compared to silver. During the Great Civil War in the reign of Charles I, as well as the unsettled condition of the country all throughout the republican era, the coinage in England was neglected. In the reign of Charles II also matters were entirely neglected by that monarch. It was not until the reign of William III that the matter was seriously taken in hand. By that time the depreciation of silver coins varied from thirty to fifty per cent in weight, with the result that people had to carry pocket scales for weighing coins, as people could not possibly accept them by tale. Gold coins which were originally meant to circulate at twenty shillings were exchangeable at varying rates. The limit is said to have reached to thirty shillings, because of the clipped and worn-out condition of the coins. William III ordered re-coinage of silver at an enormous cost to the State. Guinea at that time was valued by the treasury at twenty-two shillings in the new coin, at which ratio the Treasury was prepared to issue same. The Continental value of gold contained in this guinea was about twenty shillings and eight and a half pence. The result was that the newly issued silver began to

disappear rapidly. At the time the Royal Mints were open to the coinage of gold and silver. People soon discovered that it was more profitable to bring gold to the mint to be coined into guinea and exchange it at the Treasury for twenty-two shillings. They adopted the obvious course of importing gold from foreign countries and exported the shilling. Gresham's law was in operation here, with the result that the overrated gold coin was driving the underrated silver out of circulation. This was pointed out at the time by Sir Isaac Newton in the year 1717 when called upon to give his advice. At the date, Sir Isaac Newton made his report, the guinea was actually circulating in England at 21*s*. 6*d*. Sir Isaac recommended reduction of one shilling in the value of guinea, but as the first step with a view to ascertain the accuracy of his deductions, he suggested that a reduction of 6*d*. may be made. He argued that as this course would lower the profits of those who were exporting silver, the drain of silver would be lessened. If that result was brought about and the soundness of his deductions proved, he recommended a further reduction of six pence with a view to bring about a parity of ratio between England and the Continent of Europe. This report was accepted, and in its terms, a first reduction of six pence was made, but for some unknown reason nothing more was done, with the result that silver coins disappeared from the country, with the exception of worn-out, clipped and degenerated coins which were used for small change. For nearly a century thereafter, though in theory, England claimed to possess a double standard of gold and silver; in actual practice, they had a single gold standard. Ultimately, in the year 1916, England declared her coinage to be based on a single standard of gold, silver being used for the convenience of small change, in form of token coins. The generation which objected to a single gold standard having passed away, no difficulty was experienced in legally recognizing that which was in practice an accomplished fact.

The English coinage of the present day is neither a monometallic nor a bi-metallic system. In case of the monometallism, a single metal has to be used in currency. The difficulty of this is that if gold were used, small coins in gold could not be conveniently handled, whereas in case of a single silver standard, the same would be too cumbersome to be used for large payments. A compromise had to be reached between these two systems, and thus the English currency represents that idea. It is thus called a " composite legal tender system ", and comprises of certain elements of both the systems.

The metallic currency of England at present consists only of token coins which circulate, not as a standard or store of value, but merely as a medium of exchange for purposes of convenience. Since September 1931, the monetary standard of

England is the paper pound instead of the gold sterling. The old Gold Standard given up in that year continues to be suspended.

A BRIEF HISTORY OF ENGLISH PAPER CURRENCY

Goldsmith's Receipts.—The Paper Currency of England has also an interesting history behind it. During the times of the Great Rebellion to which we have already referred, people lodged their valuables and money with goldsmiths, who kept strong boxes and armed retainers to protect their own property. These goldsmiths gave receipts for the value of these articles left with them, promising to return the value on demand which became ultimately bank notes, because these goldsmiths, on discovering that they could utilize a certain proportion of this money for the purposes of lending out, started business of money-lenders and bankers. Thus came into existence the early English private bankers, a good number of whom were originally goldsmiths.

Evils of Unrestricted Notes.—In early days of banking it was considered imperative that a bank, or a banker, should be allowed to issue his own notes with the result that note issue was unrestricted in hands of those who called themselves bankers. The only exception made was in case of joint-stock banks, because the Charter of William III and the subsequent Act of 1708 gave the Bank of England a virtual monopoly of issuing notes in England as a joint-stock bank. In other words, other joint-stock banks may be formed, but they could not issue their own notes. This Act of 1708 forbade any other joint-stock bank (except the Bank of England) consisting of more than six persons to " borrow, owe, or take up any sum or sums of money on bills or notes payable at demand, or at a least time than six months from the borrowing thereof." At the same time, the anomaly of permitting private bankers to issue their notes unrestricted was allowed to continue. The result was that for over a century English joint-stock banking could not progress, as it was very difficult for them to compete with private banks who could receive money without paying any interest, by issuing notes, whereas the former had to pay interest on deposits received by them. The evil effect of this monopoly of the Bank of England was gradually brought into prominence, through the repeated failure of a large number of petty traders and dealers, who had added the designation of " banker " to their trade description and issued notes within their own circle of influence. The money thus obtained was frequently lost in speculation and such frequent failures brought in repeated monetary crises. One of these series of monetary crises took place in the year 1825, which roused much comment, with the result that Bank of England's monopoly of note issued as the only joint-stock bank in the country had to be restricted to a radius

of sixty-five miles around London. This restriction had a salutary effect, because it brought into existence, on the country side of England, substantial joint-stock banks who issued their own notes. Thus " country notes " came to be issued by both the private bankers and the joint-stock banks as well.

Currency and Banking Theories.—In spite of this, the position of the note issue was not quite satisfactory. The fact was repeatedly brought into prominence, during the frequent monetary crises, that England should have a substantial central bank in whose hands the whole of the note issue should be concentrated. On this question there were two schools of thought in Parliament one of which was called the school of " Currency Theory ", led by Lord Overstone and the other known as the exponents of the " Banking Theory ", was led by the famous Mr. J. W. Gilbert, who was the Manager of the London and Westminster Bank. The Currency Theorists contended that all notes issued should have equivalent deposit of metal, whereas their opponents, the British Theorists, asserted that all that was necessary was to see that the notes were issued against legitimate business transactions. Both these ideas were rather fallacious, because a deposit of equivalent metal meant that no notes could be issued in excess of the precious metal in deposit, whereas a note issue must circulate in excess of the metal in deposit, without which there can be no elasticity, so essential to a perfect paper currency system. The Banking Theorists erred on the other extreme when they urged that a bank need only trouble to see that they financed legitimate business transactions in connection with their note issue, a precaution which was in practice impossible for any banker to observe for the simple reason that it is impossible for any banker to ascertain whether a bill which he discounts is an accommodation bill, or one based on a legitimate transaction. Ultimately a compromise was reached, which was incorporated in the famous Bank Charter Act of 1844.

The Currency Theory has now absolutely no support of any kind from any well-known economists. The theory of a full metallic cover against paper money has been definitely abandoned even by nations like France, which holds a considerable amount of *sterilized* gold. Paper Currency, even in the most orthodox circles, is expected to be based on gold, but this gold is not to represent the full volume of paper money. Thus even when England goes back to the Gold Standard the Paper Currency of England is never expected to have, behind it, a metallic reserve representing the full volume of notes of the Issue Department of the Bank of England.

The Bank Charter Act.—Under this Act the Bank of England was to be divided into two departments, viz. (1) the Issue Department and (2) the Banking Department. The Issue

Department was to look after and regulate the issue of notes. These notes were originally to be issued to the fiduciary limit of £14,000,000 against securities, and the issue in excess of this fiduciary limit was to be represented by an equivalent deposit of coin and bullion, of which silver bullion was never to exceed a fourth part of the gold coin and bullion. It was this Act which originally made it compulsory for the Bank of England to purchase all gold bullion brought to it at the rate of £3 17*s.* 9*d.*

Maximum issue system is one where a maximum figure is fixed beyond which the bank cannot issue notes.

In case of the country banks, an average was to be arrived at in each case on the total amount of their issue for twelve weeks preceding April 1844, in case of each bank which was issuing its notes before the passing of this Act, and the amount so fixed was to be the maximum in case of each such bank beyond which they could not issue notes. There was no restriction imposed on them as to the deposit of bullion similar to that applying to the Bank of England. If any of these country banks were to fail or suspend their issue, or were to amalgamate with other non-issuing banks, two-thirds of lapsed issue of such banks was to be added to the fiduciary limit of the Bank of England, thereby increasing that bank's fiduciary issue to that extent. New banks, i.e. those started after the date on which this Act came into force were prohibited from issuing their notes. All country bank notes were to be adequately stamped, but in case of the Bank of England notes, a yearly payment of £180,000 exempted it from paying any additional stamp duty. All banks other than the banks of issue were prohibited from " drawing, accepting or endorsing a bill of exchange payable to bearer on demand ".

It may be added that the limit of the fiduciary issue of the Bank of England, as provided for by the Bank Charter Act of 1844, gradually rose with the lapse of each country bank to the figure of £19,750,000 from the original figure of £14,000,000.

Treasury Notes and Increase of " Fiduciary Issue ".—The " fiduciary issue " of the Bank of England which, as we have noticed, had gradually risen to £19,750,000, was further raised by the Currency and Bank Notes Act of 1928. This was due to the fact that during the war a large quantity of Treasury Notes for £1 and 10*s.* were issued by the Government Treasury of England for the first time in the history of the country. This issue was ultimately transferred to the Bank of England by this Act. The fiduciary issue, therefore, is now fixed at rather a high figure of £260,000,000, and all notes issued in excess of this have of course to be represented by gold deposit in bullion and coins. The fiduciary issue, on the other hand, has to be represented by securities of an amount sufficient in

value to cover the said issue for the time being. These securities may include silver coin of an amount of 5½ million pounds. The Bank of England can now issue notes of £1 and 10*s*. These notes may also be put into circulation by the Bank in Scotland and Northern Ireland and shall be deemed a legal tender of payment by the bank or any branch of the bank. Holders of bank notes of higher denominations, such as £5 and upwards, are entitled, on demand made at any time during office hours at the head office of the bank, or in the case of notes payable at a branch of the bank, either at the head office or at that branch, to require in exchange for the said bank notes of £5 and upwards, bank notes of £1 or 10*s*. With reference to £1 and 10*s*. notes, on the contrary, they are payable only at the head office of the bank. The fiduciary issue may be increased to such specified amount above the limit of £260,000,000 as the Treasury may deem expedient at the request of the bank, for which authority of this department has to be obtained. But such increased issue shall continue for a period not exceeding six months subject, of course, to the said authority being renewed or varied from time to time on like representation and in like manner. The total period, however, of renewal shall not in any case exceed two years from the date on which it was given, without the authority of Parliament. All minutes of the authorities given by the Treasury for the increase of this fiduciary issue must be laid before the Houses of Parliament. In a like manner, the Treasury may, on request by the bank, direct the amount of the fiduciary issue to be reduced by such amount as may be determined and for such period as the Treasury in consultation with the bank may direct.

With reference to the note issue of the Treasury, the same was transferred to the Bank of England, together with all assets of Currency Notes Redemption Account, other than Government Securities, and where the assets were not sufficient in aggregate to equalize the amount of notes so transferred, Government Securities of such amount as represented the balance were to be transferred to the Bank of England. In valuing these Government Securities, the market price as on the appointed day of transfer, less accrued interest thereon, was taken as the basis. These notes so transferred were ultimately cancelled and the Bank of England issued in its place its own notes of the denomination of £1 and 10*s*.

It was also arranged that all profits from note issue were to be paid to the Treasury, in such manner and at such times, as may be agreed between the bank and the Treasury. This profit was to be ascertained in such manner as may be agreed between the bank and the Treasury. The bank was now relieved from liability of paying the amount it paid hitherto in consi-

deration of exemption from the stamp duty on bank notes under the Bank Charter Act of 1844.

Over and above these, it is now enacted that with a view to concentrate the gold reserve with the bank and also to effect economy in the use of gold, any person in the United Kingdom who holds gold coin or bullion to an amount exceeding £10,000 in value shall, on being required to do so in writing, furnish to the bank in writing particulars of same, and if so required sell to the bank whole, or any part of this coin or bullion, except that which is *bona fide* held by the said person for immediate export, or for industrial purposes, on payment in case of coin of the nominal value thereof and the case of bullion at the rate fixed in Section 4 of the Bank Charter Act of 1844.

In September 1931, England found that the drain of her metallic reserve was assuming uncontrollable proportions. The efflux of gold was severe, and the whole gold reserve was experiencing a serious attack. Under these circumstances the Gold Standard was again suspended and the currency was made inconvertible. The fiduciary portion was, however, not expanded. The suspension of the Gold Standard was brought about generally by consideration of a protective character, namely to keep in the vaults of the Bank of England the nation's gold resources.

GENERAL OBSERVATIONS ON THE BASIS OF CURRENCY

At an early date in world's civilization, mankind found the necessity of having a common medium for exchanging goods and valuables. At different periods and in different countries, articles such as "cowries", blocks of tea, etc. were used as money. Ultimately precious metals came to be used as money. The three most important functions which money is expected to perform are to serve :—(1) as medium of exchange; (2) measure of value; and (3) standard of value for deferred payments.

Bimetallism.—When two metals were used as money, both being legal tender to an unlimited extent, the system was called bimetallism. A perfect bimetallic system must cover three requisites, viz. (1) concurrent circulation of gold and silver at a ratio fixed by the State; (2) the mints being open to the coinage of both the metals; and (3) both metals being unlimited legal tender.

Bimetallism and Gresham's Law.—The difficulty in the way of bimetallic system is that the mint ratio and market ratio of the metals generally vary, with the result that Gresham's Law comes into operation. Gresham's Law lays down that in case overrated coins are allowed to circulate at the same nominal value with underrated coins, the former will drive the latter out of circulation. To put in a more popular parlance, if inferior

or debased coins are made to circulate at the same nominal value with coins of full weight and value, the bad coins will drive the good out of circulation, but the good will never drive the bad out. In case where two metals are used in coins, and a ratio is fixed by the State, say at 15 to 1 between silver and gold, and supposing that the market ratio varies, with the result that 15½ ounces of silver are equivalent to one ounce of gold, all gold coins would disappear from circulation. Bimetallism, for some time during the nineteenth century, was the subject of acute controversy among European nations. This system was much championed by the French who introduced the perfect bimetallic system within its territories. The system failed owing to the difficulty of keeping the mint and market ratio at par and also owing to large silver discoveries. All the important nations of the world have today modelled their monetary systems on a gold standard.

Effect of Gresham's Law on Paper Currency.—The Gresham's Law operates on paper currency where the same is inconvertible and issued in excess of the wants of the people. A convertible currency never gets issued in excess, for the simple reason that, if in excess, it would be converted into cash by the people who hold it. The result of an excessive issue of inconvertible paper money is that it drives the precious metals out of circulation. This is because paper money depreciates if issued in excess and gets overrated as compared with coins. It thus drives these coins out of circulation. A clear demonstration of this phenomenon was prominent during the Great War, in connection with paper currencies of France, Germany, Austria, etc. most of which countries took a long time even to recover from that disadvantageous position.

Summary of Operation of Gresham's Law.—Thus it will be noticed that Gresham's Law operates in varying circumstances as follows :—

(1) When coins of only one metal are in circulation of varying weight and quality at a fixed value the result will be that coins of inferior weight and value will drive those of superior weight and value out of circulation.

(2) When coins of two metals are in circulation at a ratio fixed by the State, so long as the market ratio remains at par with mint ratio both the metals will freely circulate. If, however, at any time the market ratio of value between the two metals is disturbed and as a result one set of coins get overrated, the result will be that the overrated coins will drive those underrated out of circulation.

(3) If inconvertible paper currency is issued at any time in excess of the want of the people the result will be that it would soon lose its value and drive the metallic money out of circulation.

Inconvertible Notes in England.—In England, once in its history, the experiment of inconvertible paper currency was tried. That was during the Napoleonic War. Pitt began to draw upon the gold reserves of the Bank of England by repealing the clause in the Bank's Charter, which forbade it to lend beyond the amount of its capital. This reduced the stock of gold at the Bank of England to such a low level that an Order-in-Council had to be issued directing the bank to suspend payments in cash for its notes. The Bank of England notes thus became inconvertible. For some time, this did not make much difference, but gradually, as notes got issued in excess, the result noticed was (1) unfavourable foreign exchange, and (2) a general rise in prices. The gold prices were reckoned in paper money which had depreciated, which was the cause of these two results. Great controversy followed at the period, but ultimately, after Napoleon was defeated in 1818, the price of gold revived and the Bank of England resumed payment of its notes in gold.

Prices and Currency.—We have thus seen that prices depend at least in one particular, on the condition of the currency. If the currency of a country happens to be debased, the prices will rise. This may happen in case of metallic currency when it is worn out, or for some other reason does not carry, or is not backed by, sufficient metal to represent its value. In case of paper currency, when it is convertible and issued in excess of the economic wants, it loses its value and prices measured in it rise. Our standard of currency is gold, so it is in various important countries in Europe and America. The present fall in prices all the world over is accounted for on these grounds by many leading economists, as due to the scarcity of gold, caused through the large reserves of gold made by banks in the United States and France, as well as to a smaller than usual supply from the mines. The rise in gold value means fall in prices measured in gold currency.

Of course, the other causes that affect prices are the demand and supply of commodities. These are causes which operate independently of the condition of currency.

FOREIGN EXCHANGES

A brief treatment of this subject here will be appropriate. The ruling idea in case of these foreign exchanges is to settle a debt due in one country to an individual in another country by a remittance. Thus if A in India owned £100 to B in England, he would have, in the absence of other methods, to settle this debt by either sending goods or bullion of that value to England. Now supposing that if C in England owed £100 to D in India the whole trouble and expense of remitting these £100 and re-remitting could be saved, if by some arrangement C in

England could be made to pay £100 to B. Bankers who deal in exchanges render that service by selling drafts on England from India and receiving drafts for encashment from England to India. They thereby square up the account as far as possible. If drafts on England are in greater demand than those received in India from that country, the rate of exchange quoted in India gets less favourable to the remitter from here to England and *vice versa*.

Mint Pars of Exchange.—In case of countries having gold standard currency, mint pars of exchange are arrived at by comparison of gold contained by standard coins of any two given countries. In pre-war days, when the metallic currencies of countries concerned were in perfect condition, mint pars between Paris and London was 25.22 francs a £1; Berlin and London 20.48 marks a £1; New York and London $4.866 a £1, and so on.

The Specie Points.—The logical idea is that the loss on exchange between two given centres should never exceed the actual cost of remitting bullion from one centre to the other, i.e. the " specie point ". This is because as soon as the specie point is crossed, merchants and bankers would naturally prefer the less expensive method of remitting bullion under such condition. If sometimes on paper, the quotations seem to exceed the specie points, that may be accounted for either by (1) the condition of currency of the remitting country being debased, or (2) the published specie points not being accurate, due to some recent fluctuation in freight, insurance, interest, rate, etc. Generally speaking, such conditions seldom arise because remittances of bullion is the most expensive method of settling accounts between two countries.

The specie points have now totally disappeared, since practically every nation is on a theoretical metallic basis. The specie points do not operate now in gold standard countries, like France, because the restrictions imposed on the movements of gold are severe. Gold has become a commodity where imports and exports are influenced by a variety of consideration, monetary, exchange and political. The use of aeroplanes for the transfer of gold has changed the old basis on which the specie points were calculated.

Higher and Lower Rates.—The other point to be noted is that in some countries exchange is quoted in foreign currencies, as is the case in India, in which case higher rate is for us and lower against us. It means that on the foreign market our rupee is worth more than the par value. If the exchange is quoted in a country in its own currency, the higher rate is against that country and lower rate for it, because the higher rate here means that more of that country's money is to be

paid than its par value, to settle a debt in the other country in respect to which the exchange happens to be higher.

Bills on London.—London is the banking centre of the world. Ever since currency and banking came to the forefront, some convenient centre was selected by bankers where they could have their branches, or agencies, through which they could settle their international accounts and debts. Amsterdam was at one time the centre, but for more than a century London has enjoyed that privilege. The result is that all countries remitting money to foreign centres send out drafts payable in the creditor country, e.g. suppose a German wants a debt paid in America, he buys in Germany a draft payable in America. London on the other hand sends out a draft payable in London itself, e.g. a merchant in England, when he remits money to Germany, sends a draft in pounds sterling payable in London. This is because drafts on London are in constant demand all over the Continent and America, because all bankers want to remit money to London *continuously, being the banking centre, and the German can* easily sell his draft received from London in sterling to a bank in his own country. It is thus claimed that bills on London are international currency.

Fluctuation in Exchange.—The fluctuations in the rate of exchange may be summarised as due to the two main causes, viz. (1) demand and supply of bills on a given centre, and (2) currency conditions.

The demand and supply are caused through imports and exports, both visible and invisible, stock exchange influences in cases of centres like London where international securities are bought and sold, and banking influences through bankers' issue of circular letters, bankers' investments abroad and arbitrage operations.

The currency conditions, as we have already noticed, may arise from depreciated metallic or paper money and currency speculation.

Exchange fluctuations can no longer be explained by the old factors or by old Demand and Supply theory. Prof. Gustav Cassel has formulated his Purchasing Power Theory which, though a decided improvement on the old theory has very serious defects in times of competitive currency. Currency manipulation for exchange reason has thrown away the old explanation of exchange fluctuations.

INDIAN MONETARY SYSTEM

The Original Chaos.—Early in the nineteenth century India presented a scene of currency chaos. There was no uniform standard coin in British India, gold and silver coins circulated side by side without any fixed ratio, the silver coins themselves

when the same threatened to fall below the lower gold point. Thus, between the years 1898 and 1917, the rupee was rated at 7.53844 troy grs. of fine gold, which worked out at 15 rupees to the sovereign, or Rs. 28-14-4 per tola of gold. In the year 1918, several allegations were made against the working of this system, and the Government appointed what was known as the Chamberlain Committee which was to enquire whether the then existing practice in currency matters was conducive to the interest of India. This Commission reported, *inter alia*, as follows :—

"Time has now arrived for a reconsideration of the ultimate goal of the Indian Currency System. The belief of the Committee of 1898 was that a gold currency in active circulation is an essential condition of the maintenance of the gold standard in India, but the history of the last fifteen years shows that the gold standard has been firmly secured without this condition.

"It would not be to India's advantage to encourage an increased use of gold in the international circulation. The people of India neither desire nor need any considerable amount of gold for circulation as currency, and the currency most generally suitable for the international needs of India consists of rupees and notes. A mint for the coinage of gold is not needed for the purposes of currency or exchange, but if Indian sentiment genuinely demands it, and the Government of India are prepared to incur the expenses, there is no objection in principle to its establishment, either from the Indian or from the Imperial standpoint, provided that the coin minted is the sovereign (or half sovereign), and it is pre-eminently a question in which Indian sentiment should prevail. If a mint for the coinage of gold is not established, refined gold should be received at the Bombay Mint in exchange for currency. The Government should aim at giving the people the form of currency which they demand, whether rupees, notes or gold, but the use of notes should be encouraged.

"The essential point is that this internal currency should be supported by a thoroughly adequate reserve of gold and sterling."

The War and Babington Smith Committee.—After the first shock of the War, the balance of trade in favour of India began to show a continued and sometimes abnormal increase. The decline, thanks to the restrictions imposed upon the movement of precious metals, particularly of gold and to a certain extent of silver, threw the burden of liquidating a favourable trade balance on the Government of India. Added to this the heavy absorption of rupees by the Indian public, and the unexpected rise in the price of silver from 27¼*d.* per standard ounce in 1915 to 89*d.* in 1919, brought in once again the problem of exchange difficulties of the Government of India. In spite of many measures the exchange gradually rose till it crossed the limit of 2*s.*, which brought in the Babington Smith Committee which was appointed with a view to help the authorities out of the difficulties. The Committee in its majority recommendations suggested that the external value of the rupee should be 2*s.* It also made a number of other recommendations, all of which were accepted by the Govern-

ment of India and some of them including the 2*s.* ratio, were embodied in the currency legislation of the country. But hardly was the Babington Report given effect to when new causes predicted by Mr. Dadiba Dalal practically upset the whole arrangement, thereby making the new currency legislation practically a dead letter. The exchange value of the rupee gradually began to drop till it reached the level of 1*s.* 3½*d.* and thereafter slowly recovered till it reached a ratio of 1*s.* 6*d.* in 1926, bringing in one more Commission known as the Hilton Young Commission.

Fixing the Ratio at 1s. 6d.—The Report of the Hilton Young Committee is dated 1st July 1926, and their recommendation was that the ratio of the rupee in relation to gold should be fixed at the existing rate of 1*s.* 6*d.* "An opportunity," said the Committee, "for reversion to the historic rate of 1*s.* 4*d.*, if ever insisted, is gone, and the best interests of India as a whole, now require that stability should be achieved without producing those disturbances which would be the inevitable consequences of adopting any rate but that which is current." Hardly was the ink on this recommendation dry when events began to prove all their deductions to be not quite perfect.

The Government, however, accepted the Committee's recommendations, and to set all doubts at rest, pending the passage of the currency bill through the Indian Legislature, issued the following memorandum, dated the 9th September 1926 :—

"Doubts have been expressed in certain quarters as to the Government's intention in the matter of maintaining exchange at 1*s.* 6*d.* per rupee, in view of the postponement of consideration of the currency bill in the legislature. The Government of India desire to make it clear that, in accordance with the announcement made in the communique of 4th August 1926, they will continue to take such steps as may be necessary to prevent any undue fluctuation in the exchange value of the rupee in order to confine the movement of exchange within the approximate upper and lower gold points as calculated on the basis of 1*s.* 6*d.* gold rupee, namely, 1*s.* 6-3/10*d.* and 1*s.* 5¾ d., respectively."

Hilton Young Committee's Recommendations.—Briefly taken, the main recommendations of the Hilton Young Committee's Report of July 1926 were the following :—

(1) That the monetary standard in India should be the gold bullion standard. The principal regulations applying to this standard being that :—

(*a*) the basis of the currency shall be gold, the rupee to be equivalent to a certain fixed quantity to gold;

(*b*) the currency authorities were to be placed under a legal obligation to give rupees against gold at a fixed rate;

(*c*) the currency authorities were to be under legal obligation to give gold at a fixed ratio in exchange

of rupees, or its equivalent in the currencies of countries which are based on a gold standard and which do not prohibit the export of gold;

(*d*) the rupee was to be a token coin and may be printed on silver or paper, its intrinsic value being less than its monetary value;

(*e*) gold currency was not to be in circulation or legalised;

(*f*) value of the rupee in terms of gold was to vary between the gold points fixed;

(*g*) minimum limits on the quantity of gold against which rupees could be exchanged or *vice versa*, were to be prescribed.

(2) The control of credit and currency was to be vested in one institution, viz. the Reserve Bank of India, which was to be started, around which the whole currency system of India was to revolve.

Permanent constitution of the Paper Currency Reserve provided for the holding of gold and silver metallic reserve of not less than 50 per cent of the total note circulation, and whereas the balance was to be held in securities, rupee or sterling.

The above recommendations have been the subject of keen and prolonged controversy from ever since they were made. There has been a strong and persistent demand for 1*s*. 4*d*. ratio from the most influential quarters.

The attempt to pass the first Reserve Bank Bill failed owing to strong opposition on various important issues, the two principal being (1) State Bank *v*. The Proprietary Bank, and (2) representation of the Legislature on the directorate. The Reserve Bank of India Act now in force has been dealt with in a separate chapter.

Revision of the Ratio.—The greatest difficulty has been the ratio of 1*s*. 6*d*. It was placed on the Statute Book after a bitter struggle between the elected members and the official benches. The difficulties of the State were not ended in spite of this Statutory sanction of the ratio. It is one thing to fix an artificial ratio and pass same into law, and quite a different thing to maintain same. The result is that ever since it was established, various devices have been tried to maintain same at 18*d*. but in spite of all that the ratio has been showing an obstinate tendency to fall below the limit fixed. This has led to frequent attacks from the people's representatives on the authorities who control same. The contractions of currency, reverse councils, borrowing on foreign markets, abnormal gold exports, are methods which are not only very costly, but cause considerable loss and inconvenience to trade and industry through the scarcity of money and consequent rise in interest.

If the 18*d.* ratio has proved to be not the natural and normal ratio through experience, there is no reason why the same should not be altered to 1*s.* 4*d.*, and India being a large exporting country, a lower ratio is more to her advantage in our opinion. The question, we submit, must be reconsidered after the present war conditions are over.

THE PRESENT SYSTEM

In 1925 the rupee was linked to gold but no other important changes in the structure of the monetary system of India were made. Later on the Currency Act of 1927 set up what may be called Gold Bullion Standard under which holders of legal tender currency, like rupees and notes, were entitled to obtain, on application to the Controller of Currency, Calcutta, or to the Deputy Controller of the Currency, Bombay, gold provided they demanded and paid for gold or sterling which were identical at the time—of not less value than 1,065 tolas or 400 oz. The purchase price was fixed at Rs. 21-3-10 per tola of fine gold. At the same time it was provided that gold in the form of bars, not less than 40 tolas fine, could be offered for sale in unlimited quantities to the Government. Gold coins were no longer legal tender that could be received by Government as bullion. The parity of exchange was fixed at 8.47512 grains troy of fine gold. The silver rupee, the half-rupee and Currency Notes were all unlimited legal tender. As for sterling, Rs. 21-3-10 was to buy as much sterling as was required to purchase one tola of fine gold, and Government had the option of giving sterling or net gold in exchange for rupee currency.

This system of Currency was different from the old standard of 1898-1916 inasmuch as there was a statutory gold parity for the rupee and a statutory obligation on Government to buy and sell gold at a certain fixed rate. The Currency Act of 1927 was never intended to be the final currency legislation for India. In 1931 England went off the Gold Standard and India followed England. The rupee remained linked to sterling, not to gold, and the Currency Ordinance of 1931 suspended the operation of the gold clauses of the Currency Act of 1927. The Sterling Exchange Standard came into existence introducing a momentous change in the monetary system of India by a mere ordinance. The procedure adopted to effect a fundamental change in the monetary system of India and the principle adopted created widespread criticism in this country, but the change over from Gold Exchange to Sterling Exchange Standard did not produce any disastrous consequences on Indian exchange, credit, trade and prices. The 18*d.* ratio became firm and had no longer to be supported by artificial measures. Gold exports assumed extensive and alarming proportions and reached over 300 crores. These exports created a demand for rupee bills

which contributed to the strengthening of exchange at the expense of the reserve of the nation in yellow metal.

The next change in the Currency of India began in 1935 when the Reserve Bank of India was established. India at present is linked to Sterling and the whole Currency system of the country has been handed over to the Reserve Bank. This bank manages the system, holds all reserves, controls exchange and discharges other functions of a Central Bank. All the reserves are amalgamated into one reserve and a new form of Currency Statement is issued every week. The Reserve Bank maintains the exchange value of the rupee at 18*d*. Silver exchange has been stopped and surplus silver is being sold by Government. Gold reserves enormously increased. The Reserve Bank has also the right to issue paper currency up to a certain limit and this power gives to the system of Currency considerable elasticity. The amalgamation of reserves and the control of currency and credit by the Reserve Bank have given to the Indian Money Market a healthy tone, reduced the Bank rate and has avoided violent fluctuations in the said rate. Now the Indian Currency and Exchange are no longer dominated by fiscal or financial considerations of the Government of India.

Since the above events occurred the present Great War began in 1939, with the result that by the Ordinance of February 1942 the Proviso to Sub-section 3 of Section 33 was deleted. This Section 33 provides that the assets of the Issue Department must consist of gold coin, gold bullion, sterling securities, rupee coins and rupee securities to an aggregate amount not less than the total liability of the Issue Department. The Proviso provided to the effect that the amount held in Government of India Rupee Securities should not at any time exceed one-fourth of the total amount of the assets of fifty crores of rupees, whichever was greater, etc. This restriction has now been removed by the Ordinance to meet the increasing needs of War Finance. The result is that the amount of notes in circulation has enormously increased. According to the report on " Currency and Finance " for the year 1942-43 issued by the Reserve Bank of India the position is as follows :—

"The year under review (1942-43) witnessed a very considerable expansion in note circulation. The amount of notes legal tender in India stood at Rs. 655.11 crores at the end of 1942-43 as compared with Rs. 392.71 crores at the end of the previous year and the average circulation for the year was Rs. 513.44 crores as against Rs. 287.48 crores during 1941-42. The active circulation increased from Rs. 381.73 crores at the end of 1941-42 to Rs. 643.58 crores at the close of 1942-43. The year under review thus recorded the maximum rate of annual increase in note circulation during the war, viz. 69 per cent as against the previous record increase of 59 per cent in 1941-42. Of the total absorption of Rs 474.18 crores of notes since September 1939, when the active circulation of notes legal tender in India stood at Rs 169.40 crores, the year under review accounted for Rs. 261.85 crores or 55 per cent.

The year 1942-43 was characterized by the unusual feature of a net absorption of notes during all the months of the year. The average monthly absorption during 1942-43 amounted to Rs. 21.82 crores as against Rs. 11.77 crores for 1941-42, Rs. 1.29 crores for 1940-41 and Rs. 3.90 crores for 1939-40. The maximum and minimum absorption at Rs. 32.13 crores and Rs. 7.81 crores occurred during April and July 1942 respectively, the latter month having the only two weeks of the year, namely 11th to 24th July 1942, with a total net return of notes amounting to Rs. 1.22 crores The second half of the year coinciding generally with the busy season showed a larger absorption at Rs. 150 99 crores as compared with Rs. 110.86 crores during the first half."

INDIAN PAPER CURRENCY

Early History.— Originally, i.e. prior to the year 1861, note issue was in the hands of banks, known as " Chartered Banks " and not of the Government. These banks in early days were a few private banks and the issue was confined to the cities of Calcutta, Bombay and Madras. The principal banks were the Presidency Banks which had the right of note issue and their maximum authorized issue was only rupees five crores against which they were compelled to hold one-fourth in specie and were controlled by the Government. These notes were not legal tender. In 1862 under the inspiration of James Wilson, banks were deprived of the right of note issue which the Government took over as a monopoly created by the Act of 1861, though the Presidency Banks were by agreement permitted to transact Paper Currency business as agents to Government, and as a compensation for their loss of note issue, they were also permitted to use Government balances and manage Government Treasury work in the Presidency towns as well as at their branches. This currency business was ultimately transferred in 1866 to a department of the Government.

The Fiduciary Limits.—Notes issued by the Government in various denominations were to circulate within certain circles, and until 1910 they were legal tender only within the circle of issue and could only be cashed at the head office of the circle concerned. The original principle on which the note issue was based on the fiduciary system, which originally placed the limit of four crores and metallic reserve in silver bullion or coin had to be kept over all issue exceeding four crores. Thus, though convertibility of these notes was assured, elasticity was absent in a large way. The fiduciary limit was gradually raised to six crores in the year 1871, eight in 1890, ten in 1896, twelve in 1905, and fourteen in 1911. In case of the last two limits of twelve and fourteen crores respectively, it was also enacted that in the former case securities of the United Kingdom of at least two crores in value and in the latter of at least four crores should be kept. In 1898 gold bullion was also authorized to be received in exchange for notes, and in 1891 a portion of this gold was kept in London. Under the Acts of 1902 and 1905,

Government was permitted to keep the reserve in bullion, gold coins, or securities at their option either in India or London. All the rupees were to be kept in India. In 1910, notes of denominations up to and including Rs. 100 were allowed to circulate all over India as legal tender, and could be cashed as of right at any of the head offices of seven circles in which the issue was divided. During the War, the fiduciary limit which was prior to that of 14 crores, as we have already seen above, was gradually raised until at the end of 1919 the figure came up to 120 crores, of which 20 crores were to be made up of Government of India securities. The circulation of notes had meanwhile considerably increased and elasticity was also much improved. In 1917, notes of the denomination of Re. 1 and Rs. 2-8-0 were also put into circulation. Ultimately in the year 1919 the Babington Smith Committee was appointed to consider the whole of the Currency question. It submitted its report on 22nd December 1919, making various important recommendations most of which were embodied in the Paper Currency Act of 1920 and the Consolidating Act of 1923.

Paper Currency Consolidating Act, 1923.—This Act lays down that a universal currency note shall be a legal tender in any place in British India and that any other currency note shall be legal tender at any place within the circle from which the note was issued. It provides that a reserve shall be maintained for the satisfaction and discharge of the currency notes in circulation, which shall consist of two parts, viz. (1) the metallic reserve, and (2) the securities reserve. The metallic reserve shall consist of the total amount represented by the sovereigns, half-sovereigns, rupees, silver half-rupees, and gold and silver bullion for the time being held on that account by the Secretary of State for India in Council and by the Governor-General in Council. However, gold coin and bullion held by the Secretary of State for India in the United Kingdom should not exceed fifty millions of rupees (five crores) in value. The securities reserve shall consist of the securities which are for the time being held on that account by the Secretary of State for India in Council and on behalf of the Governor-General in Council. It was, however, provided that no securities held by the Secretary of State for India in Council, other than securities of the United Kingdom, the date of maturity of which is not more than one year from the date of their purchase, shall be included in the securities reserve. Also that the securities held on behalf of the Governor-General in Council shall be securities of the Government of India and shall not exceed in amount two hundred millions of rupees, of which an amount of not more than one hundred and twenty millions of rupees may be held as securities created by the Government of India and issued to the Comptroller, such securities being known as " created securities ".

These currency notes in circulation at any time are never to exceed the amount of the metallic reserve and the securities reserve taken together, of which the metallic reserve should be at least 50 per cent of the value of total notes in circulation, with the exception of those notes which have been issued against bills of exchange, as dealt with later. For the purpose of valuing the metallic reserve, gold bullion shall be reckoned at the rate of one rupee = 1.30016 grains troy of fine gold, and silver bullion at the price in rupees at which it was purchased. The securities were to be reckoned at the price at which they were purchased and the " created " securities at the market price of similar securities on the day of their issue.

Over and above this, the Governor-General in Council is empowered to authorize the Comptroller to issue notes to an amount in all not exceeding fifty millions of rupees against bills of exchange which will mature within ninety days from the date of issue. The currency notes so issued shall be in addition to those issued against the reserve and shall be deemed to have been issued on the credit of such bills and that of the revenue of India.

In the year 1924 the issue of one rupee and two and a half rupee notes was definitely declared to cease from 1st January 1926.

Currency Commission of 1926.—In 1926 the Indian Paper Currency System was again the subject of enquiry by a Royal Commission which recommended the establishment of a new Reserve Bank, as we saw above, which was to act as the Central Bank of the country with two departments, viz. the Issue Department and the Banking Department, the former looking after the currency of the country and the latter to banking business. This recommendation, as we have already noticed, could not be immediately put into effect as the Reserve Bank Bill subsequently introduced in the Assembly was dropped for the time being. The second recommendation of the Commission particularly in connection with the Currency Reserve was accepted, viz. (1) Gold sovereigns and half-sovereigns were declared not to be the legal tender in British India, and after 30th September 1927 they were to be received at the Government Treasury at the bullion value which was now fixed at the rate of 8.47512 grains troy instead of 11.30016 grains troy for one rupee. This portion of the enactment tries to stabilise the rupee in relation to gold at a rate corresponding to the exchange rate of 1*s.* 6*d.* to the rupee. (2) An obligation was placed on Government to purchase all gold bullion tendered for sale in the form of gold bars containing not less than 40 tolas of fine gold at the rate of Rs. 21-3-10 per tola of fine gold. (3) A corresponding obligation upon Government to sell gold was also imposed and accordingly any person who makes a demand

at the office of the Comptroller of Currency, Calcutta, or of the Deputy Comptroller of Currency, Bombay, and pays the purchase price in legal tender to the Currency at the rate of Rs. 21-8-10 per tola of fine gold either for delivery at the Bombay Mint or at the option of the Comptroller or the Deputy Comptroller for immediate delivery in London at an equivalent rate, provided that the demand shall not be for an amount of gold or sterling of less value than that of 1,065 tolas of fine gold.

In January 1929 Government published three letters embodying recommendation of the Hilton Young Commission. They established the new 18*d*. ratio, fixed the purchase price of gold by Government at Rs. 21-4-10 per tola in the form of bar containing not less than 10 tolas, a rate of 1*s*. 5 49/64*d*. was notified as the Government selling rate for sterling, and sovereign and half-sovereign ceased to be legal tender. These were the main changes of the Paper Currency Act of 1927, in addition to the power to Government to increase the fiduciary portion of Indian Currency which were embodied in that Act.

Indian Metallic Currency.—The Indian metallic currency is made up of silver coins of the denominations of " one rupee ", " half-rupee " and " quarter-rupee ". The standard weight of Government rupee shall be 180 grains troy and its standard fineness shall be eleven-twelfths or 165 grains of fine silver and one-twelfth or 15 grains of alloy. Nickel coins shall be coined with the authority of the Governor-General in Council for " four anna ", " two anna " and " one anna " pieces. Bronze coins are " a pice ", or " quarter-anna ", " half-pice " and " a pie ". The rupee and half-rupee shall be legal tender in payment of an account, provided the coin has not lost in weight more than 2 per cent below standard weight and has not been defaced. The quarter-rupee shall be legal tender in payment of an account, for any sum not exceeding one rupee under similar conditions. The nickel coins shall be a legal tender for one rupee and the bronze coins shall be a legal tender for a sum not exceeding one rupee.

CHAPTER VII

LETTERS OF CREDIT

Definition.—According to Story, " a letter of credit is an open letter of request by one person, usually a merchant or a banker, requesting some other person or persons to advance money or give credit, to a third person named therein, for a certain amount, and promises that he will repay the same to the person advancing the same, or accept bills drawn upon himself, for the like amount. It is called a General Letter of Credit when it is addressed to all merchants, or other persons, in general, requesting such advance to a third person; and it is called a Special Letter of Credit when it is addressed to a particular person by name, requesting him to make such advance to a third person."

Varying Forms.—The Letters of Credit are of various types but all of them could be divided into two divisions, viz. (1) a letter by which one banker requests another to whom the said letter is addressed to hold a certain sum at the disposal of a third person who is the holder of that letter and to pay him such amount as he requires against either cheques on the banker giving this letter or on the banker to whom the letter is addressed not exceeding in total the whole amount covered by the said letter. This letter is generally taken when the customer is to visit and spend most of his time at one particular place and wants to obtain funds during that period. Such credits are known as " encashment credits "; or (2) they may be Letters of Credit used for the purpose of financing shipments of goods imported or exported from a country or for the movement of produce or manufactured goods from one place to another in the country itself. The former types of letters are known as " Personal Credit Letters " or " Travellers' Facility Letters " whereas the latter types are known as " Letters for Commercial Credits ".

Letters for Personal Credit and Commercial Facility.—With reference to the first type of Letters of Credit we have referred to in the preceding paragraph, the banker giving such a Letter of Credit asks the banker to whom it is addressed to keep a specific sum of money at the disposal of or to the credit of the latter. These types of credits aim at facilitating travellers or others temporarily resident in other centres, by allowing them to make use of the branch offices or agencies of the bank concerned for the purpose of obtaining cash as they may require in course of their travel or residence at these centres by drawing cheques. When this letter is addressed to more than one banker, it is known as a " circular letter of credit ", in which case the bankers to whom it is addressed have to endorse on

the letter the amount paid. Sometimes these letters of credit are accompanied by circular notes in form of cheques, of the value or denomination of such sum as may be convenient to the holder, in which case the letter of credit becomes virtually a letter of indication, stating the amount up to which the circular notes are due, their numbers and containing a specimen signature of the holder. Here, the holder has to keep the letters of credit or indication, as well as the circular notes, in separate boxes while travelling, and gradually cash the notes by producing the letter of credit as well as the signed circular notes at the various banks to which the letter of credit or indication is addressed.

In case of Letters of Credit issued without circular notes, columns are ruled at the back of the letter in which the branches or the agencies have to enter details of the amount which the holder withdraws from time to time in course of his travels or residence at different centres for which the said letter has to be used. The letter may indicate the amount either in rupees or in sterling or in any other currency, and when the amount is drawn at a particular foreign centre, it will be paid in the current account of the centre concerned at a rate of exchange for demand drafts from that centre to the place where the banker issuing the Letter of Credit happens to be. When the last balance is drawn out, the Letter of Credit as well as the Letter of Indication as dealt with above, will be taken away by the bank or agency paying this last balance to be sent over to the bank issuing same duly cancelled. In these cases the traveller who is granted credit either pays in cash of the equivalent amount for obtaining these letters or the same is done through a debit to his current account in credit or through his depositing securities or making a similar arrangement to his banker's satisfaction.

Circular Cheques.- Instead of circular notes with letters of indication as mentioned in the above paragraph, it has now become the custom to issue circular cheques without the letter of indication which must be distinguished from the circular notes referred to above. These circular cheques are issued by banks to their agents or correspondents abroad. These agents sell these cheques to customers about to visit the country where the issuing bank is situated. These cheques are bound in book form on the same basis as the circular notes are bound, and are drawn in the currency of the country where the payment is to be made, bearing the name of the bank of issue. The selling banks or correspondents advise the issuing bank of the sales of such cheques as well as the names of the parties to whom they are so sold, crediting the issuing bank for the amount. The issuing banks in their turn when they pay these cheques debit the selling banks or correspondents. These cheques can be cashed at any branch office, agency or Head Office of the

issuing bank whose list is supplied or furnished to the customer either on the back of each cheque or on a separate booklet or handbook. The cheques are issued in different colours to represent the maximum amount for which they may be drawn, as for example, a cheque in blue may not be used for more than 100 francs and so on.

Letters for Commercial Credit.—It may be mentioned that these forms of Letters for Commercial Credit are of considerable importance in the banking world. They are used for the purpose of financing merchandise in the form of raw produce or manufactured goods and their movement from one place to another either by rail or through shipments. The most important of these letters of credit in connection with business are those used for the financing of produce and shipments of goods in connection with the financing of which the banker takes a very prominent part.

It may be added that the customer who arranges to get a letter of credit from his banker for business purposes, generally gives a letter of guarantee to his banker, with or without security, as may be necessary. In case of the guarantee, the customer guarantees to provide funds to the banker in time to enable the latter to pay the bills on maturity which the bankers happen to accept under this arrangement.

The transactions on which the letter of credit for commercial purposes is obtained from a banker is one under which the person wishing to open such a credit approaches the bank and requests it to give him a letter addressed to another person at some distant centre from whom he expects shipments of goods on credit. The total amount of such credit is settled with the banker by giving the requisite security to the latter's satisfaction and the banker on his side, by giving the said letter of credit, authorizes the other party who is to make the shipment to draw bills of exchange on him according to the tenor and up to the amount mentioned in the said letter, which the banker giving the letter agrees to accept, provided they are drawn strictly in accordance with the terms and stipulations covered by the letter of credit. It is usual to stipulate in the said letter that the credit has to be made use of within the period stated in the letter, usually six months. If the banker undertakes to accept the bills drawn in accordance with such a letter without conditions, the document is called an " open " or " clean " letter of credit. If, on the other hand, the stipulation is that the documents of title to the goods covered by the bills drawn against shipment are to accompany the bills, the letter will be called a " Documentary Letter of Credit ". To take an illustration, supposing a merchant in London wishes to import from India cotton or seed, he arranges with a London banker to give him a letter of credit for a fixed sum, say,

£10,000, which is addressed to the merchant at the other end where purchase is to be made, say in Bombay. In this letter the banker authorizes the Bombay merchant to draw upon him drafts at thirty or sixty days after sight, or at any other period agreed upon, to the extent of £10,000 against shipments of cotton or seed made by him, and the London banker agrees to accept same and pay same when presented in due course in London. It may be mentioned that the London banker arranges this accommodation on behalf of his customer either on his personal credit or on some security lodged with him.

Letters with Documentary Credit.—Generally, the letters of credit stipulate that the drafts drawn against shipments shall be accompanied by documents of title to the goods, such as the Bills of Lading, Insurance Policies, etc. Here the banker gives the letter of credit on request of his customer, authorizing the party concerned to draw bills against him up to a specified limit and undertakes to accept same provided the documents accompanying the draft are in order. (*Barner* v. *Johnstone*, L.R. 5, H.L. 157.) 'In order' means that the bill of lading, etc., strictly comply with description of them in the letter of credit. [*Hansson* v. *Hamel and Horley, Ltd.*, (1922) A.C. 36.] The possession of the bill of lading against acceptance would no doubt give banker a good title to the goods. An agreement between the banker and his customer to the effect that bills of lading would be forwarded against acceptances, would give the banker on acceptance of the bill, as against his customer, an equitable claim, against the bill of lading which is good even against the trustee in bankruptcy or the Official Assignee. (*Lutscher* v. *Comptoir d' Escompte*, 1 Q.B.D. 709.) If the bill is accepted on condition that the same will be payable on delivery of the bill of lading, the banker is not liable to pay unless and until the bill of lading is handed over. He has thus the security for his acceptance in the bill of lading. (*Ex parte Breet*, L.R. 6, Ch. 838 at p. 841.) These letters of credit generally run for a period of six months from their dates, though it may be stipulated otherwise.

The Law throws upon the banker who undertakes to negotiate a draft by his acceptance under a Letter of Credit granted by him to see that the person on whose request he so acts is properly protected, inasmuch as care is taken to see that all the conditions under which the said drafts are to be negotiated are fulfilled by the person to whom the said letter is addressed. He must also take good care to see that the person with whom he is dealing is the person to whom the letter has been addressed. Thus in one case where a bank negotiated a draft which was not accompanied by a Policy of Insurance in proper form, it was held that the bank was liable because it committed a breach of its contract with the party

at whose request the letter was issued. [*Borthwick* v. *Bank of New Zealand*, (1900) 6 Com. Cas. 1.]

Of course here the limit of the bank's obligation was to see that the documents presented along with the bill of exchange purported to be the documents specified in the Letter of Credit. [*Basee and Selve* v. *Bank of Australasia*, (1904) 20 T.L. 341.]

D/A & D/P Bills.—When documents are attached to a bill of exchange and it is arranged that the said documents are to be handed over to the drawee on his accepting the bill, it is called a D/A bill, i.e. " documents against acceptance bill ". If, on the other hand, the documents are only to be handed over or delivered not on acceptance, but on actual payment of the bill, the same is known as " documents against payment ". In the first case, the idea is that the drawee has to be given a credit during the interval that the bill is accepted and the date on which the bill is actually paid, whereas in the other case there is no credit given because the documents are only deliverable on payment. It may be added that in connection with commercial credits, the bills are D/A bills.

Revocable and Irrevocable Credits.—The credit thus given to the seller or shipper on the other side, may be either " revocable " at the banker's pleasure before the shipment is made, or " irrevocable " or " confirmed ", as it is called. When it is " confirmed ", it is known as " confirmed banker's credit " and when once so confirmed to the beneficiary, i.e. the person in whose favour the credit has been granted, the credit cannot be revoked except with the consent of the beneficiary, as otherwise the bankers would be liable to damages. [*Urquhart Lindsay and Co., Ltd.* v. *Eastern Bank, Ltd.*, (1922) 1 K.B. 318; *Canoutsos* v. *Raymond Hadby Corporation of New York*, (1917) 2 K.B. 173.] The idea here is that the shipper in a foreign country wants his money paid to him in his own country against his goods which he is shipping outward. The merchant who imports, therefore, arranges with a first class banker in his own country, who is known in the country where the shipper is situated, with a view to lend his (banker's) credit to him through the medium of this document, relying on which the foreign shipper makes the shipment and draws the bill on the banker. Thereafter, the foreign shipper easily gets this bill discounted in his country, with his own bank, on the guarantee of the letter of credit he holds from the importer's banker, in which the latter undertakes to accept and pay the said bill. Thus the producer gets paid immediately against his shipment. When the said bill with shipping documents is received on the other side, the drawee banker accepts and pays same, his importing customer meanwhile having furnished him with funds, i.e. before the due date.

With reference to the " Revocable Letter of Credit " also, it was held in *Cape Asbestos Co., Ltd.* v. *Lloyds Bank, Ltd.*, (1921) W.N. 274, that in case of revocable letters of credit, though the banker was not under any legal obligation to give notice before revoking, the practice of bankers in the usual course of business is to give such notice and that the said practice was a most prudent, reasonable and business-like practice. This means that though the bankers in the usual course do give notice before revoking as a matter of courtesy and as a matter of policy, they were not bound to do so in law. That is exactly why Bailhache, J., in the above case *Cape Asbestos Co., Ltd.* v. *Lloyds Bank* expressed the opinion to the effect that " an unconfirmed credit is practically useless ". This is subject to the rule that as long as the credit happens to be in force and the documents are in order, the banker must accept the bill, otherwise he would be liable to damages. [*Urquhart Lindsay and Co.* v. *Eastern Bank*, (1922) 1 K.B. 318.]

CLEAN LETTER OF CREDIT

No. 650

THE BRITISH NATIONAL BANK, LTD.
London, dated 15th May 1943.

To

MESSRS. PREMCHAND NATHU & CO., BOMBAY.

DEAR SIRS,

You are hereby authorized to draw drafts upon this Bank at thirty days' sight to the extent in all of £10,000, say ten thousand pounds, and we hereby engage with the drawers, indorsers, and *bona fide* holders of all drafts drawn under and in compliance with the terms of this Credit, that the same shall be duly accepted payable in London, England, on presentation in order, and that they shall be duly honoured on presentation in order at maturity.

This Credit will remain in force for six months from this date. The particulars of all drafts drawn against it must be indorsed on the back hereof, and the bills must specify that they are drawn under Credit No. 650, of the fifteenth day of May 1943.

We are,
Yours faithfully,
For the British National Bank, Ltd.
(Sd.) JOHN MATHUSEN,
Manager.

DOCUMENTARY LETTER OF CREDIT

No. 775 THE BRITISH NATIONAL BANK, LTD.
£15,000 *London, dated 15th May* 1943.

To

MESSRS. PREMCHAND NATHUCHAND & CO., BOMBAY.

DEAR SIRS,

You are hereby authorized to draw drafts upon this Bank at thirty days' sight to the extent in all of £15,000, say Fifteen Thousand pounds, or invoice cost of goods to be shipped to Messrs. N. Green & Co., of this City.

This Credit expires, unless previously cancelled, six months from date. All drafts against it must be drawn and fully advised to us before that date, accompanied by invoice, Bills of Lading issued to the order of the shipper and indorsed in blank, and Marine Insurance Policies.

Particulars of all drafts drawn under this Credit must be indorsed on back hereof, and the bills must specify that they are drawn under Credit No. 775, dated 15th May 1943.

We hereby engage with the drawers, indorsers, and *bona fide* holders of drafts under and in compliance with the terms of this Credit, that against surrender to this Bank of the above-mentioned documents in order, the said draft shall be duly accepted payable in London, England, on presentation in order; and that they shall be duly honoured on presentation in order at maturity.

We are,
Yours faithfully,
For the British National Bank, Ltd.,
(Sd.) JOHN MATHUSEN,
Manager.

Credit not Negotiable.—The letters of credit are not negotiable instruments, neither are they transferable and therefore the thief, or any other person getting possession of same, cannot make use of them in any form which would bind the banker giving same. It may be added that frequently the shipper wishes that the letter of credit which is drawn and written by the banker in a foreign country where his shipments are to go, should be confirmed by some local banker whom he knows. In this case the said arrangements are also made to get the said letters confirmed or "backed" by some banker in the country of the shipper.

THE CONTRACT WITH THE BANKER

Customers' Letter of Request.—Formerly, the importing customer used to send to his banker a letter asking for a confirmed letter of credit to the shipper on the other side in any form he liked, with the result that there were many conflicting decisions and litigation. The English bankers, there-

fore, have now adopted the rule of taking the letter from the customer in a form which has been adopted after due care and in consideration of past experience, favourable and unfavourable. The difficulty mostly arises through the conflict in the decisions on the question as to what constitutes " the usual shipping documents " which are to accompany the draft of the shipper, which the bank giving the letter of credit was bound to accept and honour. There are bills of lading which are regular bills of lading for the actual shipments made, whereas there are others known as " received for shipment bills of lading ". These " received for shipment bills of lading " are issued by the shipping companies against goods when they are delivered to them, and when they are not particularly certain as to the name of the ship by which the same will be sent. It has been decided that the " received for shipment bills of lading " are not documents of title and therefore they could be repudiated by the buyers. [*Diamond Akali Export Co.* v. *Bourgeois*, (1921) 3 K.B. 443.] As to the insurance policies also, letters of credit usually provide for an " approved insurance policy ". Here if the shipper presents the draft accompanied by a certificate of insurance which does not contain the full terms of insurance and the bankers refuse to honour the draft, it has been held that such a certificate was not an " approved insurance policy " within the meaning of the letter of credit and that the banker was justified in refusing to honour the draft. It was further laid down that an approved insurance policy should be one to which no reasonable objection can be made. [*Donald H. Scott and Co.* v. *Barclays Bank Ltd.*, (1923) 2 K.B. 1.] Atkins, L.J., in the course of his judgment, said that " In my view, the phrase ' approved insurance policy ' indicates a reference to some more objective or absolute standard other than the approval of the person to whom it is tendered. It means a policy to which no reasonable objection can be made by reasonable commercial men."

Form of Request Letter.—The form of request or application above referred to as given by the customer to the banker with a view to secure the above credit, no doubt, differs in wording, but the principle more or less is the same. The one recommended in the " Journal of the Institute of Bankers (England) " runs as follows :—

"I request you to open by cable, on my account a confirmed, irrevocable credit with the Bank of Erewhon, Port Erewhon, in favour of Messrs. Producer, there, for a sum not exceeding £..... subject to the conditions appended hereto, available by their draft at sixty days' sight on yourselves, if accompanied by the following documents :—

Full Set 'on Board' bills of lading made out to Shippers Order and endorsed by them in blank;

Commercial Invoices;

Insurance Policy covering Marine and War Risks, including that of floating mines;

In respect of shipment c.i.f. January-February next, of two hundred tons of glycerine, commercially pure, Port Erewhon to London, at £x. per ton.

I hereby engage to keep you provided with funds to meet drafts drawn regularly hereunder and to cover you for the amount of all commissions, charges and expenses incurred. The goods or relative documents are to be held by you as a security for the payment of the said drafts and charges. In the event of my failing to provide you with the requisite funds you are hereby authorized, without notice or waiting for my assent, to sell the goods and apply the net proceeds against the drafts. And I undertake to pay you the sum required to clear any deficiency remaining after such sale."

It will be seen that the above form covers a number of important incidents of the contract between the banker and his customers. There is a request to the banker to open a credit, an undertaking to provide funds coupled with the hypothecation or pledge of goods as security plus the authority to sell the goods without notice and appropriate the proceeds to the clearing of the credit.

When Banker Issuing the Letter Fails.—With reference to the letter of credit issued by a banker at the instance of his client undertaking to accept drafts drawn upon him (the banker), by the foreign exporter against his produce, through a confirmed letter of credit, the question naturally arises whether the exporter to whom the letter is given is entitled to refuse to ship the produce in case the banker who issued the credit becomes insolvent or stops payment. This question was decided as early as the year 1867 in *re Agra Bank, Tondeur, ex parte*, (1867) 5 Equity 160. See also the Privy Council decision in *M. A. Sassoon and Sons Ltd.* v. *The International Banking Corporation*, (1927) 29 Bom. L.R. 1811, where the incidents of a " confirmed bank credit " are also discussed. In the first case, the *Agra and Masterman's Bank, Ltd.*, issued a letter of credit by which they agreed to accept bills drawn against bills of lading of various shipments from Mauritius up to £10,000, the credit being available within six months from the date of the letter. The bank soon after suspended payment and the question then arose whether this constituted a breach, or repudiation of the contract, between the shipper of produce and the merchant through whose instance the credit was obtained. The answer was that the simple fact that the bank became insolvent, or bankrupt, was not in itself a breach of contract, because there was nothing to show that the bills would not be accepted. In other words, the beneficiary of this letter of credit was held not to be entitled to refuse to carry out his part of the contract, simply on the ground of bankruptcy of the issuing bank, because under certain circumstances it may be to the advantage of the bank to fulfil the contract rather than pay damages and in such a case the liquidators would carry out their contract. The line of reasoning taken by *Sir W. Page*

Wood, V.C., in this case was as follows, which happens to be good law even to this day :—

"That the bank has stopped payment is no proof at all that they would not accept the bills. It was argued that it would be wrong in the bank to accept, and wrong in the applicants to draw the bills. But that is not so. As regards the applicants, it was known in Mauritius that the bank had stopped payment. It was known what the consequences must be ; and that if it were so, the bill would have much less credit, and be worth much less. They could only be sold at a much higher rate of discount, owing to the risk that would be incurred with regard to the acceptance when they got over here.

"But who could say that they would not be accepted ? I remember, in an instance of a very large winding-up, I am not sure it was not in the case of this very bank I was asked to direct the official liquidator to accept bills, in the name of the company for the full value of goods. I was asked to do it in order to prevent the consequences of a breach of contract, and the damages that might accrue therefrom. I authorized the bills to be accepted, goods being sent over to the full amount and value of the bills. Hence it is impossible to say that the bills in this case, if they had been accompanied by the bills of lading, might not have been accepted."

Form of Confirmed Credit Letter.—The form of a confirmed letter of credit as recommended by Mr. Spalding in his excellent book entitled *Bankers' Credits* (2nd edition) is as follows :—

THE ALL BRITISH BANK, LTD.

LONDON,.....*dated*.....19

When replying please quote inward credit No.....

.....

.....

CONFIRMED CREDIT

No..... (which please quote).

DEAR SIRS,

We have been requested to confirm to you that for account of.....we have opened a credit in your favour at.....sight for the sum of £..... against delivery of the following documents, viz.:

(1) Full set of Bills of Lading in name of.....
(2) Invoice.
(3) Certificate at Origin.
(4) Marine and War Risk Insurance policies, and
(5) .....

covering a shipment of.....
shipped from.....per steamship.....
to.....before.....

We undertake to honour all drafts drawn within the terms of the above credit.

Yours faithfully,
We are, Dear Sirs,
THE ALL BRITISH BANK, LTD.,

Countersigned. .....*Manager.*

This Credit expires on the.....

With reference to the confirmed letters of credit against shipping documents, the next point to be noted is that when a banker accepts against bills of lading, he must take care to see that these bills of lading the " clean " and unqualified. This point though not strictly decided, can be inferred from the judgment in the case of *National Bank of Egypt* v. *Hannevig's Bank Ltd.* (" Journal of the Institute ", Vol. XLI, p. 305). In an American case, it was further decided, for the first time in 1920, that a customer at whose instance a bank has issued an irrevocable letter of credit cannot compel the bank to cancel that letter, because the issuing of the letter by the bank constituted a binding contract between the issuing bank and the beneficiary, apart from the contract between the beneficiary and the bank. This case was followed by the English case of *Urquhart Lindsay and Co., Ltd.* v. *Eastern Bank Ltd.*, (1922) 1 K.B. 318, where the same principle was laid down and the bankers who, at the instance of the party who got them to issue confirmed letters of credit, stopped accepting and paying bills drawn against proper documents, were declared liable to damages to the beneficiary concerned.

The Position of the Drawer in case of Confirmed and Irrevocable Letters of Credit.—We have seen that in case of " Irrevocable Credit " the agreement is that it cannot be revoked or cancelled unless all parties agree to the same. On the other hand a " Confirmed Credit " letter includes a clause inserted by the bank opening the credit providing an undertaking to protect the drawings in accordance with the terms of the letter. The clause usually runs as follows :—

"We hereby agree with the drawers, endorsers and *bona fide* holders of drafts drawn under and in compliance with the terms of this Credit that the same shall be duly honoured on due presentation to the drawee."

In the above case the question as raised recently by the Indian Merchants' Chamber and other bodies was as to whether in case of the above-mentioned two types of letters of credit, the bills are dishonoured by the bank on which the same are drawn under its letter of credit, the negotiating bank, with whom the same may have been discounted by the drawer, can recover the amount of the bill from the drawer. The answer is clear, viz. that a drawer of a bill under the ordinary law applying to Bills of Exchange, as laid down in both the English and the Indian Acts, is responsible to endorsers and the holder of the bill for the value, to make good the said amount on the dishonour of the bill by the drawee bank. Thus if a merchant in Bombay makes a shipment and draws a bill on " X " bank of London against " X " bank's letter of credit and discounts same in Bombay with the Chartered Bank of India, the said Chartered Bank would have recourse against the merchant in Bombay as the drawer in case the " X "

bank were to fail and is unable to pay the amount. Of course the merchant in Bombay will have the right in his turn to recover the value of its shipment from the London merchant for whom he makes the shipment under his agreement with the said London merchant.

A Meaningless Letter of Credit.—A peculiar form of letter of credit is to be found in *Chandonmull Benganey* v. *National Bank of India, Ltd.*, 51, Cal. 43. In this case a letter of credit was given in the usual and ordinary form and thereafter qualified by directly contradictory terms, and a question of construction arose. The defendant bank wrote to the plaintiff "We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorized to negotiate your bills, as offered on Messrs. M. G. & Co. (of London) to the extent of £16,875, etc." They then added the conditions that (*a*) "Please note that this advice does not release you from the liability attaching to the drawers of a bill of exchange," (*b*) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit." It was held that this document was not by its terms and was intended to be an ordinary banker's letter of credit and that the claim made under it on the basis of the so-called letter on the bank could not be sustained.

Negotiation of Drafts Under a Letter of Credit.—Where the letter of advice from the Eastern Bank, Calcutta, to G. K. & Co., the shippers, stated in effect that under a letter of agreement with their London customer, their London office had granted a confirmed credit to the former and that they were prepared to negotiate three months' bills drawn by the said shippers up to a certain amount. The shipper drew drafts (D. A.) accordingly, against the London customers, but discounted same with some other banker, the I Bank, which bank handed over the shipping documents to the London customer against acceptance and failed. It was held by the Privy Council that the Eastern Bank was not responsible and that the I Bank as holders in due course could sue the Calcutta shippers as drawers for the amount. This was on the ground that the appellants really lost their rights under the confirmed credit, because they chose to negotiate the bills through the respondents. [*Sassoon and Sons, Ltd.* v. *The International Banking Corporation*, (1928) 55 Cal. 1; see also *M. A. Sassoon and Sons, Ltd.* v. *International Banking Corporation*, (1927) A.C. 771.]

Revolving Credits.—In case of firms doing oversea trade all the year round in certain commodities, a system of credit, accompanied by a provision for its repetition is opened which is commonly known among merchants and bankers as "Revolving Credit." As an illustration, supposing that a credit

was opened between two firms, one in England and the other in India, by which the Indian firm is to ship goods and draw bills against these goods on the English Bank, which the latter undertakes to accept and pay under what is called a revolving and confirmed letter of credit for a fixed period. We may further, for the purpose of our illustration, suppose that the credit is for Rs. 50,000. The Indian firm makes its first shipment for the value of Rs. 10,000, which leaves a balance in credit of Rs. 40,000. As soon as the bill drawn against this first shipment of Rs. 10,000 is accepted and paid for in England, the credit again shifts back to the original figure of Rs. 50,000 and so on, until the period provided for in the letter expires. Thus, what actually occurs in practice is that the clearance of one shipment virtually makes room for another of the same value, without fresh instructions being necessary, and that this is the object sought to be achieved by this system of dealing. Much of course would depend on the construction of the letter in which the revolving credit is arranged on the question whether the fresh bills were to be drawn after the others fall due or after they were actually paid for and settled. [*J. Burjorji and Co.* v. *International Banking Corporation*, 27 Bom. L.R. 27.]

Trust Letters or Trust Receipts.—The usual practice of bankers in connection with imported goods, on which they have advanced money by accepting or discounting documentary bills drawn against these shipments, is to arrange with warehouse-keepers to receive the goods and keep them in the name of the banker until such time as the customer on whose account the advance was made, pays the money. Some bankers do large business of advances on shipments of this character, and maintain their own warehouses. There are cases, however, where for practical reasons, the customer has to be entrusted with the goods with a view to enable him to sell, or dispose them off, and out of the proceeds to pay the banker his advance, interest and charges. This is, of course, done only in case of approved customers in whose integrity the banker has complete confidence, after taking sufficient care to see that their money is secure. With this view, they get a document executed by the customer, commonly known as the " trust letter ", in which the importing customer acknowledges receipt of the shipping documents concerned and undertakes to hold the goods represented by them, or the proceeds thereof, in trust for and as trustee of the banker. These trust letters, or receipts, as they are sometimes called, embrace stipulations by which the customer agrees to consult the banker at the time of the sale, as well as to apply the proceeds of the goods in the manner stipulated by the latter. The said letter also contains the usual stipulation on the part of the customer, to keep the said goods fully insured and also to keep both the goods, as well as the money realized by their sale, distinct and separate. According

to some writers, what actually occurs here is that the customer practically hypothecates the proceeds of the sale in discharge of the lien.

Two Interesting Points re Trust Letters.—In connection with these letters of trust, two interesting points were raised in the famous case of *In re David Allester, Ltd.*, (1922) 2 Ch. 211. In this case, the importer was a limited company which had pledged bills of lading with a bank to secure an overdraft. When the time for sale of goods matured, the company obtained possession of the goods by giving a " letter of trust " to the bank, undertaking thereby in usual terms to hold the goods in trust, or its proceeds if sold, for the bank and to remit the entire proceeds to the said bank. The company thereafter went into liquidation and the question as to the priority of the bank as the creditor over other creditors was raised by the liquidator of the importing company. The first point taken was that the letter created a bill of sale in English law which required registration; and the second and the more important point was that it was a mortgage or charge which must be registered within 21 days under English Companies Act of 1929. (The corresponding Section of the Indian Companies Act 1913 being Section 109.) Both these contentions were overruled. In the course of his judgment, Astbury, J., observed :—

" These letters of trust are mere records of trust, authorities given by the bank and accepted by the company stating the terms on which the pledges were authorized to realize the goods on the pledgees' behalf..... The bank as pledgee had a right to realize the goods in question from time to time and it was more convenient to them, as is common practice throughout the country, to allow the realization to be made by experts, in this case by the pledgers. They were clearly entitled to do this by handing over the bills of lading and other documents of title for realization on their behalf without in any way affecting their pledge rights."

With reference to the second point, his Lordship laid down that—

" These letters of trust really create no mortgage or charge on book debts in any true sense of the word at all. The bank had its charge before the letters came into existence. The object of these letters of trust was not to give the bank a charge at all, but to enable the bank to realize the goods over which it had a charge in the way in which goods in similar cases have for years and years been realized in the city and elsewhere."

Thus, it will be noticed that the nature of this transaction is quite simple. Here the importing customer simply acts as a servant, or agent, or trustee, whichever way we may put it, of the bank, as far as the operations of taking possession of the goods and disposing them off to the best advantage are concerned.

Form of Trust Letters.—The forms of " letters of trust " vary, but the one recommended by Mr. M. S. Herries, Fellow

of the Institute of Bankers, is one drafted and settled by him after considerable experience of both English and American banking, as follows :—

TRUST LETTER

.....19 .

I/We hereby acknowledge having received from you for your account the undermentioned documents, viz.....

.....

and in consideration thereof I/we hereby undertake to receive the goods therein specified and to hold the same and the proceeds thereof, in trust on your behalf with authority to sell the goods for your account but not to make any other disposition whatsoever of the said goods, or any part thereof, and in case of any contemplated sale otherwise than

for cash, or

on the usual trade terms, viz. cash in ..... days after delivery I/we agree to advise you to obtain your consent in writing to such sale.

I/We further undertake to hand you the proceeds of all sales as soon as received to be applied against.....

.....

and for the payment of any other indebtedness (whether certain or contingent) of mine/ours to you.

I/We agree to keep the said goods insured to their full value against fire and other risks you may deem desirable, and to hand you the evidence of such insurance, the sum insured to be payable, in the event of loss to you, and in case such insurance is not arranged to your satisfaction, you are hereby authorized to effect insurance, the cost of which I/we engage to pay.

I/We further agree to keep the said goods stored to your satisfaction, and if requested by you to remove them at my/our expense to any other place of storage indicated by you.

It is understood, however, that you are not to be held responsible for the suitability and sufficiency or otherwise of storage or insurance, and that all charges and expenses in connection with such goods are for my/our accounts.

I/We further agree to keep this transaction separate from any other, and to grant you the sole and absolute lien on the goods until you have received full payment *plus* charges including your commission at .....per cent, and interest at the rate of ..... per cent, above Bank Rate, minimum charge 5 per cent per annum, and you are authorized, if you shall think fit so to do, to apply for and receive direct from the buyers the proceeds of any sale, and I/we agree that as against me/us your receipt shall be a sufficient discharge.

I/We further agree that no failure or omission on my/our part fully to carry out any of the provisions of this or any similar agreement shall be deemed a waiver by you of any of your rights or remedies under any of such agreements unless such waiver shall be in writing endorsed hereon and duly signed by you.

It is further agreed that you may, at any time, cancel this trust and take possession of the said goods, or of any of the proceeds of such goods wherever the said goods or proceeds may be found, and that the trust agreement is without prejudice to any of your rights or remedies for the recovery of the ultimate balance on any account between us.

Signed. ..... Stamp 6d. .....

Letters of Hypothecation are documents taken from customers who by depositing documents of title to the goods such as Bill of Lading, Marine Insurance Policy, etc., obtain credit from bankers by giving a charge on these documents. These documents may cover a single transaction when they are called specific letter of Hypothecation but where these transactions between the customer and the banker are frequent a general letter of Hypothecation is given. The letters of Hypothecation give the bankers the right in connection with their loans and advances to the goods covered by the documents. The loans may be given either in actual cash or by accepting bills of exchange or by negotiating drafts in connection with the goods or documents concerned. The banker here becomes the pledgee of the goods or documents and the letter gives him the right to deal with the said goods in any manner which it may be necessary to do so under the circumstances and in case circumstances so arise to sell these goods and recover the whole loan as well as the expenses from the said sale. Of course where the amount so recovered is insufficient to settle the debts due to the banker he can claim the balance from his customer.

CHAPTER VIII

BANKER AND CUSTOMER

As we have already noticed, the relations between a banker and a customer are usually that of a debtor and creditor. The money deposited with a banker is not given to him on trust, but the same is lent to him with a view that he may make use of same in his business and in consideration of such a use he usually pays interest to the latter.

Cases Where the Banker is a Trustee.—There are cases, however, where a banker does place himself into a position of a trustee. Where a remittance was sent to a banker with instructions to purchase shares in a certain company and the bank bought some shares, but before completing the rest of the purchase it failed, it was held that they stood in the position of trustees to the remitter, and, therefore, he was entitled to a refund of the unspent balance of the amount. (*Official Assignee of Madras* v. *J. W. Irvin*, 8 M.L.T. 99.) Also where bankers received money from one party on behalf of another (the latter not being the customer) and wrote to the latter inquiring what was to be done with it, intimating at the same time that it was held in suspense, it was held that the relationship of debtor and creditor not being established, the latter can recover the amount in full out of bank's assets in case of its failure meanwhile. (*Official Assignee of Madras* v. *D. Rajaram Aiyar*, 38 Mad. 299.) On the other hand, where a person had a deposit account with a banker and asked the latter to buy certain securities out of the money which the former agreed to do, but failed before doing so, it was held that this agreement did not make the bankers trustees for the amount in deposit. (*Official Assignee of Madras* v. *The Society for Providing Christian Knowledge*, 8 M.L.T. 52.)

The Usual Dealings with Customer.—In case of fixed deposits, interest is always allowed because here the banker is certain that the money deposited will not be demanded for a specified time or prior to the giving of the stipulated notice. In case of current accounts certain banks do not allow interest as is the case with the Bank of England in England and the Reserve Bank of India, but others allow interest at a very low rate on the running balance of the current account. Atkin, L.J., in the course of his judgment in *Joachimson* v. *Swiss Bank Corporation*, (1921) 3 K.B. 110 at page 127, while dealing with the customer's contract with his banker, said: "I think that there is only one contract made between the bank and its customer. The terms of that contract involve obligations on both sides and require careful statement. They appear upon consideration to include the following provisions,

The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept." Bankers collect cheques as agents for collection and until they place the amount so collected to the credit of the customer, the relationship of a debtor and creditor does not arise. If the bank stops payment before collecting such a cheque, and the liquidator collects same thereafter, the whole proceeds must be handed over to the customer. [*In re Farrow Bank, Ltd.*, (1923) 1 Ch. D. 41.]

Limitation on Current Account.—It was also decided in the above case that in order to make the balance at the credit of a customer due for payment, a demand by the customer was a necessary ingredient in an action against the banker, because the banker's contract with his customer was such that the ordinary rule applicable to a loan of money will not apply to this balance. Atkin, L.J., further added that " the result of this legal decision will be that for the future bankers may have to face legal claims for balances on accounts that have remained dormant for more than six years. But seeing that bankers have not been in the habit, as a matter of business, of setting up the Statute of Limitations against their customers or their legal representatives, I do not suppose that such a change in what was supposed to be the law will have much practical effect." This decision as to limitation was followed in *Bengal National Bank, Ltd.* v. *J. N. Mazumdar*, (1929) 56 Cal. 556. Further for the purpose of the Indian Limitation Act, Art. 60, it has been decided that it is not necessary to prove that the borrower is carrying on business only as a banker. A man might become a banker, or place himself in the position of a banker with regard to a particular customer, and if the dealings between the lender and the borrower are such that the Court is satisfied that it could be said that the borrower is in the position of a banker to the lender, then the

money so lent could be considered as a deposit. [*Bhimanna Kumaji Sonar* v. *Venichand F. Gujar*, 28 Bom. L.R. 78.]

Who is a Customer.—The next point to be considered is as to who is exactly a " customer " from a banker's point of view, because certain sections of the Negotiable Instruments Act give a banker certain immunity and protection, as we shall see later. The older view of the law was that there must be " some sort of account or some similar relation." [*The Great Western Railway Co.* v. *The London and County Banking Co., Ltd.* (1901) Ap. Cas. 414.] Sir John Paget, in his book from which we have already quoted, states, " to constitute a customer, there must be some recognizable course of habit of dealing in the nature of the regular banking business." Thus, the old view expected a course of dealing for some duration, and that is perhaps the state of law applicable to English Law Courts, because the recent decision which alters the same is a Privy Council decision which would of course be binding on us in India. In the case of *Commissioner of Taxation* v. *English, Scottish and Australian Bank, Ltd.*, (1920) A.C. 683, it has been laid down that " customer " signifies " a relationship in which duration is not of the essence, and includes a person who has opened an account on the day before paying in a cheque to which he has no title." For example, a person calls on a banker and opens a current account by paying large amount which is payable to " bearer " and " crossed ". The bank collects the same in good faith and the customer draws out the cash and absconds. Earlier than that in case of *Ladbroke and Co. v. Todd*, (1914) W.N. 165; 20 T.L.R. 443, it was held that the very first transaction between the banker and another party brought about the relationship of a banker and a customer and it was emphasised that in a case like that it was not necessary that the person should have drawn on any money or even that he should be in a position to draw any money. Here a person who stole a cheque which was " crossed account of payee " forged the endorsement of the said payee and representing himself to be the payee opened an account with the defendant bank in the payee's name to which account the cheque was paid in. The cheque on the urgent request of the thief was specially cleared by afternoon and the thief drew upon the account. Not only the circumstances here brought into operation the rule of the banker and customer but it was also held that the banker was negligent and had not taken sufficient precaution and thus he was deprived of the protection of Sec. 131 of the Negotiable Instruments Act, the corresponding section of the English Bills of Exchange Act being 82. It may be further added that it has been held in *Savoury* v. *Lloyds Bank*, (1932) 2 K.B. 122 that it is not safe for a banker to accept a new account without taking care to see that satisfac-

tory references are obtained and in case the prospective customer happens to be in employ of some one, the name of the employer must be ascertained and proper enquiry made. The Section 131 of the Negotiable Instruments Act runs as follows :—

"A banker who has in good faith and without negligence received a payment for a customer of a cheque crossed generally or specially to himself shall not in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment."

(A similar rule is laid down by Section 82 of the English Bills of Exchange Act, 1882).

PASS BOOKS

Whether Entries Binding on Customer.—The position at law in connection with this most familiar document is not quite satisfactory, on account of some conflict in decisions with regard to the main issue, viz. whether entries in the pass book both to the debit and credit of a customer are finally binding on the customer, particularly where the pass book has been written up and sent to him and he does not examine it or raise any objection over it. According to Sir John Paget's view, in his excellent book on the *Law of Banking*, " the proper function which the pass book ought to fulfil is to constitute a conclusive and unquestionable record of transactions between the banker and the customer, and it should be recognized as such. After full opportunity of examination on the part of the customer, all entries, at least to his debit, ought to be subsequently final, and not liable to be subsequently re-opened, at any rate to the detriment of the banker." This is of course what ought to be the law in the opinion of the learned author, but unfortunately, the trend of decisions in England is opposed to that view, e.g. in *The Kapitigalla Rubber Estates, Ltd.* v. *The National Bank of India, Ltd.* (1909) 2 K.B. 1010, it was laid down by Justice Bray, after carefully examining the judgment in *Bank of England* v. *Vagliano*, (1891) A.C. 107, that " the mere fact that a customer of a bank takes his pass book out from the bank and returns it without objection to any of the entries contained therein, being a pencil entry of the balance, does not amount to a settlement of account as between him and the banker in respect of these entries." In one case where a bank manager credited a customer for £2,000 for the purpose of deceiving the auditor and then debited him again for the same amount, of which the customer knew nothing at the time, it was held when the customer attempted to claim the credit that he could not accept the credit without also regarding the debit. There was no circumstance of making the entry and communication of making same to the customer nor of customer acting upon it, neither any alteration of the position of the customer. [*British and North European Bank, Ltd.* v. *Lalzstein*, (1927) 2 K.B,

92.] In another case, viz. *Holland* v. *Manchester and Liverpool District Banking Co., Ltd.*, (1909) 14 Com. Cas. 241, where a customer who found on examination of his pass book that there was a balance to his credit of £70-17-9 and thereupon drew a cheque for £67-11-0 in favour of a creditor firm. The bank discovering its own mistake dishonoured the cheque on presentation upon which the plaintiff sued them for damages and it was held that he was entitled to recover damages. Even the fact that the customer had placed ticks or marks against the entries would not bind him to the effect that he had acknowledged the debits or the credits in the pass book. [*Chatterton* v. *London and County Bank*, (1880), *The Miller*, 3rd Nov., p. 394; (1891), *Times*, 21st Jany., p. 3.] Here it was held that the customer was not bound to examine his pass book and that such marks did not give the inference that he had examined and accepted them. Of course if the customer had actually acknowledged and signed the form agreeing to the accuracy of the entries he would be bound by it. In India, in a Bombay case *Moroji* v. *National Bank of India*, 2 Bom. L.R. 1041, where the bank besides initialling the receipt of a cheque credited the amount in the pass book to the customer before actually collecting same and the cheque was then dishonoured, it was held that if the customer, on the faith of the entry in the pass book alters his position, the entry binds the banker, otherwise they are only *prima facie* against the bank and the bank is allowed to show that entries were made by mistake.

Pass Book Entries in U.S.A.—In America, however, the position is not the same and the New York Court of Appeal made up of six judges, in a case, *Morgan* v. *United States Mortgages and Trust*, (1913) 208 New York Reports 218, have decided that "the depositor who sends his pass book to be written up and receives it back with his paid cheques as vouchers, is bound to examine the pass book and vouchers and to report to the bank without unreasonable delay any errors which may be discovered." This judgment is based on the footing that this duty of the customer is "dictated by ordinary business custom." It is, however, doubtful whether such a custom could be successfully established either in England or in India. Mr. Frederick Huth Jackson, at the annual meeting of the Institute of Bankers, England, in the year 1913, while commenting upon this decision, is reported to have said that in the case of a business firm which returns its pass book through its bankers with various items ticked, the banker should be permitted to plead that this act of ticking and returning of the pass book should be treated as *prima facie* evidence of the customer having examined and passed as correct items in the pass book, but he agreed that the same principle could not be applied to private persons as distinguished from businessmen. It is likely that this business view may be accepted by the

English Courts. Until then the view taken by Bray, J., in *The Kapitigalla Rubber Estates* cited above, holds good.

Entries in Customer's Favour.—In case of customers of the class who live up to the last penny of their income and do not keep accounts if the banker by an error credits him with an amount and the customer alters his position relying on the accuracy of the pass book by drawing cheques the banker cannot subsequently debit him and thus recover the amount. On this question, there is an old case, viz. *Skyring* v. *Greenwood*, (1825) 4 B. & C. 281, decided by a very strong bench of judges which is good law even today, as the principle enunciated there has been confirmed in the recent case of *Holt* v. *Markham*, (1923) 1 K.B. 504. In the former case Lord Chief Justice Abbot laid down the law and stated that " every prudent man accommodates his mode of living to what he supposes to be his income. It therefore works a great prejudice to any man if, after having had credit given him in account for certain sums, and having been allowed to draw on his agent on the faith that those sums belonged to him, he may be called upon to pay them back." In the second case also the ground on which the defendant was not called upon to repay the money which he had drawn out, was that " the defendant had been led by the plaintiff's conduct to believe that he might treat the money as his own and in that belief had altered his position by spending it and, therefore, the plaintiffs were estopped from alleging that it was paid under a mistake." The principle is that the banker must beware lest he makes any representation to his customer that a certain amount is properly and duly credited to him, because if the customer, relying on the representation and in good faith, alters his position, the representer would be estopped from going back upon it. Of course, in each of this class of cases, the customer has to establish his *bona fides* before he is permitted to take advantage of the wrong entry. This is not easy to do in the case of a businessman who keeps regular books of account and is thus expected to know his exact position. The cases which have been decided along the lines laid down above, were those in which the customers concerned had fixed income, who never kept accounts, viz. military officers. It should also be noted that the pass book entries will not be binding on the bank unless and until the same are communicated to the customer. [*British and North European Bank* v. *Zalzstein*, (1927) 2 K.B. 93.] It may be added here that many large banks through the introduction of mechanical systems of book-keeping are now using machined statements, which frequently carry with them a docket which the customer is requested to return with his signature acknowledging the accuracy of the statements. This is more or less following the American system. From the banker's standpoint the advantage happens to be not only that he is

able to economise labour in his office through the use of mechanized system of accountancy but that through obtaining a statement as to the accuracy he protects his position against being called upon to pay for any error made by staff. The customer's advantage is that instead of having to constantly return his pass book to the banker to be written up, the statements given to him remain in his possession undisturbed and thus he is not inconvenienced as he was where the old-fashioned pass books were issued during the period that they were sent to be written up. It may be, however, mentioned that the customer is under no legal obligation to sign any acknowledgment of his account even though called upon by the bankers.

Entry in Bank's Favour.—Where a banker, on the other hand, makes an erroneous entry in his favour that will have to be rectified unless he proves that the account was settled as between himself and his customer, but then the question is under what circumstances will the account be considered as settled? As we have seen, the pass book by itself cannot be relied on as a settled account. If, therefore, the banker wants a settled account, the only course open to him is to get, if he can, a writing from the customer to that effect. This is now generally sought to be done by banks, by periodically sending out letters announcing the state of the balance at the close of that period, to which there are annexed blank forms of acknowledgment as to the correctness of the account which the customer is requested to fill in, sign and return. As we have seen the customer cannot be compelled to sign such a statement.

RIGHT OF INTEREST

The General Rule.—Generally speaking, the right to charge interest is implied by custom. There is no right at Common Law to charge even simple interest on an overdraft, but by custom and practice, the banker allows or charges interest on six-monthly rests, and this custom, being acquiesced in by the customer, is binding upon him. [*Gwyn* v. *Godby*, 4 Taunt 346; *Crosskill* v. *Bower*, 32 L.J., Ch. 540.] Interest is defined as a periodical payment of money at a specified rate, in consideration of the use of the money by the debtor as a loan.

Interest by Way of Damages.—Interest by way of damages is also allowed under certain circumstances, e.g. by the Interest Act of 1839, it is laid down to the effect that in case of a debt, or some certain due, according to any written instrument on a particular date, the Court may, at its discretion, allow interest on it at the usual current rate. If the sum is payable otherwise than under a written instrument, the Court may allow interest, if after the sum is due, the creditor makes a demand in writing, giving notice to the debtor that

interest will be claimed from the date of such demand to the date of payment.

Excessive Interest.—Before the passing of the Usurious Loans Act, 1918, of India (following similar English enactments), " the Courts in India had practically no power to interfere and reduce interest in case excessive rate was provided for on a loan or any other transaction." This naturally led to great hardship and decrees were frequently passed allowing claims for interest at absurd percentages. The Usurious Loans Act, 1918, (Sec. 3), however, provides that 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; and

(*b*) that the transaction was, as between the parties thereto, substantially unfair;

the Court may exercise all or any of the following powers, namely, may—

(*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 for 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 debt or in such manner and to such extent as it may deem just."

These powers will not of course allow a Court to re-open a transaction already closed.

It will thus be seen that the Court can even on its own motion interfere in those cases where in its opinion the transaction is " substantially unfair ". In considering whether interest is excessive, the Court is expected to take into consideration the risk incurred as on the date of the loan from the creditor's standpoint and for that purpose the presence or absence of security, its value, financial condition of the debtor and the result of previous transactions (if any) of the debtor must be taken into account.

Interest after Death or Bankruptcy.—Interest keeps on running on current account, even after the death of the

customer, until the closing of the account, i.e. until the money is withdrawn. In case of overdrawn account, interest after death of the customer, can only be charged as simple interest. [*Provincial Bank* v. *O'Reilly*, (1890) 26 L.R. Ir. 318.] In case of bankruptcy or death, the relationship of banker and customer is broken and thus the former is unable to charge interest from the date of the receiving order in England, and of adjudication order, in India. If, however, the customer is not actually a bankrupt, i.e. no receiving order or adjudication order has been passed, but he has executed a deed of arrangement for the benefit of his creditors, compound interest will keep on running. The payment of interest on overdraft is entirely dependent upon the terms of the deed. If bankruptcy follows, the claim for interest can only be made up to the date of the receiving order. As mortgages for fixed sums carry simple interest by implication, unless compound interest is provided for specially in the instrument, the banker should keep the account of such mortgages as separate and distinct from the current account of their customers.

Right to Simple Interest.—To sum up, the right to compound interest is based generally on special agreement, or acquiescence, whereas the right to simple interest in absence of a specific agreement occurs in the following cases :—

(1) By usage of trade, (2) by way of damages as discussed above, (3) on judgment debts at the usual percentage, viz. 4 per cent in England and 6 per cent in India, (4) by a Special Act or Statute, (5) through an express or implied agreement, (6) against a principal debtor on money paid by a surety, (7) on amount due on an award on a particular day when the same is not paid, though specifically demanded, and (8) money obtained and retained by fraud.

In connection with interest on overdrafts, it has been held that mere sending of a notice by a bank to one of its customers that the interest charged on overdrafts against securities held has been raised, is not of itself sufficient to render the customer liable to pay the enhanced rate. The bank can only charge such higher interest in case, after receiving this notice, the customer borrows more money from the bank. (*Gaddar Mal* v. *Tata Industrial Bank*, 49 All. 671.)

Garnishee Order.—A Garnishee Order is a very old English process of law, by which a judgment-creditor can get funds in the hands of a third party, belonging to the debtor, attached. In India this is provided for by Or. 21, r. 46 of the Code of Civil Procedure, 1908. The condition is that a debt to be attached must be actually due from the garnishee, i.e. the judgment-creditor's debtor to the judgment-creditor. This does not mean that the debt should be due on the date on which the order is actually served, but if it is due and accruing,

which means that if the period has begun to run and the present obligation exists, it can be attached. To put it in the language of a Privy Council judgment, " An existing debt, though payable at a future date, may be attached." [*Syed Tuffussool* v. *Raghunath*, (1871) 14 M.I.A. 40, p. 50.] Thus, the balance of current accounts can be attached in the hands of the banker, belonging to his customer. In case of fixed deposits, if the fixed deposit was for a fixed period, it can be attached, because it is a present debt or obligation payable at a future date by the banker. If, however, the fixed deposit is placed with the banker on condition that it can be withdrawn by the customer, only on the customer giving the banker a specific notice, say that of a week, unless the notice has been given, it does not become a debt due and accruing, and therefore it cannot be attached. After being attached the banker is of course entitled to deduct from the balance at his customer's credit, all debts and charges due to him at the date of the order, and for that purpose he can combine all current accounts. In one case judgment-debtors instructed their banker to transfer their current account to another person to whom they owed nothing and to close their account. This transaction was duly entered in the bank's books but notice had not been given to the proposed transferee nor was the transfer accepted by him. Meanwhile the Garnishee Order *nisi* was served on the bank by the judgment-creditor; it was held that at the time of service of this Garnishee Order, the relation between the banker and customer still existed as far as the judgment-debtor and the bank were concerned and that the debt from the bank to the judgment-debtor was still due and therefore the Garnishee Order *nisi* would operate. As to the instructions given by the judgment-debtor to the bank it was held that the same was still recoverable at the time when the Garnishee Order *nisi* was served on the bank and that the Garnishee Order in itself operated as revocation in law. [*Rekstin* v. *Severo S. G. A. O. K. and the Bank for Russian Trade Ltd.*, (1943) 1 K.B. 47.]

Orders Nisi and Absolute.—Before making the order absolute, an order *nisi* is made. This order attaches the funds in the hands of the banker, or garnishee, but gives him an opportunity to appear in Court and show cause, if any, as to why the order should not be made absolute. On the banker failing to show sufficient cause, the order is made absolute. As the garnishee order attaches only the amount due and accruing on the day on which it is served, the banker may open a separate or new current account of his customer for moneys paid in by him afterwards on which the customer can draw cheques. In a Bombay case, *Bhagwandas Kishordas* v. *Abdul Hussein Mohammedali*, 8 Bom. 49, where A gave a cheque to B for work done, but before the cheque was presented by B for payment, X who had obtained a decree against B

attached in A's hands the amount due by him to B. Here it was held that A, having handed over the cheque to B, the payment was complete and there were therefore no funds in the hands of A, which could be attached. Where the garnishee denies the debt, the decree-holder may have a Receiver appointed, with full powers to sue the garnishee to recover the debt from him. [*Toolsa* v. *Antone*, (1887) 11 Bom. 448.] If, however, there is a cross debt due to the garnishee from the judgment-debtor at the date of the attachment, the garnishee is entitled to attach it against the amount due by him. [*Tyaballi* v. *Athmaram*, (1914) 38 Bom. 631.]

The English authority in connection with a " debt owing " is in *Glegg* v. *Bromley*, (1912) 2 K.B. 474, which means a debt on which the creditor could have immediately and effectively sued. In case of definition of " debt accruing due ", Linlay, L.J., in *Webb* v. *Stenton*, 11 Q.B.D. 518, has laid down that " an accruing debt is a debt not yet actually payable, but a debt which is represented by an existing obligation."

In a case where a joint account was opened between husband and wife on which each could draw singly by cheques and a garnishee order was issued by the husband's judgment-creditor, it was held that it could not attach as the account was a joint account and there was nothing to show that it was only husband's account. [*Hirschorn* v. *Evans* (Barkley's Bank, Ltd., Garnishee), (1938) W.N. 289; (1938) 2 K.B. 801.] In another case it was held that money paid in after the service of garnishee order was not attached and thus the bank was not bound to hand it over. [*Heppenstall* v. *Jackson* (Barkley's Bank, Ltd., Garnishee), (1939) 1 K.B. 585.]

Form of Garnishee Order.—When the garnishee order is served and the banker finds that the balance at the credit of his customer is much larger than that warranted by the judgment, on the footing of which the order has been served, the question frequently arises whether he should allow the customer to draw against the excess, over the garnished amount. The answer is that it is very risky for the banker to take such a course because the garnishee order attaches the whole balance due or accruing, to the credit of the customer. The garnishee order is usually made out in the following form :—

GARNISHEE ORDER

Upon hearing Mr.....as Solicitor for the above-named Judgment Creditor, and upon reading the affidavit of the said.....filed the.....day of .....19.....

It is ordered that all debts owing or accruing due from the above-named Garnishee to the above-named Judgment Debtor be attached to answer a judgment recovered against the said Judgment Debtor by the above-named Judgment Creditor in the High Court of Justice, on the.....day of..... 19.....for the sum of £.....debt and costs on which Judgment the said sum of.....remains due.... and unpaid.

And it is further ordered that the said Garnishee attend the District Registrar in chambers, at the County Court offices..... .....on..... .....day, the..... .....day of .....19..... at.....o'clock in the..... noon, on an application by the said Judgment Creditor that the said Garnishee pay the debt due from.... .....to the said Judgment Debtor or so much thereof as may be sufficient to satisfy the Judgment.

*Datd this.....day of.....*19.....

DISTRICT REGISTRAR

CHAPTER IX

STAMP LAW

We shall here briefly deal with some of the most important of the documents with which the Banker has to deal, such as cheques, promissory notes, bills of exchange, deposit receipts, foreign bills, ordinary receipts, etc. As to stamp duty it is well to remember that the Stamp Acts, both English and Indian, divided documents for the purpose of being stamped into two divisions, viz. (1) those on which adhesive stamps are permitted, and (2) those on which impressed stamps only are allowed.

The Adhesive Stamps.—The documents on which adhesive stamps are allowed are :—

(1) Instruments chargeable with duty of one anna or half-anna in India, or one penny or half-penny in England.

(2) Bills of exchange, cheques and promissory notes, drawn or made out of British India, or in English law drawn or made out of the United Kingdom.

(3) Notarial Acts.

(4) Transfers by endorsements of shares in any incorporated company or other body corporate.

In all cases, the adhesive stamp should be immediately cancelled by the person who affixes them, so that the same cannot be used again. In case it is not so cancelled, the document shall be treated as an unstamped document. The same rule applies to *hundis* bearing adhesive stamps. (*Dayaram Surajmal* v. *Chandulal Dayabhai*, 27 Bom. L.R. 1118.) The cancellation of these stamps may be effected either by writing across them the person's name or initials, or that of his firm, or the true date of his so writing, or in any other effectual manner. In case of bills, cheques and notes, drawn out of British India, or the United Kingdom, the first holder, before he presents same for acceptance or payment, or endorses or transfers or otherwise negotiates same, must affix the proper stamp and cancel same, unless the said bill or note was already so stamped with adhesive stamp and effectually cancelled. If the adhesive stamp, so affixed by a prior holder, was not effectively cancelled, any person in whose hands the same comes *bona fide*, shall be competent to cancel the stamp, as if he were the person by whom it was affixed. As soon as he does so, the bill shall be deemed duly stamped. For the purpose of ascertaining whether a bill of exchange, or promissory note is a foreign bill, the holder should satisfy himself that it purports to be so drawn or made out, and if it is so made out, he would be quite justified in taking for granted that it was a foreign

bill, although on the face of it, it may have been made within British India or the United Kingdom.

BILLS OF EXCHANGE, PROMISSORY NOTES AND CHEQUES

"A Bill of Exchange" for the purpose of the Stamp Act has been defined by the Indian Stamp Act, as follows:—

"'A Bill of Exchange' means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a *hundi*, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money." For the purpose of the Stamp Act, *hundis* are bills of exchange written in an oriental language.

"'Bills of Exchange payable on demand' include—

(*a*) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(*b*) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and

(*c*) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn."

The English Act.—According to the English Act, "the expression 'bill of exchange' includes draft, order, cheque and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for any sum of money; and the expression 'bill of exchange payable on demand' includes—

(*a*) An order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be performed or happen; and

(*b*) An order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also to order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the

person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf."

Non-Mercantile Bills.—The words " and any other document " occur (1) in the Indian Stamp Act, Section 2 (2), as well as (2) in the English Stamp Act, Section 32, the result of which is that documents which are not strictly speaking bills of exchange under either of the Acts are also included. Such documents are in common parlance called " non-mercantile bills ". Thus an order to pay out of a particular fund is not an unconditional order, and therefore not within the definition of the Negotiable Instruments Act of 1881 or the English Bills of Exchange Act of 1882, but for the purpose of the Stamp Act, it would be included in the definition as given in that Act. The duty on these documents is charged *ad valorem*, i.e. according to value for which both the Acts lay down a scale.

English Scale of Duties.—The scale of duties according to the English Stamp Act is as follows :—

BILL OF EXCHANGE

	£	s.	d.
Payable on demand or at sight, or on presentation (or within three days after date or sight)	0	0	2
Of any other kind whatsoever (except a Bank Note) and PROMISSORY NOTE of any kind whatsoever (except a Bank Note)—drawn or expressed to be payable, or actually paid or indorsed, or in any manner negotiated in the United Kingdom	...	...	...
Where the amount or value of the money for which the bill or note is drawn or made does not exceed £10	0	0	2
Exceeds £ 10 and does not exceed £ 25	0	0	3
„ „ 25 „ „ „ 50	0	0	6
„ „ 50 „ „ „ 75	0	0	9
„ „ 75 „ „ „ 100	0	1	0
For every £100 and also for any fractional part of £100 of such amount or value	0	1	0
By the Finance Act, 1899 (Section 10), the duty on a Bill of Exchange drawn and expressed to be payable out of the United Kingdom, when actually paid or endorsed or in any manner negotiated in the United Kingdom, shall, where the amount for which the bill is drawn, exceeds £50 and does not exceed £100	0	0	6
Exceeds £100 for every £100, and also for any fractional part of £100	0	0	6

Indian Scale of Duties.—The scale of duties according to the Indian Stamp Act is as follows :—

Bill of Exchange as defined by Section 2 (2) and (3), not being a Bond, bank-note, or currency note.

(*a*) Where payable on demand .. .. .. *Nil.*

NOTE.—*Under Act of* 1927 *the duty of one anna was abolished from 1st July* 1927.

—	If drawn singly	If drawn in set of two, for each part of the set	If drawn in set of three, for each part of the set
	Rs. a. p.	Rs. a. p.	Rs. a. p.
(*b*) Where payable otherwise than on demand, but not more than one year after date or sight ...			
If the amount of the bill or note does not exceed Rs. 200 ...	0 3 0	0 2 0	0 1 0
If it exceeds Rs. 200 and does not exceed Rs. 400 ...	0 6 0	0 3 0	0 2 0
Do. 400 do. 600 ...	0 9 0	0 5 0	0 3 0
Do. 600 do. 800 ...	0 12 0	0 6 0	0 4 0
Do. 800 do. 1,000 ...	0 15 0	0 8 0	0 5 0
Do. 1,000 do. 1,200 ...	1 2 0	0 9 0	0 6 0
Do. 1,200 do. 1,600 ...	1 8 0	0 12 0	0 8 0
Do. 1,600 do. 2,500 ...	2 4 0	1 2 0	0 12 0
Do. 2,500 do. 5,000 ...	4 8 0	2 4 0	1 8 0
Do. 5,000 do. 7,500 ...	6 12 0	3 6 0	2 4 0
Do. 7,500 do. 10,000 ...	9 0 0	4 8 0	3 0 0
Do. 10,000 do. 15,000 ...	13 8 0	6 12 0	4 8 0
Do. 15,000 do. 20,000 ...	18 0 0	9 0 0	6 0 0
Do. 20,000 do. 25,000 ...	22 8 0	11 4 0	7 8 0
Do. 25,000 do. 30,000 ...	27 0 0	13 8 0	9 0 0
and for every additional Rs. 10,000 or part thereof, in excess of Rs. 30,000...	9 0 0	4 8 0	3 0 0
(*c*) Where payable at more than one year after date or sight	the same duty as a Bond (No. 15) for the same amount.		

EXEMPTED DOCUMENTS

The following documents will not require stamps :—

(1) Bill or note issued by the Bank of England or the Bank of Ireland.

(2) A draft or order drawn by one banker in the United Kingdom to another banker in the United Kingdom, or one banker in British India to another banker in British India, which is not payable to bearer or to order, but mainly used for the purpose of settling or clearing any account between such bankers.

(3) A letter written by one banker in the United Kingdom to another banker in the United Kingdom or one banker in British India to another banker in British India, directing the other banker to pay any sum of money Here this letter should not be sent to be delivered to the person to whom the payment is to be made.

(4) A letter of credit granted in the United Kingdom authorizing drafts to be drawn out of the United Kingdom, payable in the United Kingdom.

(5) Any instrument executed by or on behalf of, or in favour of the Government of India in cases where but for this exemption, the Government will be liable to pay the duty chargeable in respect of such instrument. Under this regulation, all drafts, cheques, drawn by the Accountant-General or receipts given by Government Departments, would be exempted from stamp.

(6) In case of local authorities, raising a loan under the Local Authorities Loan Act, 1879 (India) or of any other law for the time being in force, by issue of bonds, debentures, or other securities, shall pay in respect of such loan the duty of one per cent on the total amount of bonds, debentures, or other securities issued, and such securities shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(7) The receipt given for money deposited in any bank or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for. In India one anna stamp is required.

(8) An acknowledgment, by a banker in his customer's pass book, of money receipt from his customer.

(9) A mere endorsement by a banker in his register sanctioning a loan on terms different from the application.

(10) A demand draft drawn or issued by one office of a bank upon another of the same bank. (*In re Imperial Bank of India*, 56 Cal. 233.)

GENERAL RULES APPLYING TO BILLS

The payee of a bill or cheque on which the stamp duty is one anna in India and two pence in England, can affix the stamp himself, if the same does not happen to be stamped. In India, a bill of exchange may also be written on a *hundi* paper, that is, a stamp paper bearing the word " hundi ". Both in England and in India, promissory notes and bills of exchange, otherwise than on demand, must be stamped at or before the time of execution. In English law, there is one exception, viz. that if by some error, such a bill or promissory note is written on impressed stamp paper of sufficient amount, but of improper denomination, the same may be stamped with a proper stamp, on payment of the duty and a penalty of 40*s*. if the bill or note be not then payable according to its tenor or of ten pounds, if the same be so payable. [Section 37 (1), Stamp Act, 1891.] Of course, even though a bill or note is defective and inadmissible in evidence in a Court, because it is sufficiently stamped, the holder may still sue on it on the original consideration if he had taken the bill as a convenient medium of giving time and not in full and final settlement. (*Krishnaji* v. *Rajmal*, 2 Bom. L.R. 25.) A bill of exchange duly accepted, if not met on due date, and the time of the bill is extended by the drawer and re-accepted by the drawee, such altered bill is a second instrument and must be stamped afresh. (*International Banking Corporation* v. *Pestonji*, 27 Bom. L.R. 31.) It should also be remembered that a document in order to be said to be stamped under the Stamp Act of 1899, it should not only be stamped with a stamp of the requisite value, but also in the manner prescribed by law. (*Motilal* v. *Jagmohandas*, 6 Bom. L.R. 699.) On this principle a demand promissory note stamped by four stamps of a quarter-anna each was declared as not duly stamped. (*Venkataraman* v. *Shankaranarayan*, 19 Bom. L.R. 862.)

Stamping Bills in a Set.—In Indian law, the Stamp Act provides for duty payable in case of foreign bills separately for (1) bills drawn singly, (2) those drawn in set of two, and (3) those drawn in set of three. In case a person wrongly purporting to be drawn or executing a bill of exchange, in a set of two or more, does not so draw the requisite number, he is punishable with a fine which may extend to Rs. 1,000. According to English law, Section 89 of the Stamp Act of 1891, lays down " when a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill."

If an instrument is in such form as to fall under two categories of stamp duty (e.g. an instrument which might be regarded as either a promissory note or a marketable secuity), the general rule is that it must bear the higher duty, but Section 8 of the Finance Act, 1897, provides that " where under the power conferred by any Act any county council or municipal corporation issues bills repayable not later than twelve months from their date, those bills shall, notwithstanding that by the same or any other Act they are charged or secured on any property, fund, or rate and that the statutory charge is referred to in the bills, be treated for the purposes of the Stamp Act, 1891, and the Acts amending that Act as promissory notes and not as marketable securities."

Admissibility in Evidence.—We have already seen that bills of exchange and promissory notes requiring a stamp of the higher value than two pence in England and one anna in India, should be stamped by impressed stamp of the correct value either before or at the time of execution. If not so stamped, it will not be admitted in evidence in a suit brought to recover money on it. In one appeal case, viz. *Bala Raghu Dhanwade* v. *Bhiku Genu Jambale*, 25 Bom. L.R. 450, it was held that when once the improperly stamped document was admitted in evidence and a decree passed on it, it cannot be challenged in appeal on the ground of want of proper stamp. This principle was laid down much earlier in *Krishnaji* v. *Rajmal*, 2 Bom. L.R. 25, where it was held that the holder of a bill or note which is defective and inadmissible in evidence for want of stamp, may still sue on the consideration the person to whom he gave it, though he cannot use the bill in support of his suit. Again, a promissory note which is not made payable to bearer or order and is attested is to be stamped as a bond. (*R. D. Sethna* v. *Mirza*

Mohamed Shirazi, 9 Bom. L.R. 1034.) A *hundi* on which a one-anna stamp was affixed as the proper stamp, but was not cancelled at the time of execution, was not stamped and subsequent cancellation of the stamp did not cure the defect. (*Dayaram* v. *Chandulal*, 27 Bom. L.R. 1118.)

A Bill of Lading.—A bill of lading (including a through bill of lading, but not a mate's receipt) requires stamp as follows :—

India	4 annas
Bombay and Punjab	8 „
Bengal, Madras, Assam and U.P. ..	6 „

The duty according to English Law is 6*d*.

Marine Insurance Policy.—The duty according to Indian law :—

	If drawn singly	If drawn in duplicate for each part
(1) In case of Voyage Policy :—		
(*i*) Where the premium of consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy	One anna	Half-an-anna
(*ii*) in any other case, in respect of every full sum of one thousand five hundred rupees and also any fractional part of one thousand five hundred rupees insured by the policy	One anna	Half-an-anna
(2) For Time Policy		
(*i*) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy— where the insurance shall be made for any time not exceeding six months ...	Two annas	One anna
(*ii*) Where the insurance shall be made for any time extending six months and not exceeding twelve months	Four annas	Two annas

Under English law, the Policy of Sea Insurance has to be stamped before it is executed. It is not so in India where in case of failure to stamp, the document can be stamped after paying the requisite penalty. (*Tricamji Damji and Co.* v. *Virji*, 24 Bom. L.R. 820.)

The scale according to English law is as follows:—

	s.	*d.*
Where the premium does not exceed 2*s*. 6*d*. per cent ...	0	1
Where the premium exceeds 2*s*. 6*d*.:—for any voyage		
Where the sum insured does not exceed £250	0	3
Exceeds £250 but does not exceed £500	0	6
„ £500 „ „ £750	0	9
„ £750 „ „ £1,000	1	0
„ £1,000 for every £500 or part of £500	0	6

Time:—

Where the insurance is made for any time: *s. d.*

(1) Not exceeding six months, three times the amount which would be payable if the insurance were made upon a voyage.

(2) Exceeding six months and not exceeding twelve months, six times the amount which would be payable if the insurance were made upon a voyage.

Containing continuation clause, an additional duty of 0 6

Penalty for fraud or evasion, £100

LETTERS OF CREDIT

This means any instrument by which one person authorizes another to give credit to the person to whose favour it is drawn. Two annas. Adhesive stamp.

CONTRACT OF GUARANTEE

This is to be stamped as an agreement with the same duty as applying to an agreement.

MORTGAGE DEED

Duty according to Indian law :—

Mortgage Deed not being an Agreement Relating to Deposit of Title Deeds, Pawn or Pledge, Bottomry Bond, Mortgage of a Crop, Respondentia Bond or Security Bond—

(*a*) When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given.	The same duty as a Conveyance for a consideration equal to the amount secured by such deed.
(*b*) When possession is not given or agreed to be given as aforesaid.	The same duty as a Bond for the amount secured by such deed. (All provinces except Madras.) Madras: same duty as a Bottomry Bond for amount secured.

Explanation:—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.

(*c*) When a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped.

for every sum secured not exceeding Rs. 1,000	India, Eight annas; Bombay, Rupee one; Madras, Bengal, Punjab, Assam, U. P., Annas twelve.
and for every Rs. 1,000 or part thereof in excess of Rs. 1,000	India, Eight annas; Bombay, Rupee one; Bengal, Madras, Punjab, Assam, U. P., Annas twelve.

Exemptions

(1) Instruments executed by the persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the payment of such advances.

(2) Letter of hypothecation accompanying a bill of exchange.

The duty according to English law is as follows :—

Mortgage, Bond, Debenture, Covenant (except a marketable security otherwise specially charged with duty), and *Warrant of Attorney*, to confess and enter up judgment.

(1) Being the only or principal or primary security (other than an equitable mortgage) for

	s.	d.
The payment or repayment of money not exceeding £10 ...	0	3
Exceeding—		
£10 and not exceeding £25	0	8
£25 „ „ £50	1	3
£50 „ „ £100	2	6
£100 „ „ £150	3	9
£150 „ „ £200	5	0
£200 „ „ £250	6	3
£250 „ „ £300	7	6
Exceeding £300—		
For every £100 and also for any fractional part of £100, of such amount secured	2	6

(2) Being a collateral, or auxiliary, or additional, or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped:

For every £100, and also for any fractional part of £100 of the amount secured (maximum 10s.) 0 6

(3) Being an equitable mortgage for every £100 and any fractional part of £100 of the amount secured 1 0

(4) Transfer, Assignment, Disposition or Assignation of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment:

For every £100, and also for any fractional part of £100 of the amount transferred, assigned or disposed, exclusive of interest, which is not in arrear 0 6

And also where any further money is added to the money already secured. — The same duty as a principal security for such further money.

	s.	d.
(5) Reconveyance, Release, Discharge, Surrender, Resurrender, Warrant to Vacate, or Renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured:		
For every £100, and also for any fractional part of £100 of the total amount or value of the money at any time secured ...	0	6

DUTY ON A CONVEYANCE

Description	Proper Stamp Duty
Where the amount or value of the consideration for conveyance as set forth therein does not exceed Rs. 50 ...	India: Bombay, C. P. and U. P., Eight annas; Bengal, Punjab, Madras, Bihar, Twelve annas.
Where it exceeds— Rs. 50 but does not exceed Rs. 100 ...	India: Bombay, C. P. and U. P. One rupee; Bengal, Punjab, Madras, Bihar, One rupee and eight annas.
„ 100 „ „ „ 200 ...	India: Bombay, C. P. and U. P., Two rupees; Bengal, Madras, Punjab, Bihar, Three rupees; Burma, Two rupees & eight annas.
„ 200 „ „ „ 300 ...	India, Rupees three; U. P., Three rupees and four annas; Bombay, C. P., Bengal, Madras Punjab, Assam, Four rupees and eight annas.
„ 300 „ „ „ 400 ...	India, Four rupees, U. P., Rupees four and eight annas; Bombay, C. P., Bengal, Madras, Punjab, Assam, Six rupees.
„ 400 „ „ „ 500 ...	India, Five rupees. U. P., Five rupees and twelve annas. Bombay, C. P. Bengal, Madras, Punjab, Assam, Seven rupees and eight annas.
„ 500 „ „ „ 600 ...	India Six rupees. U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam Nine rupees.
„ 600 „ „ „ 700 ...	India, Seven rupees. U. P, Bombay, C. P, Bengal, Madras, Punjab, Assam, Ten rupees and eight annas.
„ 700 „ „ „ 800 ...	India, Eight rupees. U. P. Bombay, C. P., Bengal, Madras, Punjab, Assam, Twelve rupees.
„ 800 „ „ „ 900 ...	India, Nine rupees. U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam, Thirteen rupees and eight annas.
„ 900 „ „ „ 1,000 ...	India, Ten rupees. U. P., Bombay, C. P., Bengal, Madras, Pnnjab, Assam, Fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000	India, Five rupees. U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam, Seven rupees and eight annas.

DUTY ON A CONVEYANCE—*Contd.*

Description	Proper Stamp Duty
Bombay Cities and Urban Areas :	
Where it exceeds—	
Rs. 200 but does not exceed Rs. 300 ...	City of Bombay, Ten rupees. Cities of Ahmedabad, Poona and any other city notified, Seven rupees and eight annas. Other urban area notified, Four rupees and eight annas.
„ 300 „ „ „ 400 ...	City of Bombay, Fourteen rupees. Cities of Ahmedabad, Poona and any other city notified, Ten rupees and eight annas. Other urban area notified, Six rupees.
„ 400 „ „ „ 500 ...	City of Bombay, Eighteen rupees. Cities of Ahmedabad, Poona and any other city notified, Thirteen rupees and eight annas. Other urban area notified, Seven rupees and eight annas.
„ 500 „ „ „ 600 ...	City of Bombay, Twenty-two rupees. Cities of Ahmedabad, Poona and any other city notified, Sixteen rupees and eight annas. Other urban area notified, Nine rupees.
„ 600 „ „ „ 700 ...	City of Bombay, Twenty-six rupees. Cities of Ahmedabad, Poona and any other city notified, Nineteen rupees and eight annas. Other urban area notified, Ten rupees and eight annas.
„ 700 „ „ „ 800 ...	City of Bombay, Thirty rupees. Cities of Ahmedabad, Poona and any other city notified, Twenty-two rupees and eight annas. Other urban area notified, Twelve rupees.
„ 800 „ „ „ 900 ...	City of Bombay, Thirty-four rupees. Cities of Ahmedabad, Poona and any other city notified, Twenty-five rupees and eight annas. Other urban area notified, Thirteen rupees and eight annas.
Art. 23—	
Where it exceeds—	
Rs. 900 but does not exceed Rs. 1,000 ...	City of Bombay, Thirty-eight rupees. Cities of Ahmedabad, Poona and any other city notified, Twenty-eight rupees and eight annas. Other urban area notified, Fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000	City of Bombay, Twenty rupees. Cities of Ahmedabad, Poona and any other city notified, Fifteen rupees. Other urban area notified, Ten rupees.

BONDS

Not being Debenture Bonds

Description	Proper Stamp Duty
Where the amount or value secured does not exceed Rs. 100	Two annas.
Where it exceeds—	
Rs. 10 but does not exceed Rs. 50 ...	Four annas.
„ 50 „ „ „ 100 ...	India, Eight annas, Bihar, Ten annas.
„ 100 „ „ „ 200 ...	India: Bombay, C. P., Bengal, Punjab, Assam, U. P., Bihar, One rupee. Madras and Burma. One rupee and four annas.
„ 200 „ „ „ 300 ...	India, One rupee and eight annas. Bihar, Burma and Bombay, Two rupees and four annas; Bengal, Madras, Punjab, Assam, One rupee and fourteen annas; U. P., One rupee and ten annas.
„ 300 „ „ „ 400 ...	India, Two rupees. Bihar, Burma, Bengal & Bombay, Three rupees. U.P., Two rupees and four annas. C. P., Madras, Punjab, Berar, Two rupees and eight annas.
„ 400 „ „ „ 500 ...	Bihar, Bombay, Burma, Bengal, Three rupees and twelve annas. C. P., and Berar, Three rupees and eight annas. U. P., Two rupees and fourteen annas. Madras, Punjab, Three rupees and two annas.
„ 500 „ „ „ 600 ...	Bengal, Madras, Punjab, Bombay, Bihar, Burma, U. P., C.P. and Berar, Four rupees and eight annas.
„ 600 „ „ „ 700 ...	India, Three rupees and eight annas; U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam, Five rupees and four annas.
„ 700 „ „ „ 800 ...	India, Four rupees; U. P. Bombay, C. P., Bengal, Madras, Punjab, Assam, Six rupees.
„ 800 „ „ „ 900 ...	India, Four rupees and eight annas: U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam, Six rupees and twelve annas.
„ 900 „ „ „ 1,000 ...	India, Five rupees; U. P., Bombay, C. P., Bengal, Madras, Punjab, Assam, Seven rupees and eight annas.
and for every Rs. 500 or part thereof in excess of Rs. 1,000	India, Two rupees and eight annas; U. P., Bombay, C. P. Bengal, Madras, Punjab, Assam, Three rupees and twelve annas.

SECURITY BOND

When executed by way of security to account for money received or executed for surety to secure due performance of a contract.

Same duty as a Bond when the amount secured does not exceed Rs. 1,000	Same duty as a Bond for the amount secured.
In any other case	India, Five Rupees. Bombay and Bengal, Rupees Ten. C. P., Madras, Berar, Bihar, Burma, Punjab, and U. P., Rupees Seven and annas eight.

DEBENTURE

(Whether mortgage debenture or not) being a marketable security transferable:—

(*a*) by endorsement or by separate instrument of transfer ...	India: Same duty as a Bond. Bengal, Madras and Punjab—same duty as a Bottomry Bond.
(*b*) by delivery	India: Same duty as Conveyance for consideration equal to face value. The City of Bombay, the Cities of Ahmedabad, Poona and any other city notified, other urban area notified—The same duty as was leviable on a Conveyance (No. 23) before the passing of the Bombay Finance Act, 1932, for a consideration equal to the face amount of the debenture. U. P.—Where the face amount of the debenture does not exceed Rs. 100: One rupee four annas. Where it exceeds Rs. 100 but does not exceed Rs. 200: Two rupees and eight annas. Where it exceeds Rs. 200: the same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

Exemption

A debenture issued by an Incorporated Company or Corporation in terms of a registered mortgage deed duly stamped for full value, whereby the body borrowing makes over wholly or in part their property to trustees for the benefit of debenture-holders, provided that the debentures so issued are expressed to be issued in terms of the said mortgage.

AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE

that is to say, any instrument evidencing an agreement relating to—

(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or—

(2) the pawn or pledge or movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—

[*See Tables on pages 227–28.*

SETTLEMENT

The duty according to Indian law is as follows:—

A.—*Instrument of* (including a deed of dower).

A.—Bengal, Madras, Punjab: The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property settled as set forth in such settlement.

Bombay: The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled.

A. (Proviso)—

Madras, Punjab, Bihar, C. P. and Berar, U.P.: Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed the duty on such instrument shall not exceed twelve annas.

Bengal: Proviso as above but duty not to exceed one rupee.

B.—Bengal, Madras, Punjab: The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding fifteen rupees.

Bihar, C.P. and Berar, U.P.: The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding fifteen rupees.

The City of Bombay, the City of Ahmedabad, Poona and any other city notified, other urban area notified—

A.—(*i*) Where the settlement is made for a religious or charitable purpose: The same duty as a Bond (No. 15) to the amount or value of the property settled as set forth in such settlement.

(*ii*) In any other case: The same duty as is leviable on a conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount or value of the property settled.

[*Continued on page 229*

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement.

India—The same duty as a Bill of Exchange for the amount secured.

		Bengal, Madras, Punjab									United Provinces		
		If drawn singly			Each part of set of two			Each part of set of three					
	Rs.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
(*i*) When the amount of the loan or debt does not exceed	200	0	4	6	0	3	0	0	1	6	0	3	0
(*ii*) When it exceeds Rs. 200 but does not exceed	400	0	9	0	0	4	6	0	3	0	0	8	0
,, 400 ,,	600	0	13	6	0	7	6	0	4	6	0	12	0
,, 600 ,,	800	1	2	0	0	9	0	0	6	0	1	0	0
,, 800 ,,	1,000	1	6	6	0	12	0	0	7	6	1	4	0
,, 1,000 ,,	1,200	1	11	0	0	13	6	0	9	0	1	8	0
,, 1,200 ,,	1,600	2	4	0	1	2	0	0	12	0	2	0	0
,, 1,600 ,,	2,500	3	6	0	1	11	0	1	2	0	3	0	0
,, 2,500 ,,	5,000	6	12	0	3	6	0	2	4	0	6	0	0
,, 5,000 ,,	7,500	10	0	0	5	1	0	3	6	0	9	0	0
,, 7,500 ,,	10,000	13	8	0	6	12	0	4	8	0	12	0	0
,, 10,000 ,,	15,000	20	4	0	10	2	0	6	12	0	18	0	0
,, 15,000 ,,	20,000	27	0	0	13	8	0	9	0	0	24	0	0
,, 20,000 ,,	25,000	33	12	0	16	14	0	11	4	0	30	0	0
,, 25,000 ,,	30,000	40	8	0	20	4	0	13	8	0	36	0	0
and for every additional Rs. 10,000 or part thereof in excess of	30,000	13	8	0	6	12	0	4	8	0	12	0	0

(b) if such loan or debt is repayable on demand or more than three months from the date of such instrument.

India—Half the duty payable on a Bill of Exchange for the amount secured.

Bengal, Madras, Punjab, Bihar, C. P. & Berar—Half the duty on a loan or debt under clause or clause for the whole amount secured. The Madras Act adds the words—stamp duty of a quarter anna shall be reckoned as a half anna and three-quarter anna as one anna. The U. P. Act adds (*b*) If such loan *or debt is repayable not more than three months from the date of such instrument.—Half the duty* payable on a loan or debt under clause (*a*) for the amount secured. (U. P. Act 3 of 1936).

Exemption

Instrument of pawn or pledge of goods if unattested.

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement.

India—The same duty as a Bill of Exchange for the amount secured.

		Rs.	Bihar, C. P. & Berar: If drawn singly Rs.	a.	p.	Each part of set of two Rs.	a.	p.	Each part of set of three Rs.	a.	p.
(*i*)	When the amount of the loan or debt does not exceed	100	0	3	0	0	2	0	0	1	0
(*ii*)	When the amount of the loan or debt exceeds 100 but does not exceed	200	0	4	6	0	3	0	0	1	6
(*iii*)	When it exceeds Rs. 200 but does not exceed ...	400	0	9	0	0	4	6	0	3	0
	,, 400 ,,	600	0	13	6	0	7	6	0	4	6
	,, 600 ,,	800	1	2	0	0	9	0	0	6	0
	,, 800 ,,	1,000	1	6	6	0	12	0	0	7	6
	,, 1,000 ,,	1,200	1	11	0	0	13	6	0	9	0
	,, 1,200 ,,	1,600	2	4	0	1	2	0	0	12	0
	,, 1,600 ,,	2,500	3	6	0	1	11	0	1	2	0
	,, 2,500 ,,	5,000	6	12	0	3	6	0	2	4	0
	,, 5,000 ,,	7,500	10	0	0	5	1	0	3	6	0
	,, 7,500 ,,	10,000	13	8	0	6	12	0	4	8	0
	,, 10,000 ,,	15,000	20	4	0	10	2	0	6	12	0
	,, 15,000 ,,	20,000	27	0	0	13	8	0	9	0	0
	,, 20,000 ,,	25,000	33	12	0	16	14	0	11	4	0
	,, 25,000 ,,	30,000	40	8	0	20	4	0	13	8	0
and for every additional Rs. 10,000 or part thereof in excess of		30,000	13	8	0	6	12	0	4	8	0

(b) if such loan or debt is repayable on demand or more than three months from the date of such instrument.

India—Half the duty payable on a Bill of Exchange for the amount secured.

Bengal, Madras, Punjab, Bihar, C. P. & Berar—Half the duty on a loan or debt under clause or clause for the whole amount secured. The Madras Act adds the words—stamp duty of a quarter-anna shall be reckoned as a half anna and three quarter anna as one anna. The U. P. Act adds (*b*) If such loan or debt is repayable not more than three months from the date of such instrument.—Half the duty payable on a loan or debt under clause (*a*) for the amount secured. (U. P. Act 3 of 1936).

Exemption

Instrument of pawn or pledge of goods if unattested.

Continued from page 226.]

Provided that where an agreement to settle is stamped with the stamp required for an Instrument of Settlement, and an Instrument of Settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed one rupee. Provided further that where an Instrument of Settlement contains any provision for the revocation of the settlement, the amount or value of the property settled shall for the purposes of duty, be determined as if no such provision were contained in the instrument.

(Bom. Act 4 of 1941).

B.—The same duty as is leviable on a conveyance (No. 23) under the Bombay Finance Act, 1932, as amended from time to time for a consideration equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.

Exemptions

Deed of dower executed on the occasion of a marriage between Muhammadans.

B.—*Revocation of* India The same duty as a Bond for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.

Bengal, Madras, Punjab, Assam. The same duty as a Bottomry Bond.

The duty according to English law is as follows:—

	s.	d.
Settlement.—Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever:		
For every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled ...	5	0

Note.—The duty in respect of unused stamps can be recovered within six months.

A memorandum of agreement should be stamped within fourteen days of its date, and any other document within thirty days. Certain documents, e.g. bills of exchange and articles of clerkship must be stamped before execution.

LETTERS OR POWER-OF-ATTORNEY

The duty according to the Indian law is as follows :—

Power-of-Attorney, not being a Proxy

(*a*) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents	India : Eight annas ; Bombay, Punjab, Rupee one ; C. P., Burma, Bengal, Madras, U. P., Berar and Bihar Annas twelve.
(*b*) when required in suits or proceedings under the Presidency Small Causes Courts Act, 1882	India : Eight annas ; Bombay, Bengal Punjab, and Burma, Rupee one ; Madras, Bihar, C. P., Berar and U. P., Twelve annas.
(*c*) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (*a*)	India : One rupee ; Bombay, Punjab, Burma and Bengal, Rupees two ; C. P., U. P., Madras, Bihar and Berar, Rupee one and annas eight.
(*d*) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally	India . Five rupees ; Madras, Bihar, Berar, C. P. and U. P. Rupees seven and annas eight ; Bombay, Punjab, Bengal and Burma, Rupees ten.
(*e*) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	India : Ten rupees ; Bombay, Burma, Bengal and Punjab, Rupees twenty ; C. P., Madras, Berar, U. P. and Bihar, Rupees fifteen.
(*f*) when given for consideration and authorizing the attorney to sell any immovable property	India, same as Conveyance ; Bombay, Poona, Ahmedabad, Bengal.—The same duty as a Conveyance for the amount of the consideration.
(*g*) in any other case	India : One rupee for each person authorized ; Bombay, Punjab, Burma, and Bengal, Rupees two for each person authorized ; C. P., Madras, Bihar, Berar, and U. P., Rupees one and annas eight for each person authorized.

N.B.—The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1908.

Explanation.—For purposes of this Article more than one person when belonging to same firm shall be deemed to be one person.

LETTER OR POWER-OF-ATTORNEY, AND COMMISSION AGENT OR FACTOR'S MANDATE OR OTHER INSTRUMENT IN THE NATURE THEREOF

The duty according to the English law is as follows :—

		s.	*d.*
(1)	For the sole purpose of appointing or authorizing a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	0	1
(2)	By any Petty Officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	1	0
(3)	For the receipt of the dividends or interest of any stock :		
	Where made for the receipt of one payment only	1	0
	In any other case	5	0
(4)	For the receipt of any sum of money or any bill of exchange or promissory note for any sum of money, not exceeding £20, or any periodical payments not exceeding the annual sum of £10 ...	5	0
(5)	Of any kind whatsoever not hereinbefore described ...	10	0

Exemptions

(1) Letter or Power-of-Attorney for the receipts of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than £3.

(2) Letter or Power-of-Attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any Ecclesiastical Court.

(3) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

CHAPTER X

ACCOUNTS OF CUSTOMERS

General Observations.-- We have already dealt with this subject in its element stage in our Chapter VIII, dealing with Banker and Customer. We have seen that according to the latest decisions, namely, *Commissioner of Taxation* v. *English, Scottish and Australian Bank, Ltd.*, (1920), A.C. 683, a customer is one who may have opened an account by paying in a cheque to which he had no title. A banker has thus to be very careful in selecting his customer, i.e. careful enquiries should be made as to his respectability and other details. While opening an account, the customer's signature is taken on a card as specimen, or in a special book called " Signature Book ", which is indexed. Thereafter the current account is opened in the ledger in bold characters, with the customer's full name. If the customer is a joint-stock company, the names of directors and the secretary are also noted. Particular note is also taken of those who are entitled to operate on the account and their specimen signatures are obtained and duly indexed. Where a customer has given authority to any of his agents, or servants, to sign on his behalf, the banker should obtain a written mandate from the customer, stating clearly the powers which he has delegated to the servant or agent in connection with the account. It should be remembered that the authority to draw a cheque on a current account will not imply an authority to draw, endorse, or accept a bill of exchange, and therefore all these operations have to be made clear in this mandate with a view to avoid future difficulties.

Form of Mandate in Favour of Agent.—Form of Mandate which bankers take, is usually in the following form :—

Mandate or Authority for a person to draw on another person's account.

To

The.....Bank, Limited.

Referring to the Current Account opened at your Bank, I hereby request you to honour all cheques drawn up on the said account by the person whose signature is hereunder written, notwithstanding that such cheques may create or increase an overdraft to any extent, and I authorize the said person on my behalf to make, draw, accept, or otherwise sign any bills of exchange, promissory notes or other negotiable instruments, and to discount the same with your Bank or otherwise, and also to indorse cheques or other negotiable instruments of any description.

This authority shall continue in force until I shall have expressly revoked it by a notice in writing delivered to you.

Dated this.....day of.....19 .

(Sd.)..... .....

The following is the signature of the person authorized to sign as above-mentioned :—

Specimen Signature of Mr. .....

AUTHORITY OF AGENT

But agent's authority is derived either through an express power-of-attorney or is implied, through the nature of his appointment. Thus, a director, secretary, agent, or manager of a joint-stock company derives an implied authority to sign on behalf of the company and do all that the company can do under its constitution on their respective appointment. On the same footing, a manager of a branch office of a firm has the implied authority to do all that is necessary for carrying on the business of the branch office. Generally speaking, agency denotes a relationship between two persons, by which one is appointed to do all that is necessary in connection with the business of which he is appointed an agent. In law, it is not necessary that the agent should get any consideration for his service, with a view to make his acts binding on the principal.

Different Types of Agents.—An agent may be either a (1) special, (2) general, or (3) universal agent.

(1) A "special agent" is one who is authorized to do a particular act on behalf of his principal, i.e. to go and buy a particular article, or to sign a particular document for his principal.

(2) An agent is said to be "general" where he is authorized to do each and every act which may be necessary in order to enable him to carry on the business of his agency, e g. the manager of a branch office would be a "general agent" to do all that is necessary to carry on the branch business entrusted to him.

(3) An "universal agent," on the other hand, possesses unlimited authority and, therefore, can act for his principal on all lawful matters.

Mercantile Agents.—Mercantile agents are known under various denominations such as factors, brokers, bankers, auctioneers, commission agents, and " del credere " agents.

A " Factor " is an agent who is employed to sell goods or merchandise consigned or delivered to him by, or for, his principal, for compensation. A " Broker " is an agent for effecting bargains and contracts in the matter of trade, commerce, navigation, etc. between two parties. He generally has not the possession of goods. The factor sells his principal's goods in his own name and gives security in his own name. A broker cannot do so. He only brings the contracting parties together and is not entitled to collect the price unless specially authorized. " Bankers " act as agents of their customers in various particulars, as we have seen already in other chapters. In case of " Auctioneers," they begin as the agents of the seller, but as soon as the property is knocked down to the highest bidder, they also become the agents of the buyer, and their

signature binds both the buyer and the seller. " Commission Agents " are those who act generally on behalf of foreign principals, and earn their commission for their labour. They are generally personally acquainted with local merchants with whom they deal. " Del Credere Agent " is the factor who, in consideration of an extra commission, agrees to indemnify the principal against losses arising from failure of a person with whom contracts were entered into by him on behalf of his principal.

A " Counsel ", " Attorney ", or " Pleader ", are agents appointed by merchants for the purpose of conducting their suits. In case of a " Counsel ", his authority at the trial, unless limited, relates to the trial and all matters incidental to it and to the conduct of the trial. (*B. N. Sen* v. *Chunilal Dutt and Co.*, 51 Cal. 885.) An " Attorney " or " Solicitor " practically has a similar authority and can compromise his client's suit unless his client has given his express direction to the contrary. A " Pleader ", on the contrary, must obtain his client's special authority, before entering into a compromise.

Ratification.—Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. (Sec. 196, Contract Act, 1872.) Thus, if the agent exceeds his authority, the principal will have the option as soon as he comes to know of it, to ratify the contract made in excess of authority, and if he ratifies same, it will be binding both upon the principal himself as well as the third party with whom the contract was entered into. The ratification, though made at a subsequent date, relates back to the date on which the contract is made. Of course, ratification should be made within reasonable time. Once the act is ratified by the principal, he cannot withdraw such ratificaion.

An agent's authority is revoked either (1) by express revocation by the agent or principal, (2) completion of the business of agency, (3) death or insanity of the principal or agent, (4) adjudication in insolvency of the principal, but not necessarily of the agent, (5) expiry of the time for which the agreement of agency was made, (6) mutual agreement, and (7) destruction of the subject-matter of the agency.

Power-of-Attorney.—The banker should see, while dealing with the agent, that he is properly authorized to do the acts which the agent claims to do. The safest course for the banker in cases where a written power-of-attorney has been given to the agent by the principal, is to note all powers delegated by this instrument in a special register kept for the purpose. In law the fact that a person signs " *per pro* " is warning to all

who deal with him that he has an authority, limited by a power-of-attorney and therefore all who accept the agent's signature ought to ascertain whether the act is authorized by this instrument.

LUNATICS

Under the Indian Contract Act, 1872, Section 12, a person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding the nature and effect of same and of forming a rational judgment as to its effect upon his interests. That definition should form a guide to all while deciding whether a person is a lunatic. As soon as the banker comes to know of the lunacy, or insanity of his customer, it is absolutely necessary that he should not honour his cheques. (*Drew* v. *Nunn*, 4 Q.B.D. 661.) Of course, if the customer is confined in a lunatic asylum, or is judicially declared a lunatic, under the Lunacy Act, after a proper inquisition by a competent Court, the banker is safe in stopping the account. Otherwise, he should take care to see that he does not stop the account in a hurry and thereby place himself in a difficult position.

INTOXICATED PERSONS

The position of an intoxicated person is no doubt akin to lunacy in some respect. It is no doubt difficult to realize whether the person is so intoxicated as to be incapable of understanding the nature and effect of the act. Under the circumstances, if such a customer were to call in for cashing his cheque, the banker should take care to see that the payment is witnessed by some responsible person who is not in the service of the bank.

MARRIED WOMAN

A married woman can enter into contracts and bind her separate estate. The English law provides for this under the Married Women's Property Act, 1882, as modified by the latest Act, viz. Law Reform (Married Woman and Tortfeasors) Act, 1935, where it is laid down that a married woman shall be capable of acquiring, holding and disposing of any property, suing and being sued, rendering herself and being rendered liable in respect of any tort, contract, debt or obligation and being subject to the Law relating to Bankruptcy to the enforcement of judgments and orders in all respects as if she was a *feme sole*. Thus now under this Act a married woman is placed on the same position as a single woman in England with regard to her contractual capacity and can be committed to prison for non-payment of the judgment debt and she can also be made bankrupt in the same way as a single woman. A Hindu married woman also, can enter into contracts and bind her "stridhan",

[*Govindji* v. *Kalidas*, (1880), 4 Bom. 318.] Her contracts would bind her husband only if they are for her necessaries. A Mahommedan married woman stands on the same footing in connection with her capacity to enter into contracts. Women of other communities in India are given the same power of holding separate properties by Section 4 of the Indian Succession Act, 1925, and Section 4 of the Married Women's Property Act, 1874. A married woman can open a current account with a banker in her own name, which account would form part of her separate estate. She can thus draw bills, cheques, etc., in connection with her separate estate, and arrange for all obligations including overdrafts with the banker. Of course, these obligations will bind her separate estate and not her husband, so long as the husband has no interest in the transaction. A married woman in India, possessing separate property, may be adjudicated insolvent in connection with debts contracted by her, irrespective of the fact whether she is a Hindu, Mahommedan or of any other community. In England, the Bankruptcy Act of 1914 goes further and lays down that where a married woman is a bankrupt, her husband is not entitled to any dividend out of her estates for any debts due to him from her, until the claims of other creditors are paid in full.

JOINT ACCOUNTS

Ordinarily, when accounts are opened with a banker jointly, and in absence of any instructions to the contrary, the parties concerned must join in drawing cheques or in giving directions on the said account. (*Marshall* v. *Crutwell*, L.R. 20 Eq. 328.) The banker, however, for his own safety, should get a writing containing precise instructions as to what members are entitled to draw cheques, and whether the balance of the account has to be paid to the survivor, in case of the death of any of the parties to the joint account, or whether the same is to be dealt with in any other manner. This writing should be signed by all parties in whose name the joint account is opened. It will make no difference whether one of the joint parties was consulted or his name was included as one of the joint account holders afterwards. His signature would be necessary, once the joint account is opened, for the purpose of the operation on the account. By special arrangement in writing, however, one or more of the parties to the joint account can be authorized to operate on same and by special arrangement an authority may be given to an outsider to operate on same. Ordinarily, where no special instructions are given, the survivor or survivors of a joint account are entitled to the whole balance at the foot of the account at that date. We have already seen what is the exact position as to the joint account in the name of husband and wife. It is, however, open to a married woman to open a joint account in the name of herself and a person other than her

husband. Such account will be treated on the same footing as a joint account between two individuals. In case of overdrawn joint accounts, the banker can recover from all parties provided a request to overdraw is received from all. If not, the cheques must have been signed by all. The modern banker never allows such an overdraft without obtaining signatures of all parties on a proper letter of request.

To avoid any doubt or difficulty arising on the question of an overdraft in case of joint account, the bankers usually get a clause inserted in the mandate they receive permitting an overdraft on the joint and providing for several responsibility of the parties to the said joint account. The advantage of obtaining such a joint and several mandate is that it will enable the bank, if circumstances so arise, to set off the credit balance on the private accounts of any of the parties to the joint account, against an overdraft on the joint account after giving due notice. In this case the banker should take care to see that where he takes a joint and several bond with security from the partners to cover an overdraft, such a security ends the moment one of the parties dies. Thus in *Bank of Scotland* v. *Christie*, (1840) 8 Cl. & F. 214, three partners A, B and C gave a joint and several bond to the bank with a view to cover advances made to them on cash-credit basis. In this bond two estates belonging to A were specifically mentioned as securities. When A died, it was held that the partnership being dissolved on his death, the security of A's estates no longer continued and as in this case the bank continued dealings with the partnership as constituted by B and C and at a certain period, the payments made into the account entirely balanced the debt due by this account at the time of A's death, A was thereby discharged. This joint debt created by such an account cannot be attached on a garnishee order issued in connection with the debt of only one of the joint holders. [*McDonald* v. *Tacquah Gold Co.*, (1884) 13 Q.B.D. 535.]

On the death of all the joint parties to the account in absence of instructions to the contrary in the mandate signed by all, any balance on the account is payable to the legal representative of the joint account holder who dies last.

Executors in Joint Account.—Each executor or administrator is presumed to have power over the whole estate of the testator [*Ex parte Rigby*, (1815) 19 Ves. 463], whereby any one executor can operate on the account unless the banker has instructions from one of them not to part with the money. [*Gaunt* v. *Taylor*, (1751) 2 Hare 413.] The payment of a cheque drawn by the surviving executors or administrators on the death of any of them, exonerates the banker. [*Clough* v. *Bond*, (1837) 3 My. and C. 499.] The banker should see that this account is not allowed to be overdrawn without special

arrangement, because the fact that an executor has an account with a banker does not entitle the banker to rank as a creditor upon the testator's estate in respect of an overdraft balance of the account. The credit will only be taken to have been given to the executor personally. [*Farhall* v. *Farhall*, (1781) L.R. 7, Ch. 123.]

Trustees in Joint Account.—In case of trustees in joint account, the position is different from that of executors. The banker should not allow the survivors, on the death of a trustee, to withdraw the balance without ascertaining the provisions in the instrument of trust. Again, during the life-time of these joint trustees, the banker should see that all of them join in signing the cheques, unless the trust instrument contains a special provision authorizing the trustees to delegate their powers to one or more of their number, by a special power-of-attorney. Here, the banker may, satisfying himself as to this and obtaining proper authority from the trustees concerned, permit one of their number to operate on the account on behalf of himself and his co-trustees. When one of the trustees has absconded, so that his signature cannot be obtained, equity will relieve by making an order that the bankers shall pay the cheque of the remaining trustees. [*Ex parte Hunter*, (1816) 2 Rose 363.]

Bankruptcy or Death of One Party.—Where one of the joint account parties becomes bankrupt, the banker should stop operations on that account and ask for instructions jointly signed by the solvent joint account holders, together with the trustee in bankruptcy in England and the Official Assignee in India. Here, according to Sir John Paget, whether (1) the bank has authority to honour cheques of either party, or (2) it has no such authority, the banker cannot safely allow the solvent party to withdraw the balance, unless the official assignee or the trustee in bankruptcy joins. In case of the death of a joint account holder, the usual practice of bankers is to ask the survivors to draw a cheque for the whole balance and pay in same to a new account opened in the names of survivors. Any one of the joint account parties has a right to stop payment of cheques drawn on it, even though he may have delegated the power of drawing cheques to one of their number or even to an outsider. The notice to stop payment in such a case particularly operates as a countermand of that authority. The death of one of the joint account holders will not prevent a cheque from being paid in case all have signed same according to arrangements.

Overdrafts and Non-trading Partnerships.—In case any overdraft is required on a joint account the banker should obtain authority from all holders, in order to bind them, as otherwise, only those who had joined in arranging the loan would be bound.

The accounts of a non-trading partnership stand on the same footing as joint accounts and the same rules will apply to them. This is because in case of non-trading partnerships, a single partner has no implied authority to draw cheques, or operate on the account on behalf of his other partners in the name of the firm. This can only be done by special written instructions to that effect to the banker signed by all partners.

Safe Custody in Joint Names.—Where a sealed box is left with bankers in safe custody in joint names of persons who are not partners, the question whether same can be delivered to the survivor on the death of one of them is not free from doubt. Sir John Paget states : that unless there is a writing, there is nothing to show that the box is a joint property. The authority of the legal personal representative of the deceased joint owner must be obtained before allowing access to or withdrawal of the box.

TRADING PARTNERSHIPS

Definition.—In case of trading firms, every partner has an implied authority to deal with the accounts and money belonging to partnership on behalf of himself and his other partners, the signature being in the name of the partnership firm which binds all the partners. A partnership is defined by the Indian Partnership Act, 1932, as the relationship between persons who have agreed to share profits of a business carried on by all or any of them acting for all (S. 4). Persons who have entered into partnership with one another are called collectively " a firm ". In the English Partnership Act of 1890, partnership is defined as " the relation which subsists between persons carrying on a business in common with a view to profit."

Illegal Partnership.—Both in English and Indian law, a partnership of more than ten persons in banking business, or more than twenty in a trading firm, is an illegal partnership, with the result that the members of such an illegal partnership in England are in the unenviable position of not being able to sue and recover their claim in a Court of Law, nor can they be sued, or wound up, or enter into contracts.

In India, however, Sec. 4 (4) of the Indian Companies Act, 1913, as amended by the Act of 1936 lays down to the effect that in case of illegal partnership all the members of the firm will be personally liable for all liabilities incurred in their business of illegal partnership to the public or outsiders, but they cannot sue the outsiders and recover money due to illegal partnership. It is further laid down that the persons who are members of such illegal partnership shall be punishable with fine not exceeding Rs. 1,000. It may be added here that the joint family firms carrying on trade or business are exempted from this provision and thus the Section does not apply to them. The actual wording of the Section runs as follows :—

S. 4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or of Royal Charter or Letters Patent.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its objects the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council or of Royal Charter or Letters Patent.

(3) This Section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this Section, minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this Section shall be personally liable for all liabilities incurred in such business.

(5) Any person who is a member of a company, association or partnership formed in contravention of this Section shall be punishable with fine not exceeding one thousand rupees.

The members of an illegal partnership cannot also call upon each other for contribution, or apportionment with regard to losses paid by one or more of them on account of partnership ; neither can they enforce accounts as to partnership dealings from their brother-partners. This principle was enunciated in a Madras case, viz. *Pannaji Devichand* v. *Senaji Kapurchand*, 50 Mad. 175, where four unregistered firms carried on a certain business in partnership and the total number of the partners in all the firms exceeded twenty. Such partnership *inter se* between firms, particularly Marwadi firms, is very common in India, and before transactions are done with or overdrawn accounts allowed to such firms, care should be taken to see that the total number does not exceed the maximum provided by law unless of course they are joint family firms. A partnership may be illegal in law for other reasons, such as one

started to sell intoxicants without licence. In such a case, not only money lent but also money advanced as capital could not be recovered. (*Gopalrao* v. *Kallapa*, 3 Bom. L.R. 164.)

Outsiders Dealing with Partners.—The outsiders who deal with a partnership are expected to take for granted that all the powers which normally a partner of a trading partnership is permitted by law to exercise, are vested in each partner, unless they have notice of restrictions, if any, imposed on certain partners by the partnership, i.e. unless they have notice they will not be bound by such restrictions. When a partnership wants to open an account with the banker, the banker should see that all the partners join in the written authority which has to be signed by all individually, and in which all details as to the operation of the partnership account and powers of individual partners should be enumerated. Ordinarily a partner in a trading partnership has the power to draw, accept, indorse bills of exchange, cheques and promissory notes, *hundis*, etc. (*Haji Noor Mohamad* v. *Macleod*, 9 Bom. L.R. 271), and enter into contracts in connection with the business of the firm, raise loans on behalf of the firm in the firm's name in the ordinary course of the business of the firm, etc. Where money was borrowed by one of the partners in the name of the firm, but without authority of his co-partners, and applied to pay off the debts of the firm, it was held that the lender was entitled in equity to the repayment by the firm of the amount so applied and the same rule extends to money *bona fide* borrowed and applied to the legitimate purpose of the firm. (*Lakshmisankar* v. *Motiram*, 6 Bom. L.R. 1106). Again it was held in one case that if a bill is drawn even by a sleeping or secret partner in the name of the firm every one of the partners is liable. (*Bunarsee Doss* v. *Gholam Hossein*, 13 Moo. I.A. 358.) As far as the banker is concerned, the account, however, has to be opened in the name of the firm. It will not do if the same is opened in the name of any individual partner, because such an account will not bind his co-partners for any overdraft taken by any of them. [*Alliance Bank* v. *Kearsley*, (1871) L.R. 6, C.P. 433.] A partner has also no authority to pay the firm's cheques into his private account. [*Beavan* v. *National Bank*, (1906) 23 T.L.R. 65.]

Power of Partner to Borrow.—As regards the borrowing powers of a partner, the following quotation from *Lindley on Partnership* is important :—

"One of the most important of the implied powers of a partner is that of borrowing money on the credit of the firm. The sudden exigencies of commerce render it absolutely necessary that such power should exist in the members of a trading partnership . . . At the same time, the implied power of borrowing money, like every other implied power of a partner, only exists where the business is of such a kind that it cannot be carried on in the usual way without such a power. If

money is borrowed by one partner for the declared purpose of increasing the partnership capital, or of raising the whole or part of the capital agreed to be subscribed in order to start the firm, or if the business is such as is customarily carried on, on ready money principles, or without borrowing—as in the case of solicitors, the firm will not be bound, unless some actual authority or ratification can be proved. Still less will the firm be bound where the borrowing is prohibited and the person advancing the money is aware of the prohibition."

A single partner in India whose usual powers to manage the firm are not restricted can borrow even on mortgage of immovable property in the regular course of business. The English doctrine that a single partner cannot mortgage the immovable property of the firm does not apply to India. (*Asan Kani Ravuttar* v. *Somasundaram Chettiar*, 31 Mad. 206.) A partner may bind the firm by an equitable mortgage of immovable or real property. (*Lindley on Partnership*, 8th Ed. p. 177.)

General Powers and Duties of Partners.—Every partner has generally speaking, the power to do all acts necessary for or usually done in carrying on the business of partnership of which he is a partner unless there is an agreement to the contrary. A partner, subject to the provisions of the Indian Partnership Act, 1932, is the agent of the firm for the purposes of the business of the firm (S. 18). Thus the act of a partner which is done to carry on in the usual way, business of the kind carried on by the firm binds the firm, provided the same is done and executed in the firm name or in any other manner expressing or implying an intention to bind the firm (Secs. 19-22).

It would thus be seen that it is quite open to the members of a firm to enter into a mutual agreement under which they can restrict the power of any of the partners by arranging that certain members should only attend to a particular branch of the business and enter into contracts with regard to that branch only, and that certain others should look after other branches of management or take no active part except in financing the business. Such an agreement would, no doubt, be binding upon the partners and also on those who are aware of, or who had notice of, those terms in the partnership agreement. In short, the agreement to this effect would be binding upon the partners among themselves. The result would be that, if one of the partners in spite of an agreement to the contrary were to enter into a contract in the regular course of the business of the firm which by agreement he was not entitled to do, an innocent outsider would not be bound by such a clause in the partnership agreement of which he had no notice and can still look to the firm for his payment. It would be, on the other hand, open to the firm to pay up the money and obtain compensation from their partner who has violated the clause in the partnership agreement. Besides, the general powers of partners are limited

only to the doing of those acts which are usual and necessary in the ordinary course of the business of the firm and, therefore, they do not confer any extraordinary powers because it has been laid down that:

"A power to do what is usual does not include a power to do what is unusual, however, urgent." (*Lindley on Partnership*).

"Every partner is, in contemplation of law, the general and accredited agent of the partnership, or, as is sometimes expressed, each partner is *proepositus negotis societatis*, and may, consequently, bind all the other partners by his acts in all matters which are within the scope and objects of the partnership. Hence, if the partnership be of a general commercial nature, he may pledge or sell the partnership property; he may buy goods on account of the partnership; he may borrow money, contract debts and pay debts, on account of the partnership; he may draw, make, sign, endorse accept, transfer, negotiate and procure to be discounted, promissory notes, bills of exchange, cheques, and other negotiable papers in the name and on account of the partnership." (Storey, Sec. 125).

What a Partner cannot do under Implied Powers.—In the absence of usage or express authority from all other partners the implied authority of a partner does not empower him to:—

(1) submit a dispute relating to the business of the firm to arbitration.

(2) open a banking account on behalf of the firm in his own name.

(3) compromise or relinquish any claim or portion of a claim by the firm.

(4) withdraw a suit or proceeding filed on behalf of the firm.

(5) admit any liability in a suit or proceeding against the firm.

(6) acquire immovable property on behalf of the firm.

(7) transfer immovable property belonging to the firm.

or

(8) enter into partnership on behalf of the firm.

[S. 19 (2).]

Bank's Power of Set-off.—Unless the partners have specifically agreed that they are to be jointly and severally liable for an overdraft which the banker allows on the partnership firm's account, the banker cannot set-off this, overdraft against the private and separate accounts of the partners concerned with the same banker. (*Watts* v. *Cristie*, 11 Beav. 546.) With some bankers it is the practice to take a mandate admitting joint and several liability. This not only enables them to proceed against them jointly or severally or successively, but in case of insolvency the banker can prove on their private estates and partnership estate concurrently. The partner can, in course of borrowing on behalf of the firm, make use of the title-deeds or real immovable estate belonging to the firm by way of equitable mortgage.

Shares in Companies and Partnership.—A partner cannot accept shares in a joint-stock company in satisfaction of a debt due to the firm, even though the shares be fully paid. [*Niemann* v. *Niemann*, (1889) 43 Ch.D. 198.] But if the partnership was a banking partnership, it can receive shares in a joint-stock company by way of security for a debt due to the firm and register same in the name of the firm. If, in such a case, the shares are not fully-paid, the firm can be made liable, as contributories in respect of such registration. [*Weikarsheins* (1873) L.R. 83, Ch. 831.] Where a partner has a private account besides the partnership account, the banker should not allow a cheque drawn in favour of a partnership to be endorsed and put into private account of the partner, because that will belong to the partnership account. (*Beavan* v. *National Bank*, 23 T.L.R. 65.) There is no objection to a partner drawing a cheque on the firm's account, in the name of the partnership and placing it into his personal account. [*Blackhouse* v. *Charlton*, (1878) 8 Ch.D. 444.]

Guarantees and Securities in Partnership.—When taking a guarantee from a firm, the banker should be careful to see that each and every partner signs the guarantee, because it is not one of the implied powers of a partner in an ordinary trading partnership to sign guarantee binds. If, however, it is usual to give guarantees or the business of the firm includes giving of guarantees as the principal or one of the departments of the business then a single partner can by signing a guarantee in the name of the firm bind the firm and his brother-partners. When securities are deposited for advances to the partnership firm, they extend only to advances, before any change in the constitution of the partnership firm or the banking firm (if a private bank) occurs. [*Ex parte Kensington*, (1813) 2 V. and B. 79.] On the same principle, on the death of a partner who has deposited his own separate property with the bank as a security, dies, the bank must stop further advances, as money lent after that will not be secured by this deposit. [*Bank of Scotland* v. *Christie*, (1841) 8 Cl. and Fin. 214.] Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of a firm. Thus, in case of a banking partnership, securities are left in safe custody and if the same are misappropriated by one of the partners of such a firm, the banking firm will be responsible. If, however, money were to be placed in the hands of one member of a banking firm to be invested at his discretion, the banking firm will not be so responsible for misappropriation by that partner. This is because the last named transaction is not within the scope of the banker's business. It has been laid down that in case one partner in a banking house were to collude with a member of a trading firm in a transaction connected with the business of

the bank, the banking firm is liable to the trading firm for any damages which the latter may have suffered by reason of such a transaction. [*Longman* v. *Pole*, (1828) M. & M. 225.] According to Lindley (*Lindley on Partnership*, 8th Edn., p. 225):

"If there were two firms with one name, a person who is a member of both firms is liable to be used on all bills bearing that name and binding on either firm. But if a member of only one of the two firms is sued on the bill, his liability will depend first on the authority of the person giving the bill to use the name of the firm of which the defendant is a member, and secondly on whether the name of that firm has in fact been used If both these questions are answered in the affirmative, he will be liable, but not otherwise."

One partner can direct the banker of his firm not to pay a cheque of the firm. A partner can assist to the transfer of the account of the firm to the successors of the bank. (*Beale* v. *Caddick*, H. & N. 326.)

Deceased Partner's Capital.—Both in Indian and English law, a partnership is dissolved through death or bankruptcy of any partner, and in connection with the deceased partner's share or capital at the time of his death, both the English and Indian Acts lay down that in the absence of any contract to the contrary, the property left by a retiring partner, or the representative of a deceased partner to be used in the business is to be considered as a loan. The principle here is that though the legal personal representative of a deceased partner was entitled to a share of the profits earned through the use of partnership assets, in computing that share, the proportion due to the surviving partners for their supervision and management must be considered as an expense. [*Manley* v. *Sartori*, (1927) 1 Ch. 157.]

Death or Bankruptcy of Partner.—In case of the dissolution of partnership through death or bankruptcy of a partner, the surviving partners have a right to operate on the partnership account in connection with the dissolution. If, however, one of the partners becomes bankrupt, all that the partners who are solvent are bound to do is to close the books of account and hand to the trustee in bankruptcy in England or the official assignee in India. If, however, in case of either death, bankruptcy, or retirement of a partner, the banker wants to retain his lein for any money due to him, he should stop the account and continuing partners should be asked to open new account for future use, because if he does not do that, the Rule in *Clayton's case* will come into operation. In case of lunacy, or other disability, the partnership is not dissolved *ipsb facto*, for it requires the order of a competent Court for that purpose. In case of insolvency in India also the same rule operates. The executors of a deceased partner have no right to operate on the banking account of a partnership, nor have they any right to enter into the business of the other partners. Upon

the death of a partner, if the bank account of partnership is overdrawn and if the banker wishes to stop the account, he should return the cheque with the remark " partner deceased ".

In case of bankruptcy of a partner, he has no right to operate on the partnership funds, with the result that cheques drawn by him on the partnership account in the partnership name must be refused by the banker.

The Doctrine of Holding Out.—In case of " holding out ", i.e. where a person, though not a partner, by his conduct, or words, or writing, leads another to believe that he is a partner, though he is not, and thereby others give credit to the firm under the belief that he was a partner, the law is that he will be personally liable. To put it briefly a person who has, by words spoken or written or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm. Holding out may be effected in various ways. Eyre, C. L., has expounded this principle in *Vaugh* v. *Carver*, 14 R.R. 845, as follows :—

"Now a case may be stated in which it is the clear sense of the parties to the contract that they shall not be partners, that A is to contribute neither labour nor money and to go still further, not to receive any profits. But if he will lend his name as a partner, he becomes as against all the rest of the world a partner, not upon the ground of the real transaction between them, but upon principles of general policy, to prevent the frauds to which creditors would be liable, if they were to suppose that they lend their money upon the apparent credit of three or four persons, when in fact, they lent it only to two of them, to whom without the others they would lend nothing."

According to Lindley—

"It is, therefore, wholly immaterial whether the person holding himself out as partner does or does not share the profits or losses. Nay, more, even if it be known that he does not share either, still he may be liable. For, although a person who lends his name may sue for an indemnity from those who use it, it by no means follows that he ought not to be liable to third parties merely because they are aware of such stipulation. His name does not induce it the less on account of his right to be indemnified by others against any loss failing in the first instance on himself; and although in the case supposed, he cannot be believed to be a *partner*, the lending of his name does not justify the belief that he is willing to be responsible to those who may be induced to trust to him for payment."

Partner's Notice of Retirement.—It, therefore, follows that if a person who is a partner retires from a firm, he should give public notice of retirement, otherwise he would be liable for debts of the firm to those who do not know of his retirement and gave credit to the firm after his retirement under the belief that he was still a partner. It has been further held here that besides giving public notice of retirement, the partners retiring should also give actual notice to each of the old customers of the firm, as public notice only affects a new customer. (*Jwaladutt Pillani* v. *B. Motilal*, 29 Bom. L.R. 1244.)

It may be added here that even where a retiring partner takes a written contract from his other partners freeing himself from all liabilities of the firm, such an agreement would not be binding on the creditors of the firm unless these creditors are made parties to such an agreement. If they do not agree to do so, the position would be that the retiring partner would still be liable (granting that he has given public notice of his retirement) for the debts of the firm incurred during his tenure of partnership to the creditors of the firm and in his turn he would be entitled to be indemnified by his own ex-partners for any money that he may have to pay to such creditors. In case of the insolvency of his co-partners, however, after his retirement, his position would be that he would have to pay out of his pocket the creditors of the firm whose debts were incurred during the period of his partnership to his last penny and put in his claim before the trustees of the insolvent for such money paid out.

Public Notice of Dissolution.—The Act makes it clear that on the dissolution of a firm a public notice should be given, failing which the partners continue to be liable for the act of any one of them which would have been the act of the firm if done before dissolution. This of course does not apply to the estate of a partner who dies or is adjudicated an insolvent for acts done after such person ceases to be a partner (S. 45).

Partner's Liability for Partnership Debts.—It has been laid down in England and in India, that every partner is liable for all debts and obligations incurred while he is a partner in the usual course of the business by or on behalf of the partnership; but the person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such a firm for anything done before he comes in as a partner. Thus it would be noticed that the liability of partners is unlimited with regard to debts of the firm incurred in the regular course of the business of partnership, and that too, after they joined the partnership. In England it was decided by the House of Lords in *Kendall* v. *Hamilton*, 4 App. Cas., (1879) 504, that a partner during his lifetime is jointly liable for the debts of the firm with his other partners, though when a partner dies, the deceased partner's estate can be held liable. The meaning of this rule is that if a debt is due from a partnership firm made up of, say, A, B and C, all the partners, A, B and C must be sued in order to make them all liable for their debts. If, on the other hand, the creditor chooses to pick out only A, he is no doubt at liberty to do so, but supposing that he fails in satisfying his debts out of the estate of A, he cannot proceed against B and C for the balance of the debts which remains unpaid. In mercantile practice, however, the firm is looked upon as a person having an existence almost different from

parties who are its partners, and now both in India and England suits are allowed to be filed in Court, both by and against partners, in the name of the firm in order to simplify procedure.

Liability of Partners for Neglect or Fraud of Co-partners.—Where by the wrongful act or neglect of a partner acting in the ordinary course of business of the firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner (S. 26). The principle on which this rule is based is that every partner is an accredited agent of the firm to carry on the business of partnership, and that, as the principal would be responsible for the neglect or fraud his agent committed in the course of his employment, the firm is here liable for the neglect of fraud of one of its partners committed during the management of the business of the firm. It would be no defence for the other partners to say that they did not know of the fraud or did not participate in it. If, for example, one of the partners receives money in course of the business of the firm and disappears with it or misappropriates it for his own use and then becomes insolvent, the firm has to make good that money. This principle is now laid down in S. 27 of the Indian Partnership Act, 1932, where it is laid down that the firm is liable to make good the loss where (1) a partner acting within the apparent authority receives property or money and misapplies it, or (2) the firm receives property or money and misapplies same. In one case where one of the partners obtained certain information from a clerk of a competing firm by bribing him, which information he used for the benefit of his firm and to the harm of the competing firm, his partners were held to be liable to pay compensation to the competing firm. [*Kamlyne* v. *Houston and Co.*, (1903) 1 K.B. 81.] It must be noticed here that the neglect or fraud ought to have been committed in the regular course of business of the firm in order to make the other partners liable, e.g. it has been decided that in case of solicitors when money is given to them to be invested by them in a specific manner it is said to be so entrusted to them in the regular course of their business, and if therefore one of the members receives same and misappropriates it the firm would be liable. [*Blair* v. *Bromley*, (1844) 2 Ph. 254.] If, on the other hand, the money was given to a partner with certain instructions to invest at the discretion of the partner, the payment is not held to have been made in the regular course of the business of the firm, and therefore, misappropriation by a member of the firm is not binding on the firm. [*Harman* v. *Johnson*, (1853) 22 L.J., Q.B. 297.]

Special Agreement, Emergency and Other Incidents.—Of course by a special agreement it is open to partners to extend

or even restrict the implied authority of any partner, but this is subject to the rule that any such restriction shall not bind an innocent outsider who deals with a partner within his implied authority without knowing of such restriction (S. 20). In an emergency, however, a partner has authority to do all such acts for the purpose of protecting the firm from loss as would be done by a person or ordinary prudence, in his own case, acting under similar circumstances, and such acts will bind the firm (S. 21). In any case the act or instrument done or executed by a partner or other person on behalf of the firm must be done or executed in the firm name or any other manner expressing or implying an intention to bind the firm (S. 22). On the same principle an admission or representation by a partner concerning the affairs of the firm is evidence against the firm if made in ordinary course of business (S. 23). Notice to a partner habitually acting for the firm of a matter relating to the affairs of the firm operates as notice to the firm, except in case of a fraud on the firm committed by or with the consent of that partner (S. 21).

Conduct of Business and Mutual Rights and Liabilities.— Subject to contract between partners :—

(1) every partner has a right to take part in the conduct of the business,

(2) every partner is bound to attend diligently to his duties in the conduct of the business,

(3) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners.

(4) every partner has a right to have access to and to inspect and copy any of the books of the firm,

(5) a partner is not entitled to receive remuneration for taking part in the conduct of the business,

(6) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm.

(7) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits,

(8) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum,

(9) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(*i*) in the ordinary and proper conduct of the business, and

(*ii*) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances, and

(10) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm (Ss. 12-13).

Continuation after Expiration of Term.—In case a partnership is formed for a fixed period and on expiration of that period the partners continue business the presumption is that the mutual rights and duties of the partners (unless there is an agreement to the contrary) remain the same as they were before expiration of the term and the partnership thereafter is naturally to be taken as a partnership at will and the mutual rights and duties as stated above are to continue in so far as they are consistent with each partnership at will.

Dissolution of Partnership.—A partnership firm may be dissolved by mutual agreement or consent of all partners at any time (S. 40). Where it is a partnership at will the same may be dissolved as from the date mentioned in the notice given in writing by any partner to all other partners. If no such date is mentioned the same is dissolved from the date of the communication of the notice (S. 43).

A firm is dissolved compulsorily when all partners, or all but one partner, are adjudicated, or where an event has happened which makes it unlawful for the business of the firm to be carried on or for partners to carry it on partnership (S. 41).

A partnership is also dissolved (subject of course to contract between partners) : (1) by the expiry of the term if it is for a fixed term ; (2) by completion of one or more enterprises to carry on which the same was constituted ; (3) by death of a partner ; and (4) by the adjudication of partner as an insolvent (S. 42). In this case the adjudicated partner ceases to be a partner on the date on which the order of adjudication is made irrespective of the fact whether the firm is dissolved or not (S. 34). Where by a special contract between partners the firm is not dissolved on death of a partner the estate of the deceased partner is not liable for any act of the firm done after his death (S. 35).

Dissolution by a Suit.—A partner can by bringing a suit get a partnership dissolved on any of the following grounds :—

(1) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(2) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(3) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(4) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(5) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner;

(6) that the business of the firm cannot be carried on save at a loss; or

(7) on any other ground which renders it just and equitable that the firm should be dissolved (S. 44).

Banker and Partnership Winding up. When a partnership is dissolved through death, all cheques drawn by the deceased partner should be marked "Partner deceased", in all cases where the account happens to be overdrawn and the banker wants to stop account in order to preserve the lien on the deceased partner's estates. The next point is that on dissolution of partnership, the authority of each partner to bind the firm continues (in case of death the partners so authorized are the surviving partners) with a view to wind up the partnership business and to complete transactions which have been started during the time of the partnership of the outgoing or deceased partner, and any mortgage even of real or immovable property made by the surviving partners who are carrying on the business of the old firm will be good against the deceased partner's legal personal representatives. [*In re Clough*, (1885) 31 Ch.D. 824.] The mortgage will have a good title provided he did not know that the money so borrowed were utilized for

the purpose other than that of the business of the firm. A cheque drawn by a deceased partner is generally paid by banks without confirmation from the surviving partners, unless there are special circumstances which make such confirmation necessary. In case of a cheque drawn by a bankrupt partner, the banker should not pay same unless confirmed by other partners. When one of the partners deposits security to cover the firm's account and then the firm becomes bankrupt, which means that the partners are all bankrupt, the banker can treat this security as a collateral security and may prove against the partnership estate for the whole debt. On the same principle, if the security was given by the firm for the debts of a partner separately, the banker can prove against the partner's estate, without taking over the security into account and treating the same as a collateral security. The principle on which the estates are divided in case of bankruptcy of a firm is that all the firm's creditors are paid first out of the firm's assets, and the private creditors of each partner are in their turn paid in the first instance in full, out of the private estate, if that be sufficient, the surplus, if any, on either side, being thereafter transferred either to the firm's creditors, or to the creditors of the individual partner concerned, as the case may be.

Winding up and Sale of Assets.—It may be further noticed that each and every partner has a right, on dissolution, to insist on the sale of the partnership assets. No partner, in the absence of an agreement to that effect, can claim to have his own share or that of his partner valued by a valuer or to have same divided in specie. Besides, the right of winding up the affairs of a partnership in dissolution is a personal right belonging to each of the members of the firm which cannot be taken out of the hands of other partners by the personal representatives or trustees of a deceased or bankrupt partner. The general rule with regard to the above is stated thus: "On the dissolution of the partnership all the property belonging to the partnership shall be sold, and the proceeds of the sale, after discharging all the partnership debts and liabilities shall be divided among the partners according to their respective shares in capital." [*Darby* v. *Darby*, (1856) Drew, p. 503.] Here goodwill on the value attached to the firm's name must also be sold for the common benefit of all the partners. [*Levy* v. *Walker*, (1879) 10 Ch.D. 436.]

Joint and Separate Debts.—Where there are joint debts due from the partnership and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the

payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

The principle, as laid down in the section, has been long established in England. Lord King, in *ex parte Cook*, 2 P.W. 500, used the following words :—" It is settled, and is a resolution of convenience, that the joint creditors shall be first paid out of the partnership or joint estate, and the separate creditors out of the separate estate of each partner; and if there be a surplus of the joint estate, besides what will pay the joint creditors, the same shall be applied to pay the separate creditors, and if there be, on the other hand, surplus of the separate estate beyond what will satisfy the separate creditors, it shall go to supply any deficiency that may remain as to the joint creditors."

Partners' Rights and Obligations after Dissolution.—After the dissolution of partnership, the rights and obligations of the partners continue in all things necessary for the winding up of the business of the partnership.

Accounts on a Winding up.—The principles on which the partnership accounts ought to be finally settled on a dissolution are now laid down in Section 48 of the Indian Partnership Act, 1932, as follows :—

In settling the accounts of firm after dissolution, the following rules shall, subject to agreement by the partners, be observed :—

(*a*) Losses, including deficiences of capital shall be paid first out of profits, next out of capital and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiences of capital, shall be applied in the following manner and order :—

(*i*) in paying the debts of the firm to third parties;

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(*iii*) in paying to each partner rateably what is due to him on account of capital; and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

It may be added here that a suit for account in dissolution of partnership is to be brought within three years of the date of dissolution.

LIMITED PARTNERSHIP

In England, under the English law, which is of course not applicable to us in India known as the Limited Partnership Act of 1907, a partnership may be formed consisting of not more than twenty persons carrying on trading business and not more than

ten persons carrying on banking business, and is entitled a Limited Partnership. The partners are divided under the Act, into two designations, viz. (1) the " Limited " partners, and (2) the " General " partners. In every such partnership there must be at least one limited partner, and one general partner. The general partners' liability is unlimited, i.e. they are liable for all debts and obligations of the firm, whereas the limited partners' liability is limited to a sum, or sums, which they contribute as capital, or property, valued at a stated amount and who shall not be liable for the debts and obligations of the firm beyond the amount so contributed. This contribution, or capital of a limited partner, fixes the limit of his liabilities towards the debts and obligations of the firm, and it is further laid down that they shall not directly, or indirectly, draw out or receive back any part of their contribution, and that if they shall draw out or receive back any such part, they shall be liable for the debts and obligations of the firm, up to the amount so drawn out, or received back. The limited partners are not allowed to take part in the management of the partnership business, and they have no power to bind the firm, though they are given power to inspect, or get inspected, the books of the firm and to examine into the state and prospects of the partnership business. There is no objection to their advising their partners in the firm, but they should not take part in the management. If they should take such part in the management, their liability would become unlimited, for the debts and obligations which the firm incur, while they so take part in the management and on the same footing as if they were general partners. The death of a limited partner does not dissolve partnership, nor is his bankruptcy or lunacy a ground for dissolution. The general partners have the sole control of the management and direction of the firm, not only when the same is a going concern, but also on winding up same, unless the Court otherwise orders. These limited partnerships have to be registered in the required manner, stating their name, the general nature of business, the principal place of business, the full name of each partner and the term, if any, for which the partnership is entered into, the date of its commencement, and distinguishing the limited partners from the general partners. They should also state the sum contributed by each limited partner. All changes in the constitution of the partnership and in connection with any of the above particulars have to be notified from time to time. The law does not make the word " limited " compulsory in connection with the name of a limited partnership, and therefore, the banker has to be on his guard in England, while dealing with a partnership, lest it may be a limited partnership, failing this a substantial partner may turn out to be a limited partner, with the result that the banker may lose money.

REGISTRATION OF FIRMS

The Indian Partnership Act of 1932 has introduced a new departure, viz. the registration of Partnership firms. This was done because an amount of difficulty was experienced in connection with firms against whom suits had to be filed by businessmen, bankers and others in finding out who are the actual parties holding partnership interest in the firms. The registration is optional in the sense that no penalty is imposed but the Act is so framed that a sufficient indirect pressure is brought to bear on the parties concerned to register. This Act is to apply only to such provinces or any part of which the Governor-General in Council in the *Gazette of India* may declare from time to time. The registration is to be effected with officers known as " Registrars of firms of the area concerned ". Specially prescribed forms have to be filled in this connection containing a statement as to (1) the name of the firm, (2) principal place of business of the firm, (3) names of any other place where the firm carries on business, (4) the date on which each partner joined the firm, and (5) names in full and permanent addresses of the partners and the duration of the firm. This form or statement has to be signed by all the partners or their duly authorized agents. The firms to be registered must not include or use in connection with their names, words such as " Crown ", " Emperor ", " Empress ", " Empire ", " Imperial ", " King ", " Queen ", " Royal " or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or Local Governments (Secs. 56-58).

A minor partner who has been admitted to the benefit of partnership must notify as soon as he comes of age whether he selects to continue as a partner or not and the registrar in all such cases makes a record of such notice on his register. The register is open to inspection to any person on payment of the prescribed fee together with all statements notified and intimations filed (Sec. 66).

Effect of Non-Registration.—The effect of non-registration is that a partner cannot file a suit to enforce a right arising from a contract or conferred by these acts against the firm or against any person who is alleged to be a partner in the firm unless the said firm is registered and the person is or has been shown in the register of firms as a partner in the firm. On the same footing a firm cannot sue in any Court a third party of any right arising from a contract unless the said firm is registered and the persons suing are or have been shown in the register of firms as partners of the firm. These rules will also apply to a claim for set-off or other proceedings to enforce a right arising out of a contract, but shall not affect the following, viz. :—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(*b*) the power of an official assignee, receiver of Court under the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realize the property of an insolvent partner.

The only exception in this case being firms or partners in firms having no place of business in British India or having places of business situated in areas to which the Government notification does not apply and to a suit or claim of set-off of not exceeding Rs. 100 in value.

The Select Committee Report states that the position created is that the third party's right to sue the firm is kept intact, but in case of suits by the firm or partners *inter se* or against third parties, registration is compulsory, as such suits cannot be filed by unregistered firms or their partners. In case of suits against third parties it is open to the firm to get registered as soon as litigation is in sight. The effect of this regulation, it is submitted, is that partners of every responsible firm would prefer to get registered because otherwise they may not be able to file suits against the firm or against one or more of their partners.

JOINT-STOCK COMPANIES

Their Borrowing Powers.—In case of joint-stock companies, their powers, in connection with borrowing, lending, carrying on of business, drawing, accepting and indorsing bills of exchange, promissory notes, cheques, etc., largely depend on their constitution which is represented by the memorandum and articles of association of each company and the nature of the business. A trading company, for example, has an implied power to borrow, i.e. even if the constitution does not give express borrowing powers. Every banker who has to deal with joint-stock company has to see that these documents are produced and carefully inspected. Where the dealings of a particular company are likely to be frequent with it, the bank should file and preserve the printed copies of these documents, as well as the printed copies of the balance sheets from year to year, as they afford an excellent guide as to the financial progress and stability, or otherwise, of those concerns, at a given period. Company Law in India is covered by the Indian Companies Act of 1913 as amended by the Indian Companies (Amendment) Act of 1936. In England, however, a new Act has been passed, known as the Companies Act of 1929, which came into force on 1st November 1930. We also amended our Act in the year 1936 which amendments came into force in January 1937. The amendments made by the Indian Act were also far-reaching. In some particulars we followed the amendments of the English Act of 1929 and in addition made numerous original amendments and additions in order to meet with peculiar Indian requirements.

The Memorandum.—The memorandum of association in the Charter of the company and as such constitutes the most import-

ant of all the documents of the company to which it relates. It defines as well as limits the scope of the company's operations. Great care has to be taken in the drafting of this most important document. The memorandum, as well as the articles, when registered, bind the company as well as its members to the same extent as if they had signed same.

The Articles.—The articles of association form the bye-laws, or regulations, which govern the company's internal management, and embody the powers of the directors and officers, as well as those of the shareholders or members of the company, as to voting, etc. (Sec. 21 of Indian Companies Act, 1913.) All who have dealings with a company are expected to know the contents of its memorandum and articles. (*Royal British Bank* v. *Turquand*, 6 E. and B. 327; *Hope Mills, Ltd.* v. *Sir Cowasji J. Readymoney*, 13 Bom. L.R. 162.] It should be remembered that the memorandum lays down the main objects and powers of the company, which cannot be departed from and which can only be altered by compliance with certain specific requirements of the Companies Act. In most cases the consent of Court, besides the passing of a special resolution of members or shareholders, is compulsory, with a view to alter the clauses of the memorandum. The articles, which constitute the bye-laws of the company, on the other hand, are subordinate to the memorandum, i.e. they cannot seek to reserve powers outside the sphere chalked out by the memorandum, and in cases they do, such powers are inoperative. Thus, the memorandum is said to be subordinate to the Companies' Act, whereas the articles are subordinate to the memorandum of association as well as the Act. It is necessary for a banker to know and to feel sure as to what the powers of the company happen to be, particularly those of its directors and managers who act on behalf of the company. These powers are carefully defined in the articles as well as the memorandum. The powers in which the banker would be particularly interested are the powers of borrowing, and the extent of delegation of such powers to the directors, as distinguished from powers reserved to the members of the company which the said members can exercise through resolutions passed at general meetings. When a banker is requested to act as a banker of a joint-stock company, he should first call upon the management to furnish him with a copy of the resolution by which his appointment was made by the Board of Directors, which copy should be in the exact terms in which it appears in the minute book of the company, signed by the Chairman of the Board. This resolution must embrace detailed particulars as to the persons who are to sign cheques and other documents and should be accompanied by specimen signatures of those officials, who are authorized to sign cheques, etc. on behalf of the company. A mandate of appointment of a banker in the usual form has to be filled in and signed. The following is the usual form used :—

MANDATE OF APPOINTMENT BY LIMITED COMPANY

To be used by companies registered on or after 1st January 1901.

To THE BRITISH BANK LIMITED.

.....

.....

.....

.....19 .

GENTLEMEN,

.....Company Limited.

(Registered Office.....)

My Directors request you to open an account with the above-mentioned Company, and I hand you herewith:—

1. Certificate of Registration (for inspection and return).
2. Copy of the Memorandum and Articles of Association.
3. Certificate of Registrar of Joint Stock Companies, that the Company is entitled to commence business (for inspection and return).
4. Certified Copy of a Resolution of the Board of Directors regulating the conduct of the Account, together with specimens of the signatures of the authorized signatures.

(3) This Certificate is *not* required where there is no invitation to the public to subscribe for the Company's share, i.e. before it commences business.

Yours faithfully,

.....*Secretary.*

.....Company Limited.

We hereby certify that the following the..... .....Company, Limited, was passed at a Meeting of the Board held on the..... .....and has been duly recorded in the Minute Book of the said Company :—

"RESOLVED :—That a Banking Account for the Company be opened with the BRITISH BANK LIMITED, and that the said Bank be and is hereby authorized to honour Cheques, Bills of Exchange, and Promissory Notes drawn, accepted or made on behalf of the Company by

.....

and to act on any instructions so given relating to the account, whether the same be overdrawn or not or relating to the transactions of the Company."

Insert "any two of the Directors and countersigned by the Secretary, or *otherwise as may be required.*"

.....*Chairman.*

.....*Secretary.*

DIRECTORS	
Name	Signature

This mandate has to be carefully preserved for constant reference in course of transactions with the company. The joint-stock company concerned should also be instructed to keep the bank authorities in constant touch with variations in the appointment of directors and the officers concerned. Such notification as to alteration should be accompanied by a duly signed resolution either of the Board of Directors or of the company in general meeting, being a copy of the original in the minute book of the company. It should be remembered that every important step which a board of directors of a company takes should be taken by a resolution and that a single director has not the power to so act, unless the regulations so prescribe. This is usually done by providing that certain powers may be delegated by the board either to a committee of directors or to any one of them. The banker should insist on being furnished with properly signed resolutions in case of each such delegation.

Directors' " Ultra Vires " Acts.—The banker should take care to see that the directors do not exceed their powers in any transaction, i.e. act in an *ultra vires* fashion, because if they do so, that act will not bind the company. The company, however, in such cases, may ratify or confirm such act or transaction, at their general meeting, provided the same, though beyond the powers of the directors, happens to be within the powers of the company, i.e. not *ultra vires* the company. [*William Irvine* v. *The Union Bank of Australia*, (1877) 2 App. Cas. 366.] If, however, the act is *ultra vires* the company as well as the directors, the same cannot be ratified at all. In case the *ultra vires* acts of the directors are not so ratified by the company, the company will not be responsible for such acts, but the directors may be held to be personally liable for same. Here it is interesting to note that though company's assets cannot be utilized for paying *ultra vires* debts, it can recover money lent by it on a *ultra vires* transaction. Thus where a company, say a banking company, lent money on a mortgage in spite of the fact that the memorandum of association precluded such lending, it was held

that the company was entitled to sue and recover this money so lent. [*Ahmed Sait* v. *The Bank of Mysore*, (1930) 58 Mad. 771.]

Public and Private Companies.—Companies are divided into (1) " public " companies, and (2) " private " companies. A " public " company, must consist of at least seven members, but there is no limit as to the maximum, whereas in case of a " private " company, there shall not be less than two, nor more than fifty members not including those who are in the employment of the company. In other words, though the maximum is fifty, shares may be held by members in excess of fifty, provided they are held by the present employees as well as ex-employees to whom some were allotted while they were in the service of the company. The companies may be either " limited " or " unlimited ", and in case of those that are " limited ", it is compulsory to add the word " limited " after the name, on all notices or name boards or circulars, notices, papers issued by the company (Sec. 73). Only those companies which are formed not for profit, but for the furtherance of commerce or science, religion, charity, or other useful objects, not involving acquisition of profits, can omit the word " limited " after obtaining a special licence from the Board of Trade in England and a special permission from the Local Government of the province in which it is registered in India (Sec. 26).

Directors, their Duties and Liability.—In India every public company must have at least three directors as against the requirement of at least two in case of English public companies. Private companies need not have directors. We have already seen that the directors of companies have to act within their powers, and that where their acts are *ultra vires*, they would be personally liable, unless the said acts are ratified by the company. In this connection the summary of the judgment of Romer, J., in the famous case of *Re City Equitable Fire Insurance Co., Ltd.*, (1925) 1 Ch.D. 407, is important, where the duties of directors are laid down, viz. that (1) the manner in which the work of a company is to be distributed between the board of directors, and the staff is a business matter to be decided on business lines; (2) in discharging his duties, a director must act honestly and must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances on his own behalf. But he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his skill and experience; (3) he is not liable for mere errors of judgment; (4) his duties are of an intermittent nature to be performed at periodical board meetings and he is not bound to give continuous attention; (5) though not bound to attend all such meetings, he ought to attend them when reasonably able to do so; (6) in

regard to all such duties which may properly be left to some other official, he is, in absence of grounds of suspicion, justified in trusting that official; (7) it is the duty of each director to see that the company's moneys are from time to time in a proper state of investment, except so far as the articles of association justify him in delegating that duty to others; (8) the director in recommending a dividend and presenting the annual report and the balance sheet, should not merely be guided by the assurance of their chairman, however apparently distinguished and honourable, nor with the expression of belief of their auditors, but should himself have a detailed list of the company's assets and liabilities prepared for his own use; (9) it is the duty of the director of a big insurance company to personally supervise the safe custody of the company's securities.

It is also laid down by S. 83B (2) of the Indian Companies Act of 1913 that in case of a public company notwithstanding anything contained in its articles not less than two-thirds of the whole number of directors shall be persons whose period of office is liable to termination at any time by retirement of directors in rotation. This regulation applies to companies formed or incorporated after the commencement of the Indian Companies Amendment Act of 1936 where the articles of such companies have appointed directors two-thirds of whose number are not liable to retirement. The object of this new addition in our Indian Companies Act is to provide for not more than one-third of the total number of directors being nominated or appointed by managing agents, because the practice of appointing managing agents' *ex-officio* directors was showing a tendency of making the Board practically an *ex-officio* Board having very few independent elected directors. The Act further lays down that the managing agent shall not appoint more than one-third of the whole number of directors. The Amended Indian Companies Act has also adopted the rule of English Act of 1929 laying down that any provision in the articles or in any agreement between any person and the company by which the director or manager of the company is empowered to assign his office as such to another person shall be of no effect unless and until the same is approved by a special resolution of the company (Sec. 86B). The Amending Act also following the English Act lays down that a director may have the power to appoint an alternate or substitute director to act for him during his absence of not less than three months from the district in which meetings the directors are ordinarily held, if done with the approval of the Board of Directors, and that this substitution is not to be deemed to be an assignment of office. Of course any such alternate or substitute director shall *ipso facto* vacate office if and when the appointor returns to the district in which the meetings of the directors are ordinarily held. In short, temporary appointments of alternate or substitute directors do not consti-

tute an assignment of office within the meaning of this section if made through the approval of the Board of Directors.

It is also now laid down specifically by Section 68A of the Amending Act to the effect that in case an undischarged insolvent acts as director or managing agent or manager of a company he shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding Rs. 1,000 or both. This Section applies both to companies incorporated within British India and outside British India. This Section follows Section 142 of the English Act. This Section had to be passed because it was found in England that bankrupts who had not obtained their discharge were able by using the machinery of Companies Acts to continue trading under the disguise of a limited company with results often disastrous to those who had given credit to the company.

Under the old Indian Company law a director once appointed could not be removed unless the Articles of Association expressly provided the circumstances under which he was to be removed. Usually articles did provide for vacation of office of director *ipso facto* in cases such as lunacy, bankruptcy, failing to obtain qualification shares within proper time, etc., but generally very few companies in their Articles of Association inserted a clause by which the shareholders if not satisfied with the directors could remove them. Our new Indian Companies Amendment Act of 1936 now lays down that the company may be extraordinary resolution remove any director whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead (Sec. 86G). This Section of course does not apply to directors elected or appointed before the commencement of the Amendment Act. This is a peculiarity Indian section and is not to be found in the English Act. In case of vacation of office also now the Indian Companies Act by Section 86 (1) lays down clearly the circumstances under which the office of director is vacated *ipso facto* and thus this position is no longer left to the framers of the Articles of Association to provide.

It used to be usual both in England and India to insert what was known as Indemnity clause by which the directors and all officers of the company as well as auditors were relieved from all responsibility and liability in case they were guilty of misfeasance or negligence however gross except of course in case of fraud. This indemnity clause was declared to be valid and binding in the famous *City Equitable* case cited above. The new English as well as our Indian Amendment Act, however, has now declared any such clause to be void and inoperative.

Loans to Directors.—The practice of taking loans from companies of which they were directors became a scandal in

this country with the result that the Bombay Shareholders' Association and other public bodies protested against same. As a result, Section 86D (1) was introduced into our Act by the Indian Companies (Amendment) Act of 1936 which expressly forbids loans of any kind to a director other than the director of a banking company or that of a private company. It is thus laid down expressly that no company shall make any loan or guarantee any loan made to a company or to a firm of which such director is a partner or to a private company of which such partner is a director. In this connection, it is interesting to note, that bank directors can borrow from the banking companies of which they are directors. In one Madras appeal case where a director took a loan and failed to repay same, the Board sought to exclude him under a regulation of the Board, the Court held that loans to directors of banking companies by such companies were a part of business of the bank with them as was clear from the new Section 86D of the Indian Companies Act and therefore the exclusion was *ultra vires* and bad. [*E. P. S. Albuquerque* v. *The Catholic Bank, Ltd.*, (1943) Mad. 291.]

In addition, Section 86D (2) lays down that if the provision of the above sub-section is contravened, any director who is a party to such contravention shall be punishable with fine which may extend to rupees five hundred and if default is made in repayment of the loan or in discharging the guarantee he shall be liable jointly and severally for the amount unpaid.

Secret Contract by Company's Agents.—There is one other section in the Indian Companies Act, viz. Section 91D, which is also important, as it generally applies to managing agents, and others entering into contract on behalf of the company. The Section lays down that every manager or other agent of a company who enters into a contract for or on behalf of a company, in which contract the company is an undisclosed principal, shall make a memorandum in writing stating terms of it and the person with whom it is made. This memorandum he must forthwith deliver to the company and copies to the directors and such memorandum shall be filed in the office of the company and laid before the next meeting of its directors. In case of default, the company shall have the option to declare his contract as void and the manager or other agent is liable to a fine not exceeding two hundred rupees. This section is peculiar to our Indian Act and would apply to all agents, including managing agents and brokers, who should take care to see that the section is strictly complied with in order to save themselves from the penalty.

Mortgages and Charges made by Companies.—Six specific types of mortgages and charges are required to be registered with the Registrar of Joint Stock Companies, and in case they are not so registered within twenty-one days of effecting same, the

mortgage or charge is void as against creditors and liquidators of the company, though the loan itself may retain as a personal insecured debt. (Sec. 109, In Co.'s Act.) In India, besides being registered with the Registrar of Joint Stock Companies if the mortgage or charge happens to be a mortgage or charge on the immovable property, it should also be registered under the Indian Registration Act of 1908. The other provision that, according to *In re Moolthic Building Company* v. *Tacon Company*, (1915) 1 Ch.D. 643, the failure to register such a charge or mortgage would give a subsequent incumbrancer prior right, if he registers same, even though he had an express notice of the prior mortgage at the time when he took his security. The banker should therefore see that, where he advances money on any of the mortgages, or charges, which are compulsorily registrable with the Registrar of Joint Stock Companies, that the same are registered within the specified period.

In a Bombay case (*D. Pudumjee and Co.* v. *N. H. Moos*, 27 Bom. L.R. 1218), where the sole managing director of a private limited company borrowed a sum on condition that " pending the execution of the mortgage deed the borrowers put the lender in possession of all property of the borrowers made up of printing machinery, papers and other moveable property of a newspaper printing concern and the directors of the borrowers shall hold possession of same as agents of the lender and shall not sell the same without consent of the lender ", it was held that here the parties did not create a pledge, but intended to create a floating charge on the movable property under the meaning of Section 109, and therefore the charge was void for want of registration.

In another case where a company carrying on business as merchants consigned goods overseas obtained advances from their bankers and wrote to them enclosing for the banker's acceptance the company's drafts drawn on these shipments and copies of bills of lading and invoices that the company hypothecated the goods or proceeds to the said bankers, it was held that the effect of the transaction was that the company had created a charge on the company's book debts, which charge not having been registered was void against liquidators. [*Landenburg and Co.* v. *Goodwin Ferreira and Co.*, (1912) 3 K.B. 275.]

In case, however, where the debentures are issued in a series in which reference is given to any mortgage or charge, or to any other instrument giving such a mortgage, to which debenture-holders of that series are entitled *pari passu*, the particulars as to the amount secured by the whole series, date of the resolution authorizing the issue and the date of the covering deed, if any, by which the security is created or defined, a general description of the property charged and the names of the trustees, if any, for the debenture-holders together with the deed or a copy thereof verified in the prescribed manner containing the

charge, or if there is no such deed, one of the debentures of the series, should be registered with the Registrar. (Sec. 110, in Co.'s Act.) In case any commission, bonus, or discount has to be paid directly or indirectly in connection with the issue of these debentures, the particulars of such discount, or commission, or allowance payable as to the amount or rate per cent should also be included in the particulars supplied to the registrar for registration. (Sec. 111, In Co.'s Act.)

Charges that must be Registered.—The charges required to be registered both in India and in England are :—

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge on any immovable property wherever situate, or any interest therein; or

(*d*) a mortgage or charge on any book debts of the company; or

(*e*) a mortgage or charge not being a pledge on any movable property of the company except stock-in-trade; or

(*f*) a floating charge on the undertaking or property of the company.

It is further provided by Sec. 109 (1) of the Indian Companies Act that every mortgage or charge created as aforesaid shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner are filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby, shall immediately become payable :

Provided that—

(*i*) in the case of a mortgage or charge created out of British India comprising solely property situate outside British India, twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be filed with the registrar; and

(*ii*) where the mortgage or charge is created in British India but comprises property outside British India, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the manner may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

(*iii*) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a mortgage or charge on those book debts; and

(*iv*) the holding of debentures entitling the holder to a charge on immovable property shall not be deemed to be an interest in immovable property, S. 109 (1) where any mortgage or charge on any property of a company required to be registered under this section has been so registered, any person acquiring such property or any part thereof or any share or interest therein shall be deemed to have notice of the said mortgage or charge as from the date of such registration, S. 209 (2).

Section 109 (1) (*e*) now makes it compulsory for every mortgage on movable property as distinguished from a pledge, to be registered which was not the case under the old Act, whereas Sec. 109 (2) is designed to affect transferees with notice as from the date of registration. Where after the commencement of the Amendment Act a company registered in British India acquires any property subject to a charge of any kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under Sec. 109, the company must cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be correct copy) of the instrument, if any; by which the charge was created or is evidenced, to be delivered to the registrar for registration in manner required by this Act within twenty-one days after the date on which the acquisition is completed. Where, however, the property is situate and the charge was created outside India, twenty-one days after the date on which the copy of the instrument could in due course of post, and if despatched with due diligence, have been received in British India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the registrar. In case of default the company and every

officer of the company who is knowingly and wilfully in default shall be liable to a fine of five hundred rupees (S. 109A).

In this connection the provision of Sec. 120 is important. The section here provides a remedy in cases where the omission to register a mortgage within the twenty-one days prescribed is accidental or due to inadvertence or due to some other sufficient cause. The section runs as under :—

Sec. 120.—The Court, on being satisfied that the omission to register a mortgage or charge within the time required by Section 109, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for which a charge or mortgage was created, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on the other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended or, as the case may be, that the omission or mis-statement be rectified, and may make such order as to the costs of the application as it thinks fit.

(2) Where the Court extends the time for the registration of a mortgage or charge, the order shall not prejudice any rights acquired in respect of the property concerned prior to the time when the mortgage or charge is actually registered.

The English Companies Act of 1929 has, by Section 79, added three more additional charges which have to be registered in England. They are—

(1) Charge over calls on shares of Joint-Stock Companies made but not paid.

(2) Charge on a ship or share in a ship.

(3) Charge on goodwill, patent or on a licence under patent or on trade mark or copyright.

A registered company is also compelled by the Companies Act to maintain a register of mortgages and charges (Indian Act, Sec. 123; and English Act, Sec. 88) in which it has to enter all charges specially affecting the property of the company as well as all floating charges on the undertaking, or property of the company, giving in each case a short description of the property charged, the amount of the charge, and (except in case of securities to bearer) the names of the persons entitled thereto. The omission to keep such a register entails a fine on any director, manager, or other officer of the company, knowingly and wilfully doing same. This register shall be open at all reasonable times to the inspection of a

creditor, or the members of a company, without fee; and on payment of a small fee, not exceeding one rupee in India, and one shilling in England, for each inspection to any other person. (English Act, Sec. 89; Indian Act, Sec. 124.)

Company Debentures as Banker's Securities.—Bankers frequently advance money on debentures by companies. For this purpose it is necessary to remember that these debentures may be carrying either a floating or a fixed charge. Debentures are defined by Chitty, J., in *Edmonds* v. *Blaina Furnaces Co.*, (1887) 36 Ch.D. 215, as follows :—" The term itself imports a debt—acknowledgment of a debt—and speaking of the numerous and various forms of investments which have been called debentures without any one being able to say the term is incorrectly used, I find that generally, if not always, the instrument imports an obligation or covenant to pay. This obligation, or covenant, is in most cases at the present day accompanied by some charge or security. So that there are debentures which are secured." It will thus be seen that a debenture is a certificate issued by a company acknowledging the debt due by it to its holders. There is of course no objection to a single debenture being issued by a company to one person. [*Robson Smith*, (1895) 2 Ch. 118.]

The Floating or Fixed Charge.—A floating charge means that the holder of the debenture has a right to be paid out of the assets of the company, but the company is left free to deal with all the assets until or unless the charge becomes fixed through the capital, or interest, falling due under the terms of the issue. [*Government Stock Investment Co.* v. *Manila Ry. Co.*, (1897) A.C. 81; *Evans* v. *Rival Granite Quarries, Ltd.*, (1910) 2 K.B. 979.] Thus, in case of a floating charge, the directors are free not only to sell the property so charged, but also to mortgage same for the purpose of the business. This mortgage would take priority over the rights of the holders of floating debentures. The charge also becomes fixed when the company goes into liquidation. One other case is where the property such as goods secured by floating debentures are seized by the sheriffs. Here the debenture-holders can claim priority over the rights of execution creditors, because it has been held that the seizure of goods by the sheriff is not dealing with it in the ordinary course of business. [*Davey and Co.* v. *Williamson and Sons*, (1898) 2 Q.B.D. 194.] In one case where a mill company borrowed from a bank on the pledge of " all the liquid assets including the stock-in-process now or at any time hereafter stored by the company in the godowns and the mill premises ", with the condition that the company was not to pledge, or otherwise charge the goods, which were to be kept in a godown the keys of which were delivered to the lending bank, which company was to sell the goods under certain conditions, it was held that the transac-

tions amounted to a mortgage of specific assets with a licence to the company to dispose the goods in course of business under prescribed conditions and was therefore not a floating charge. (*Bank of Baroda* v. *H. D. Shivdasani,* 28 Bom. L.R. 689.)

The fixed charge, however, creates a mortgage on some specific property of the company in favour of debenture-holders. These debentures are also called mortgage debentures.

In case of a floating charge, however, if it is specifically declared that the company shall not mortgage any of its property in priority to, or at par with, the holders of floating debentures, the holders would be protected. A contract with a company to take up and pay for any debenture of the company may be enforced by a decree for specific performance. In case where a floating charge has attained even a Garnishee Order will not get a priority, because the service of such an order does not operate as an assignment in equity or amount to a transfer of the debt. [*Norton* v. *Yates,* (1906) 1 K.B. 112; *Geisec* v. *Taylor and Hartland,* (1905) 2 K.B. 658.]

Debentures to Bearer.—They are quite familiar to English investors, though they are rather rare over here. Kennedy, J., in *Bechuanaland Exploration Co.* v. *London Trading Bank,* (1898) 2 Q.B. 658, decided in case of bearer debentures that according to the usage of the mercantile world, the debentures were treated as negotiable instruments, passing like promissory notes or bank notes, by mere delivery from hand to hand. In a subsequent case, *Edelstein* v. *Schuler and Co.,* (1902) 2 K.B. 144, it was held that it was not necessary to tender evidence to prove that bonds of this kind are negotiable instruments, *that being a fact of which the Court will take judicial notice.*

As far as the banker is concerned, when he finds that there is already an issue of debentures by the company, giving a charge on its property, he has to take that into calculation before agreeing to an overdraft, or any other loan, without proper security, because naturally the debentures having a charge over the assets have a priority over unsecured creditors. Some companies issue their debentures, giving a charge or mortgage to a banker as security against loans advanced to the company, in which case the banker should take this debenture in the name of a nominee, preferably payable on demand. Where there is no prior charge, the banker should also see that the debenture he gets contains a clause prohibiting the company from issuing any other debentures ranking in priority, or *pari passu,* with the debenture issued to him. A separate memorandum for the deposit in the usual form should also be evidenced in the security, being deposited as a pledge, and it should be further taken care of to get this charge duly registered with the Registrar of Joint-Stock Companies, and, if necessary, with the Registrar under the Indian Registration Act

of 1908. These debentures will not be taken to be redeemed by reason only of the current account having ceased to be in debit, as we shall see a little later.

Debenture Trust Deeds.—When debentures are issued to the public it is now usual to do so under a Trust Instrument or Trust Deed. This trust deed generally speaking seeks to mortgage or charge certain specific property or gives a floating charge on general estate, or both, to the debenture-holders by way of security for the payment of debentures or debenture stock as well as interest on them on proper dates agreed upon between the parties. The usual practice is to secure the consent of two or more prominent persons well known to the debenture-holders to act as trustees on their behalf. These debenture trustees represent the lenders or the creditors who become mortgagees when the charge is given. These trustees, of one part on behalf of the lenders and mortgagees and the company on the other part, enter into these trust deeds under which the company as the borrower shall convey its properties or charges in favour of the trustees in connection with this security and the trust deed is then made to embrace in detail the terms and conditions under which the loan has been given and the charges have been created. It also gives in detail under various clauses the rights of the debenture-holders, which they can exercise through their trustees in case of default, either in payment of interest or the repayment of capital or in case of liquidation.

The advantages of providing a trust deed are many, the principal of which happens to be that in case of emergency as well as all throughout the period that the loan agreement is working, the debenture-holders have the trustees looking after their interest and ready to protect them whenever any event happens which is likely to threaten these interests. Besides this, in case of arrears of interest or capital or in the event of liquidation, through the powers which are provided for in the trust deeds, debenture-holders are able to get the properties sold or taken possession of as mortgagees, through their trustees and to do this without having to resort to Court for assistance, as a mortgagee under ordinary mortgage which does not embrace these clauses has to do and which the debenture-holders in absence of a trust deed may have to do themselves through the Court. If the charge or mortgage is given separately in separate debentures issued to each debenture-holder, it is not very easy for them to take advantage of this position. The creation of this specific mortgage through the bringing in of trustees, places the debenture-holders in a more secure position and the trustees are able whenever necessary to consult the wishes of the debenture-holders through their meetings called by themselves. In cases where the position so requires the

debenture-holders can through their trustees get a receiver of the mortgaged property appointed and that too under the powers in the deed without the intervention of the Court. The various clauses in the covenant or deed also bind the company down to various agreements under which they have to do or abstain from doing various things as the debenture-holders' interest may warrant. Of course, there were cases more frequent in old days than they are at present, where the financial position of the company borrowing being very sound, the security of debenture trust deed was not asked for, but nowadays the debenture trust deeds in case of large loans and for any specifically long period have become almost universal. In case of short loans from bankers and others, these deeds naturally are not generally used, though even in the case of bankers, the demand for mortgage debentures for the purpose of advance has become increasingly frequent.

Frame of the Trust Deed.—In considering the frame of the trust deed, the point to be remembered is that the debenture trust deed with a mortgage or charge usually gives a legal mortgage on specific assets, generally immovable, i.e. those forming what is known as block capital, and also contains a floating charge on the general undertaking of the company, including its stock-in-trade, book debts, uncalled capital or calls made and not yet paid, etc. The usual circumstances under which the mortgage or charge is made enforceable are :—

(1) Arrear or default in the payment of interest or capital,
(2) Winding up,
(3) Breach of any of the covenants,
(4) Arising out of circumstances under which a receiver has been appointed either by trustees or by other creditors.

Law Applying to Debenture Trust Deeds.—We have already seen that the object of our debenture trust is to get the mortgage or charge on property transferred to the name of the trustees on behalf of debenture-holders. These trustees in whose names shares of companies are thus transferred under this deed can exercise the voting power in connection with those shares themselves irrespective of whether any interest on debenture loan is in arrear or not. [*Siemen Bros. and Co.* v. *Burns*, (1918) 2 Ch. 324.] The debenture trustees being trustees all incidents of Trustees Act apply to them including the principles of trusts buying the trust property themselves. [*Magada Soda Co.*, (1915) 94 L.J. Ch. 217.] The lawyer who acts for trustees has a lien on the trust deed and other documents in his possession for his cost, both before and after the execution of the trust deed. [*In re Dee Estates Ltd.*, (1911) 2 Ch. 85.] Of course if there is an agreement to the effect that the company or any other party is to pay his cost, the position would be

different. [*In re Mason and Taylor*, (1878) 10 Ch.D. 729.] The debenture certificates when issued along with the trust deed, generally make a reference to the trust deed and contain a few important provisions and rules which are to be found in the said deed. Frequently debentures are redeemed by drawings, i.e. it is arranged in the trust deed that a certain number of debentures would be paid out every year from a certain reserve fund created out of the profits and that the number of debentures which should be paid out in any particular year is to be ascertained by drawing the numbers by lot. These periodical drawings are not within the Lotteries Act of England. [*Wallingford* v. *Mutual Society*, (1880) 5 A.C. 685.] If the fixed date expires, they will be considered to be due even though no ballot has been held. [*In re Tewkesbury Gas Co.*, (1911) 2 Ch. 279, (1912), 1 Ch. I. C.A.]

Redemption of Debentures.—Frequently a debenture trust deed provides for redemption of debentures by a Sinking Fund. The idea here is that every year a certain amount is transferred from the company's profits to a special reserve fund known as Sinking Fund account and after the expiration of the time during which the loan is to run, the debentures are paid out from this fund which is by that time brought up to the amount of the debenture debt to be redeemed. Here unless it is clearly stated that a Sinking Fund is intended to be cumulative, i.e. the interest on the redeemed debentures is to be added to the Sinking Fund, this will not be taken to be the arrangement by mere inference. [*Morrison* v. *Chicago and North West Granaries*, (1898) 1 Ch. 268.] Sometimes the trust deed provides that the redemption of the debentures is to be effected by a purchase, in which case the trustees may act in the best interest of all concerned. [*National Trust Co.* v. *Wicher*, (1912) A.C. 377.] The debenture deed also sometimes contains a power to the trustees to settle disputed questions in which case they can exercise their discretion. [*Noakes* v. *Noakes and Co.*, (1907) 1 Ch. 64.] If a debenture deed contains a covenant, as it usually does, to the effect that on breach of a covenant, the debt may fall immediately due that will not mean a trivial breach or default. [*Melbourne Brewery Co.*, (1901) 1 Ch. 458.]

Frequently it happens that the trustees get compensation in money when the lease of a property which has been mortgaged with them is not renewed. In this case the rule is that if the trustees have the power of sale before the security becomes enforceable, they may treat it as money arising out of sale. [*Noakes* v. *Noakes and Co.* (1907) 1 Ch. 64; *Bentley's Yorkshire Breweries*, (1909) 2 Ch. 609.] If, on the other hand, the trustees had no such power to deal with the mortgaged assets, the money must be kept invested by them and the company must receive the income. [*Law Guarantee Society* v. *Mitcham Brewery*, (1906) 2 Ch. 98.]

Under the covenants in the trust deed, powers are also given by which the discretion of the trustees is unfettered to consent to any transaction which in their opinion will not prejudice the debenture-holders. [*Hamger* v. *London City and Midland Bank*, (1918) 87 L.J. (K.B.) 978.]

The general rule applying to all trustees happens to be that they should not delegate their office either wholly or in part to one of themselves or to a stranger, unless and until the trust deed expressly or impliedly authorizes delegation or where circumstances have arisen under which a prudent man acting for himself would delegate in the ordinary course of business. [*Speight* v. *Gaunt*, (1883-84) 9 A.C. 5; *Shepherd* v. *Harris*, (1905) 2 Ch. 310; *Gasquoine* v. *Gasquoine*, (1894) 1 Ch. 470] Where, however, the trustee is a corporation or a company, its directors can act on its behalf. [*Ferguson* v. *Wilson*, (1866) L.R. Ch. 77.] A trustee, however, may employ a company trustee who happens to be a broker. [*Shepherd* v. *Harris*, (1905) 2 Ch. 310.] However, the present day trust deeds generally empower the trustees to employ brokers, bankers, solicitors, accountants, etc. and thus these difficulties do not actually arise in practice. Even if the employment of bankers was not specifically provided for in the trust deed, the trustees can employ them to hold trust funds, but in doing so they must take care to select a bank of repute and reliability (*Swinfen* v. *Swinfen*, 29 Beav. 211); but they should not leave the money with the bankers longer than is necessary. (*Cann* v. *Cann*, 51 L.T. 770; *Rehden* v. *Wesley*, 29 Beav. 230.) There is no objection of trustees employing solicitors and accountants where they are necessary irrespective of their power in the trust deed. The title deeds must be kept by the trustees and they must not permit same to pass out of their control. Even in case of the receiver, they must give inspection to him but not the custody of it. [*Ind. Cope and Co. Fisher* v. *Same*, (1909) 26 L.T.R. 11 C.A.] If the trustees act on their own judgment honestly, they will not be responsible for loss resulting on the ground that they did not consult experts. [*Cocks* v. *Champnian*, (1896) 2 Ch. 763.] They can of course file and defend suits in Court if so advised by their lawyers and where they find that certain action is absolutely necessary in the interest of the state and the trust deed does not give them the power, they can obtain sanction of the Court by satisfying the Court to that effect. [*Re New*, (1901) 2 Ch. 534; *Morgan's Brewery Co.* v. *Crosskil*, (1902) 1 Ch. 898.] The trustees of course are there to watch the interest of the debenture-holders who are the beneficiaries of the trust and to do everything which is necessary to further their interest and abstain from doing that which might injure those interests. No doubt, circumstances do arise when the interests of debenture-holders come in conflict with those of the company, when it is the duty of the trustee to protect the debenture-holders' interest.

The trust deed as we have seen secures to the trustee the power of sale and also a proviso for redemption which is generally added at the end of the deed. This power of redemption should be so drafted that the company can redeem only before a default is made in payment of the principal money. [*Sampson* v. *Pattison*, (1842) I.H.S. 533.] This power of sale, or even the statutory power of sale in case of freehold land mortgaged for a term of years, or on which a charge is given before a legal mortgage, may be exercised and when it is exercised the conveyance will vest in the purchaser of the property, subject of course to legal mortgages which carry priority to the mortgage made under the debenture trust deed, but of course he will be free as to the claims of all mortgagees subsequent to the mortgage given to the debenture-holders. With reference to the appointment of a receiver generally this power is provided for with an express condition that it is to be exercised in the case of great urgency or when the company has gone into winding-up. The usual practice is that in case of urgency the trustees when they enter give a certificate of urgency to the company, which may of course be disputed, but the general tendency of the Courts is not to go behind such a certificate if the same is given in their opinion honestly and without being reckless. (*Joplin Brewery* v. *Law Guaranteed Trust and Accident Society*, "*Times Newspaper*", *Nov.* 17, 1909.)

Debenture-holder's Receiver.—In connection with these debentures it may be mentioned that a clause is generally inserted in it, entitling the creditor, in case of liquidation of a company, or in case where the interest or capital is due and not paid, to get a receiver or manager for the company's property appointed. When a banker, under this power, obtains an order from the Court for the appointment of such a receiver or manager, or where according to powers reserved he himself can independently appoint a receiver or manager, and he exercises that power, it is his duty to inform the Registrar of Joint Stock Companies, within seven days of the date of such an appointment, by giving notice of this fact to that officer and the registrar enters this fact in his register of mortgages and charges of joint-stock companies. If the notice is not given, the banker may be liable to a heavy fine.

Lien on Shares.—In connection with advances made by bankers on shares, one element to be considered is that in case of a good many companies, clauses in the articles of association reserve what is called "first and paramount" lien on their own shares (which, of course, extend to dividends due thereon) for any and all debts due by the shareholder to the company and these clauses generally reserve a power of sale also. Many banks permit overdrafts to their customers who are their own shareholders, holding large number of shares on reliance of this power

as a security. Such a lien on the shares can be enforced even against trustees, as the shares on the register are on their personal names and no notice of trust is allowed to be entered in the register of members by the Companies Act. A purchase of such shares on the market makes them subject to the lien, because the exercise of such a lien makes the company concerned secured creditor even in bankruptcy. [*In re Collie, Ex parte, Manchester and County Bank*, (1876) 3 Ch.D. 481.] However, where the banking company has notice of mortgages of shares with outsiders, it will have no lien for advances made after such notice in spite of this clause. [*Bradford Bank Co.* v. *Briggs*, (1886) 12 A.C. 29.]

Deposit of Debentures with Banks.—Under the present law, if a debenture carrying a charge on the property of the company were to be deposited as security for an overdraft on current account with a bank, the said debenture will not be taken to be redeemed by reason only of the current account having ceased to be in debt if certain conditions are fulfilled. We have dealt with this point in Chapter V in a passing manner and shall now treat it more fully.

Under the present law (Sec. 127 of the Indian Companies Act, 1913, and Sec. 75 of the English Companies Act, 1929), " where either before or after commencement of this Act (thus making the law retrospective as well as of future application), a company has redeemed debentures which it has issued previously, it can with certain exceptions, keep them alive for the purposes of re-issue and where a company has purported to exercise such a power the company shall have power and shall be deemed always to have had power to re-issue the debentures either by re-issuing the same debentures, or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had the same rights and priorities as if the debentures had not previously been issued.

" The two exceptions are where (1) articles or the conditions of issue expressly otherwise provide, or (2) the debentures have been redeemed in pursuance of any obligation on the company so to do, not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns."

The first point is easy to follow, viz. when the articles expressly forbid such a re-issue. In the second case, say where the agreement is that so many per year shall be paid off, they cannot be re-issued. " Not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns " cover the case, where the debenture has been deposited to cover a temporary advance and the loan is called in. Here, the company can keep same alive and re-issue.

It should, however, be added that in this case, if the banker has notice of a subsequent mortgage, he should stop advancing on this account as otherwise the rule in *Clayton's case* will apply, (1 Mer. 572), and all amounts paid in by the debtor company will go to reduce the original debt. [*Florance Deley* v. *Lloyds Bank, Ltd.*, (1912) A.C. 756.] The same rule would apply in case of advances on deposit of title deeds of land in case a banker makes further advances after notice of sale of land. [*London and County Banking Co., Ltd.* v. *Thomas Ratcliffe*, (1881) 6 App. Cas. 722.] It is best in such cases to rule off and close the account with a view to keep the bank's claim intact on the original mortgage. A separate current account may be opened for the subsequent payments in by the debtor company.

LOANS TO COMPANIES

General Precaution.—While dealing with companies in the matter of giving loans and accommodations, the banker has thus to carefully study the memorandum and articles of association, to ascertain what powers the company possesses in this regard and also settle how far the board of directors can independently, or the company can, at a general meeting of shareholders, exercise such powers. He should remember, as we have already seen above, that everyone who deals with a company is expected to be cognisant of the contents of the memorandum and articles of association. The next point to remember is that in case the banker has to deal in the matter of financial accommodation, with promoters of companies about to be formed, he takes their personal bonds and not bonds from them purporting to be acting on behalf of the company to be formed as agents, because there cannot be a ratification of such acts by the company after it is formed, on the principle that the ratification must be of an act of a principal who was in existence on the day the act sought to be ratified was done. [*Scott* v. *Lord Ebory*, (1867) L.R. 2 C.P. 255.]

Newly Incorporated Companies.—In case of companies which are newly incorporated and for which financial accommodation is applied for, the banker should see whether the certificate entitling the company to commence business is obtained in case the company is a public company. In case of private companies no such certificate is necessary. The object of ascertaining this is that unless the company is entitled to commence business, all contracts entered into by it prior to that are provisional only and will not bind the company until it becomes so entitled. In other words, if it never becomes entitled to commence business and goes into liquidation before obtaining this certificate, the contracts entered into by the company never become binding. [*In re Otto Electrical Manufacturing Co.*, (1906) 2 Ch. D. 390.] On this principle a banker cannot enforce even his lien before

obtaining the certificate of the commencement of business, because a lien is a contractual right arising out of the relation between the banker and customer. [*New Druce Portland Co.* v. *Blackiston*, (1908) 24 T.L.R. 583.] All that a banker need do here is to call for the production of this certificate and see that it is properly and regularly signed by the Registrar of Joint Stock Companies. If so, it is conclusive evidence of the company's authority to commence business. [*In re Blair Open Hearth F. Co., Ltd.*, (1914) 1 Ch.D. 390.] If accommodation is sought for prior to the obtaining of this certificate of the commencement of business, but after incorporation, the same may be given on personal guarantee of the promoters or directors concerned.

An Old Established Company.—In case of an old established limited company the balance sheet would give the banker some idea as to its position. If there are mortgage debentures, then lien against securities only should be allowed, because the debenture-holders, in case of liquidation, may have the first charge unless the debenture debt is insignificant. If the company has reserve liability in connection with its shares, that will be no doubt a favourable circumstance, provided the shareholders happen to be the parties who can be relied upon to pay their calls in the event of liquidation. The usual precaution taken is to take a promissory note signed by two or more directors personally, as a collateral security, while dealing with limited companies. The other point to bear in mind is that in case the company is wound up either compulsorily, or voluntarily, the banker should not pay cheques, drawn by directors subsequent to the commencement of winding up. [*Bolognesi's case*, (1870) L.R. 5 Ch. 567.]

Guarantees on behalf of Companies.—In case of taking guarantees from directors personally, the case of *Victors, Ltd.* v. *Lingard*, (1927) 1 Ch. 323, is important. Here the point was that the directors originally gave a personal guarantee for an overdraft to be granted to their company. Thereafter they arranged that instead of their own guarantee, the company's debenture for a specific amount charging the company's property should be substituted as security for this overdraft. The question being raised, it was held that the resolution providing for the issue of debentures here was a nullity, because the directors were interested in the arrangement. This principle is laid down in our Indian Act in Section 91B, but in England a provision introducing similar restrictions is usually to be found in the articles, as was the case with *Victors, Ltd.*, as quoted above.

With reference to guarantees given in connection with loans, etc., advanced to joint-stock companies, the other point of interest is the effect on the validity of the said guarantee, in case there is a change or alteration in the composition of a

company. The principle here is that if the company remains intact, the fact that it absorbs smaller concerns whose identity is completely sunk within the original company, would have no effect. [*Capital and Counties Bank* v. *Bank of England*, (1889) 61 L.T.N.S. 516.] Amalgamation, however, would have a different effect and, according to Lord Lindley, in his book on *Partnership Law*, 7th Edn., page 139, "in absence of special provisions, such an amalgamation of two companies would release sureties on guarantees given to either separately," though, of course, in an old case. [*Prescott Dimsdale and Co.* v. *Bank of England*, (1894) 1 Q.B. 351], it was held by Smith, L. J., that much would "depend upon the nature and character of the business amalgamated and how the amalgamated business was subsequently carried on. In each case, it must be a question of fact." Of course, this would not affect guarantees either of the amalgamated companies or banks with respect to the transactions entered into prior to amalgamation. The banker should, therefore, in such cases get fresh guarantees in favour of the amalgamated company concerned.

WINDING UP OF COMPANIES

Compulsory Winding Up.- The winding up of a company may be either compulsory or voluntary. In the former case the result is that an officer called the "Official Liquidator" is appointed, who is an officer of the Court, who takes possession of the assets of the company with a view to realize same and pay all the debts. The compulsory winding up is brought about by an application either of the (1) creditors, or (2) the company itself, or of (3) one or more members who are called contributories in liquidation. The grounds on which the application for the winding up of a company may be presented are the following :—

(1) that the company itself has passed a special resolution to be so wound up;

(2) that default is made in filing the Statutory Report or in holding of the Statutory* meeting;

(3) that the company has not commenced its business within one year of its incorporation, or has suspended its business for a whole year;

* The Statutory meeting is the meeting which the Companies Act requires a company to hold within three months in England and six months in India of the company being entitled to commence business. At this meeting a report called the Statutory Report has to be submitted to the shareholders giving certain information as required by the Companies Act such as (1) total shares allotted for cash or otherwise, (2) total cash acquired on these shares, (3) abstract of cash received from shares and debentures and of payments made thereout and balance in hand, (4) the estimated amount of preliminary expenses, and (5) names, addresses and descriptions of directors, auditors, managers and secretary.

(4) that the number of company's members is reduced below two (in case of private companies) or below seven (in case of other companies);

(5) that the company is unable to pay its debt;

(6) that the Court is of opinion that it is just and equitable that the company should be wound up. (Sec. 162 of the Indian Companies Act.)

A company carrying on business in India exclusively though originally incorporated in England, can also be wound up in India.

With reference to the petition for compulsory liquidation under Section 162 (6), commonly known as the " just and equitable clause ", it was the old law that the ground alleged under this clause ought to be one which is *ejusdem generis* with that of the preceding five clauses or sub-sections. It is now decided that the power of the Court to wind up was not so restricted. [*Loch* v. *John Blackwood*, (1924) A.C. 783.] This case was followed in India in *Sabapathy Rao* v. *Sabapathy Press Co. Ltd.*, 48 Mad. 448. In England the Official Receiver becomes the provisional liquidator after which the permanent official liquidator is appointed by the Court, after consulting the members, or shareholders. In India, the Official Receiver is appointed a liquidator generally. In England, the Official Liquidator is sometimes assisted and advised by a committee of creditors, known as a " Committee of Inspection ", according to the directions and powers given by the Court. Similar provision is now made in our Act also by the Indian Companies Amendment Act, 1936, by introducing a new Section 178A for the purpose. Prior to this, there was no such provision in our Indian Act.

Voluntary Winding Up and Winding Up under the Supervision of the Court.—Under the amended Indian Companies Act and under the English Companies Act of 1929, it is now provided that where it is proposed to wind up a company voluntarily, the directors, and where there are more than two directors, the majority of directors, should hold a meeting before sending the notice of winding up and make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and have formed an opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of winding up. This declaration must be delivered to the Registrar of Companies for registration, otherwise it will have no effect. When such a declaration is made and delivered, the voluntary liquidation will be known as " A Members' Voluntary Winding Up ". In case a winding up is to be voluntary but where such a declaration is not made, it will be known as " A Creditors' Voluntary Winding Up ".

Members' Voluntary Winding Up.—In this case all the powers of the liquidator in a voluntary winding up are maintained and the rights of creditors in a voluntary winding up are removed. This is because once the company is declared solvent, creditors' intervention is considered unnecessary, because the parties principally interested under the circumstances are the shareholders, or contributories, who would share in the surplus after the creditors are paid in full.

Creditors' Voluntary Winding Up.—In this case the company must cause a meeting of the creditors to be summoned on the day, or the next day following the day, on which there is to be held the meeting of members at which the resolution for voluntary winding up is to be proposed and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the notices of the said meeting of the company. These notices of creditors' meeting must be sent to each and every creditor, and should also be advertised once in the *Gazette*, and once at least in two local newspapers in the district where the registered office or the principal place of business of the company is situate. At this meeting a full statement of the position of the company's affairs, together with the list of the creditors of the company and the estimated amount of their claim, should be laid before the creditors by the directors, and one of the directors should preside. If any default is made in this, the directors and officers are liable to a penalty of a fine.

The creditors and the company may nominate a person to be a liquidator and in case the creditors and the company nominate different persons, the persons nominated by the creditors shall be liquidators, and if no person is nominated by the creditors, the company's nominee shall be the liquidator. In case a company is not satisfied with the creditor's nominee, it may within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order, directing that the company's nominee shall be liquidator either alone, or jointly with the creditors' nominee, or that some other person be appointed liquidator.

The creditors may at their meeting also appoint a committee of inspection consisting of not more than five persons. The " committee of inspection ", or failing that the creditors, may fix the remuneration to be paid to liquidator or liquidators. In case of death or resignation of the liquidator, the creditors may fill up the vacancy. This liquidator has to call meetings of the company and of the creditors at the end of each year before which he has to lay an account of his acts and dealings and of the conduct of the winding up during the preceding year. On the affairs of the company being fully wound up, he has to pass same by calling both the meetings of the company

and the creditors. Within one week after the date of these meetings, or after the date of the later meeting, a copy of the account and the returns have to be sent to the Registrar of Companies.

In case the winding up continues for more than one year, the liquidator shall summon a general meeting of creditors at the end of the first year from commencement of the winding up. An account of his acts and dealings and of the conduct of the winding up during the previous year has to be laid before this meeting. In case the liquidation lasts for more than one year, similar meetings have to be called at the end of each succeeding year and when the liquidation is completed, final meetings have to be called both of the company and the creditors and accounts laid before them. One week after the date of these meetings, or if the meetings are not held on the same date after the date of the later meeting, the liquidator shall send to the Registrar of the Companies a copy of the account and a return of holding the meetings and of their dates. Three months after registration of these returns, the company shall be deemed to be dissolved.

Amalgamation and Reconstruction.—In case where amalgamation, reconstruction or absorption arrangement is made between two or more companies the same now can be done both under the Indian Companies (Amendment) Act of 1936 as well as under the English Companies Act of 1929 by avoiding winding up. This method saves an amount of unnecessary expenditure which the compulsory winding up of the absorbed company through the usual process of winding up involves. Thus the compromise as laid down by Secs. 153A and 153B can be carried out and applied to compromises in case of companies not in course of being wound up. Here after going through the process as laid down in Sec. 153 an application is to be made to the Court under the said section for the sanction of the compromise or arrangement proposed in a company and any persons as are mentioned in that section and it is shown to the Court that the compromise or arrangement has been made for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme for whole or any part of the undertaking or the property of any company concerned in the scheme is to be transferred to another company, the Court is authorized to make one or more of the orders as we have stated below. Here it may be added that the company transferring is called the " transferor company " and the other company to whom undertaking or property is to be transferred is known as " transferee company ".

The Court is authorized to make provision for any or all of the following matters :—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*d*) the dissolution, without winding up, of any transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out, Sec. 153A (1).

When the order under Sec. 153A (1) provides for a transfer of property or liabilities, the said property shall be transferred to and vest in and the liabilities shall be transferred to and become liabilities of the transferee company. In case any property is directed by the order to be free from any charge which is by virtue of the compromise or arrangement to cease to have effect, the same shall be free, Sec. 153A (2). A certified copy of the order has to be delivered to the registrar for registration within 14 days after completion of same. If default is made in complying with this, the company and every officer of the company knowingly and wilfully in default shall be liable to a fine not exceeding Rs. 50. The property under this section includes property, rights and powers of every description and liabilities will include duties. The word " company " as used in Sec. 153 (1) will not include any company other than a company within the meaning of the Indian Companies Act.

In a scheme or contract which involves the transfer of shares or any class of shares in a company (i.e. the transferor company) to any other company, whether the said company is a company within the meaning of this Act or not, has within four months after the making of the offer by the transferee company been approved by the holders of not less than three-fourths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares and where such a notice is given, the transferee company shall,

unless on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company. In case where, however, any such scheme or contract was approved at any time before the commencement of the Indian Companies (Amendment) Act of 1936, the Court has the power at its discretion by an order on an application made to it by the transferee company within two months after the commencement of that Act, to authorize notice to be given under this section at any time within fourteen days after the making of this order in which case Sec. 153B shall apply except that the terms on which the shares of the dissenting shareholders are to be acquired shall be on such terms as the Court may by the order direct instead of the terms provided by the scheme or contract. When a notice has been given by the transferee company under this Sec. 153B and the Court has not on application made by the dissenting shareholder ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of Sec. 153B the company is entitled to acquire. Upon this a transferor company must register the transferee company as the holder of its shares. All the money received by the transferor company under this section must be paid into a separate bank account and any other sums or any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other considerations were received. The dissenting shareholder here includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

EXECUTORS AND ADMINISTRATORS

We have seen that on notice of death of the customer, the banker should stop payment of his cheques until a probate, or letters of administration, or a succession certificate is produced. Before stopping payment, however, the banker should be absolutely certain about the customer's death. Cheques obtained prior to notice of death may be debited to the account of the deceased customer as well as those which the banker had "marked" at the customer's request. As soon as the executor,

or administrator, obtains probate or letters of administration, the bank opens an account in the executor's or administrator's own name, to which account the balance of the deceased's account is transferred. The probate is made up of a copy of the will with the sealed certificate of the Court, testifying to its genuineness. On production, the banker should note in a special register the directions which the deceased in his will has given as to the disposal of his property, for future reference and guidance. In case of " letters of administration " also, full particulars should be recorded in the register, together with details. It should also be remembered that if the executors or administrators carry on the business of the deceased they would be personally liable, unless the will directs and authorizes them to do so. In the latter case also, the executors and administrators can reimburse themselves from the estate, but if the estate is not sufficiently to meet the debts, they would be personally responsible. In a Bombay case, the doctrine of English law in this connection was enunciated to the effect that on a claim for money lent to the executors, they are liable personally and a judgment cannot be directed against the assets of the testator. [*Byramji Rustomji* v. *Heerabai*, 11 Bom. L.R. 250; *Farhall* v. *Farhall*, (1871) L.R. 7 Ch. 123.] The law regards the executors and administrators as " one " person, with the result that any one executor or administrator, can act on behalf of himself or his co-executor, or co-administrator, so that one of them can give a valid discharge for a debt or a receipt for money paid or handed over on the account of the estate.

The modern banker has lately entered upon this new field by offering himself to be nominated as an executor or trustee. The duties of executors and trustees are onerous and require specialized knowledge of the law applying to them as well as business acumen in carrying out their work. Private individuals have always found these duties not only irksome but also in these days of active work and little leisure impossible in many cases, with the result that many executors and trustees have left the bulk of the work to be done with the lawyer whose costs have frequently taxed the estate more than was just or equitable. Many of our joint-stock banks for a small fees undertake these duties, the usual practice being to form special subsidiary companies to deal with this class of business. Here the party who takes advantage of the offer gets a substantial institution to look after his property and estates under the guidance of expert officers who work these companies.

Different Grants on Administration.—Where an infant is appointed as executor, a special grant is made to the father to act during minority, which grant is known as *durante minore aetate*.

Whereas if a person appointed as an executor happens to be of unsound mind, a grant is made called *durante dementia.*

If the executor happens to be absent, a grant may be made known as *durante absentia.* Absence means out of the jurisdiction of the Court at the expiration of twelve months from the testator's death. There may be a *limited grant,* i.e. limited to time or amount of the estate or both.

Cum testamento annexo is a grant when the will exists, but either executor declines to act or is dead or not appointed.

Pendente lite is grant made when a suit is pending touching the validity of a will. The person here appointed has all general powers of the administrator, excepting the distributing of the residue. *Ad litem* is made when the proper representative does not act, and in the interests of the estate, it has to be represented at some suit or proceedings.

There is no objection to a married woman being appointed an executor or administrator. She can here act without her husband's interference.

The banker may have securities or other valuables belonging to the deceased customer. These should also be handed over to the properly appointed executor or administrator, obtaining complete discharge from him.

Loans to Executors and Administrators.—When the executor or administrator wants an advance from the banker for the purpose of paying the estate, the banker can only advance that by taking proper security. This is because otherwise an advance made prior to the obtaining of probate may place the banker in an awkward position, if by some technical flaw the will or appointment is nullified. Of course, after the grant of probate, or letters of administration, the executors or administrators are able to exercise their usual powers in connection with the estate. They can pledge the estates of the deceased for the purpose of raising a loan for meeting expenses or debts, of the deceased. The banker should see that in connection with loans granted on personal security of the executors, they must be made to join. If an account is opened in the bank ledger under the heading of "Executors of late Mr. James Shaw (deceased), William Grant and J. Ellis", that could be operated on by any single executor on behalf of himself and his co-executor. Otherwise, if it is opened in two or more personal names only, i.e. without the designation as executors, the same would have to be treated as a joint account and all would have to sign. The best thing is to take from the executors concerned a writing laying down the form in which the account has to be opened, and the manner in which it is to be operated upon. The executor is given one year, both in India and England, within which to realise the property, and is not bound to deliver any

legacy until the expiration of one year from the deceased's death. This is called the " executor's year ". The executor has complete powers in law, according to Section 269 of Indian Succession Act, 125, to dispose of the property of the deceased in such manner as he may think fit. Therefore, if the executor, in exercise of his discretion, mortgages a part of the movable estate of the deceased, the mortgage will be valid. The executor can transfer his office on his death by his will to his own executor, who is to act on behalf of the original estate, as well as that of the deceased executor. This is because in law there is a continuity of confidence of the deceased in such appointments.

As far as the executorial purposes are concerned it has been laid down for a long time that it is a very common practice for him to obtain advances from bankers for immediate wants of the estate by depositing securities belonging to the estate. [*Earl Vane* v. *Rigdan*, (1870) L.R. 5 Ch. 670.] The only point to be guarded against is that the executor may borrow money for the purpose of carrying on the testator's business without being specifically authorized to do so by the will. [*M'Nellie* v. *Acton*, (1853) 4 De. G. M. & G. 744.] If the banker has notice that the money he lends to the executor is going to be misapplied, he will acquire no claim against the estate. [*Collinson* v. *Lister*, (1855) 7 De. G. M. & G. 634.]

The usual practice when a banker hears of a customer's death, as we have already noticed, is to stop payment of the cheque of the deceased until confirmed by the executor or administrator. The cheques which the banker has already paid before he heard of the death could undoubtedly be debited to the account of the deceased. Similarly, cheques which the bankers have " marked " at the deceased customer's request or for the purpose of clearing are debited to the said account. The party who claims to be the executor or administrator has then to produce the probate in the former case and the letters of administration in the latter, to the banker on which the deceased's account is transferred to the names of the executors or administrators as the case may be. The probate is a certificate from the Court with the copy of the will to the effect that the said will was a genuine document and was the last testament of the party concerned. The banker no doubt takes note as to the contents of the will as far as the disposal of the property of the deceased is concerned for his future guidance. The points to be noted are :—

(1) The date on which the will was made, (2) the date of the probate, (3) probate value of the estate concerned, and (4) names and powers of the executors, administrators or the trustees if any appointed by the Court.

If the will empowers the executors to carry on the business of the deceased, all powers that it may give to them as to borrowing on account of the business, pledging or mortgaging of property, accepting, drawing and endorsing of bills, signing of cheques, etc. are carefully noted.

Banking Procedure while dealing with the Executors and Administrators.—Frequently bankers obtain a copy of the will and keep it on their file in such cases where they have to constantly deal with the estate in connection with its business.

If the will is so framed that certain persons are appointed executors to dispose of and distribute the estate and thereafter in case of certain specific estates or amounts, the executors or certain number of them are empowered to act as trustees, the last named set of executors become trustees as soon as their function of executorship is performed and their office of executorship is thus ended.

Will of a Hindu and Probate. In connection with the will, it will be interesting to note that a Hindu can make a will under the Indian Succession Act, 1925, as regards his separate or self-acquired property. A Hindu woman may also bequeath her " stridhana ", i.e. her own personal estate. In some cases, consent of her husband is required. The position of a Hindu is that there is besides self-acquired property what is known as " ancestral property ". Here, unless he asks for a partition, the ancestral property remains joint, and the income is utilized towards the maintenance of male members of the family and their wives, and marriage expenses of the daughters of the family. In case of a Hindu testator's self-acquired property, probates or letters of administration are to be obtained on the same footing as in case of non-Hindus. The only restriction being that a Hindu cannot bequeath property by a will which he could not have alienated by gift *inter vivos*. He cannot also so dispose of as to deprive his wife or any other person entitled to maintenance. [*Promotha Nath* v. *Nagendrabala*, (1908) 12 Cal. W.N. 808.] Under the Indian Succession (Amendment) Act, 1926, all Hindu wills made after 1st January 1927 must be in writing and attested on the same footing as all wills are required to be attested. The will of a Hindu is not revoked by his subsequent marriage. (Sec. 57, Indian Succession Act, 1925.)

Where a suit is filed to recover a debt due to the estate of a deceased Hindu, no decree can be passed against the debtor unless on production of the probate or letters of administration, or succession certificate. The case may be heard to the stage of judgment, and judgment delivered, but the actual decree cannot be passed until the party on behalf of the estate has obtained a proper probate, letters of administration, or succession certificate as the case may be.

Will of a Mohammedan and Probate.—In case of a Mohammedan, his power to make a will is governed by the Mohammedan Law. Under this law, a Mohammedan cannot dispose of more than one-third of his estate. The rest must go to his heirs according to the Mohammedan Law of Succession. Of course, there is a little difference between the two sects of Mohammedans, viz. the Shiahs and the Sunnis in the matter of details, but the above is the governing principle to all. The other important point is that a Mohammedan need not observe any special formality in making his will, as is required by law in case of other communities in India. All that is required is that he should declare his intention clearly which, if proved, and in sufficient clearness, will be carried out. [*Suleman Kadar* v. *Dorab Ali Khan*, (1882) 8 Cal. 1.] From this it follows that not only should the form known to English law need not be followed, but that it need not even be in writing. If it happens to be in writing, it need not even be signed by the testator or attested by witnesses. In case of oral will also, there is no technical compulsory requirement as to the number or class of witnesses.

An executor may apply for the probate of the will of a deceased executor in the same manner as any other executor. In case of an oral will, the same may be obtained by affidavits of witnesses as to the oral provisions made by the deceased. (*Mahommad Abba* v. *Mariambai*, 24 Bom. 8.) Under Section 211 of the Indian Succession Act, 1925, the whole of the property of a deceased Mohammedan vests in his executor whether or not probate is taken out. In absence of an executor or administrator, the property of a deceased Mohammedan vests at the moment of his death in his heirs. This is because Mohammedan Law does not recognize any representation to the estates of a Mohammedan. (*Amir Dulhin* v. *Baij Nath Singh*, 21 Cal. 311.)

As the property vests in the heirs or the executor directly, the debtors of a deceased Mohammedan can pay their debts to his executor without probate, and this payment will operate as a discharge to the debtor. In case of heirs, however, they all should join, as payment to one of them does not discharge the debt to all. [*Pathummabi* v. *Vittil Ummachabi*, (1902) 26 Mad. 734 to 739.]

It should be remembered by the banker that the executor of a deceased Mohammedan is a bare trustee for the heirs as to two-thirds of the assets which the deceased has no right to dispose of by the will. A bare trustee means one who has no beneficial interest himself, but all that he has to do is to transfer the property to the beneficiaries. (*Re Cunningham* v. *Frayling*, 2 Ch. 567.)

In case where a Mohammedan has died intestate, administration of his estate may be granted to any person who, accord-

ing to the rules of Mohammedan Law, would succeed to the whole or part of the property in case of intestacy. The Court, of course, has the discretion to select when more than one so qualified apply, and if none apply, the same may be granted to a creditor.

JOINT HINDU FAMILY FIRM

Distinct from a Partnership.—It may be stated here that a joint Hindu family firm possessing a trading business and created through the operation of Hindu Law must be distinguished from an ordinary partnership on many grounds. The liabilities of partners of such a firm are governed mainly by Hindu Law on the principle on which joint Hindu family transactions are acknowledged and accepted. The joint Hindu family firm differs from partnership in that the death of one of the joint owners does not put an end to the existence of the firm, nor can one of the partners who voluntarily severs his connection ask for an account for the past profits and losses. The managing member of the family can also pledge the family credit or family property for the purposes of the business of such a firm, but no other male member can do so. If, on the other hand, the partnership is of a character where a certain number of members of a joint Hindu family have joined with others (outsiders) the partnership will be governed by the Indian Partnership Act and not by Hindu Law.

The Manager or the "Karta".—The property generally belonging to joint Hindu family is managed by the father or any other senior member for the time being of the family. The manager of a joint family is called "karta". The manager has authority to borrow money for family business. The manager of the joint family is generally the manager of the joint family business. The liability generally of the members of the joint family is limited to their shares in the joint family estate. They are not personally liable except in case of adult co-parceners on a contract, purported to be entered into by the manager alone, unless it can be shown that in reality they actually took part in the contract or that the contract was one which they subsequently ratified. The same rule applies to a promissory note passed by the manager in his own name when the money is borrowed for the purpose of joint family business or to meet a joint family necessity. The manager of a joint family business has general power in connection with making contracts, giving receipts, discharging claims which are incidental to the business, because without such general powers it woud not be possible for the business to be carried on. [*Kishan Prasad* v. *Har Narain Singh*, (1911) 33 All. 272.]

The "Karta's" Power to Borrow.—The manager has a right to incur debts on behalf of the family for what are known as

necessities. The legal necessities have been held to be : (1) Payment of Government revenue and of debts which are payable out of family property. [*Gharib Ullah* v. *Khalak Singh*, (1908) 25 All. 407.] (2) Maintenance of co-parceners and of the members of their family. [*Makundi* v. *Sarasukh*, (1884) 6 All. 417.] (3) Marriage expenses of male co-parceners and of daughters of co-parceners. [*Sundrabai* v. *Shiv Narayan*, (1908) 32 Bom. 81 ; *Chhoti Ram* v. *Narayan Das*, (1887) 11 Bom. 605.] (4) Performance of necessary funeral or family ceremonies. [*Nathuram* v. *Shoma Chhagan*, (1890) 14 Bom. 562.] (5) Costs of necessary litigation including borrowing of money for the purpose of maintaining a suit to recover property belonging to the joint family. [*Beni Ram* v. *Man Singh*, (1912) 34 All. 4.] (6) Costs of defending the head of the joint family or every other member against a serious criminal charge. (7) Payment of debts incurred for family business. [*Sham Sunder* v. *Achhan Kunwar*, (1899) 21 All. 71.] In establishing the legal relations of a joint firm the Courts treat it as a kind of partnership and apply the principles of that law. [*Raghunath Tarachand* v. *The Bank of Bombay*, (1910) 34 Bom. 72.]

These rules, no doubt, apply to what is known as ancestral family business and not to a new business of certain male members of the family with or without outsiders.

The One Peculiarity of Ancestral Business.—The one peculiarity of this family ancestral business is that only the manager has authority and not any other co-parcener to enter into obligations binding on the family business firm, but in return, the managing member has the obligation thrown upon him of not only being liable, as far as his share of the estate goes, in connection with debts he incurs on behalf of the family ancestral business, but he is also personally liable, because the contract is entered into by him. This means that his separate property will, in such a case, be also liable, if the family property is not sufficient. The other co-parceners are not, however, personally liable, but only their share or interest in the joint family estate is liable. The manager, of course, can pledge the family property including the minor's interest for the purpose of family business, though the minor's liability will be limited to his interest in the family property, and his separate property, if any, will not be liable for the payment of such debts.

New Business by Father.—According to the latest decisions of the High Courts of Madras and Bombay, if the father starts a new business and the joint family consists of father and sons, the said business would be deemed to be ancestral. The result is that the sons, whether adults or minors, are liable for the debts incurred by the business to the extent of their shares in joint family property [*Achutanarayanayya* v. *Rat-*

najac, (1926) 49 Mad. 211; *Anna Bhat* v. *Shivappa*, (1928) 52 Bom. 876.]

If the managing member of a joint family business enters into a partnership with a stranger, the partnership will be considered as exclusively one between him and the stranger, though they may be accountable to the family if he has entered into such a contract while acting on behalf of the family.

Sir Lawrence Jenkins, in a Privy Council case (*Sanyasi Charan Mandal* v. *Krishnadhan Banerji*, 49 Cal. 560 at pp. 567-8) lays down that "the distinction between ancestral business and one started after the death of the ancestor as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business with its benefits and its obligations. In the other, they rest ultimately on contractual arrangement between parties." The result is that only those male members of the joint family who are adults and who have consented to join such a partnership would be liable, but the minor co-parcener, though he may be admitted to the benefit of partnership, would not be partner of such a business for the simple reason that this business rests on a contractual arrangement.

The manager of an ancestral family business had authority to raise money not only to discharge debts arising out of the family business, but also money to carry it on. It was a matter for his decision whether the money necessary should be raised by mortgage or a sale, or whether it was better to raise the money to continue the business which latterly had not been profitable, or to close it down, and that it would be unreasonable to expect a member to investigate a question of that kind.

Current Account with a Family Firm.—The banker has thus to bear in mind the rights and obligations both of the managing members as well as co-parcener in connection with the joint Hindu family firm.

When the account is opened with a bank, the same may either be opened in the personal name of the managing member, or in the name of the family business. In either case, it would be well to make the manager state in writing, whether the firm is an ancestral family business or a new business. In the case of the latter, whether any, and, if so, what outsiders are partners. In case of ancestral business also, the manager may be asked to state whether any outsider had been admitted in the business. As to the cheques, the same should be signed by the managing member of the business, because he alone has the capacity in law to enter into contracts, etc. on behalf of the joint family firm.

TRUST ACCOUNTS

Power of Delegation.—In connection with the opening of the account of a trust, the position at law is that unless the instrument gives authority to the trustees to delegate their powers as such to any one or more of their number, they cannot do so. The banker, therefore, while opening an account for the trust, must make an inspection of trust instruments and see what the exact position happens to be there, with a view to make a note in a special register kept for the purpose, for future reference.

It has also been held that a bank does not become a trustee in regard to trust money deposited therein by a trustee. The relationship between the trustee and the bank is that of creditor and debtor. [*The Nayar Modern Bank Ltd.* v. *Official Receiver of Travancore National Bank Ltd.*, (1941) Mad. 125.]

Under ordinary law, the delegation of power by trustees to one of their number is not permissible in absence of such reservation in the instrument. [*In re Flower* v. *Metropolitan Board of Works*, (1884) 27 Ch.D. 592.] Thus whether to accept the signature of one trustee on behalf of his brother-trustees on cheques drawn upon the trust account, or not, can only be ascertained by a reference to this document.

The Form of the Account.—As we have already seen, a trust account may be opened in the name of the trustees personally, describing same as belonging to a trust, or in a form which could clearly show that the money does not belong to the party such as the "Indian Club Account". [*Ex parte Kingston*, (1871) L.R. 6 Ch. 632.]

Again, if the account was opened in the name of a person, or persons, without any indication as to money being trust money, still if the banker had notice of the trust, i.e. he was aware of the fact that this amount, which these persons were operating on, belonged to trust, that would be sufficient, and the bank would have to be cautious while dealing with these persons. If no such notice or indication can be proved against the banker, he would not be liable. [*J. R. Thomson* v. *The Clysdale Bank*, (1803) A.C. 282.] It has also been held that a banker is not entitled to apply what he knows to be trust funds in discharge or reduction of a debt of a customer. If a banker does so he can be compelled to make restitution of the money so applied. [*P. L. N. K. M. Nagappa Chettiar* v. *O. R. Moms P. Firm*, (1939) Mad. 121.]

Breach of Trust by Transfer.—If the customer had one bank account in his personal name, and another in the trust name, a transfer of money from the trust account to the personal account should be put the banker on inquiry, particularly where the transferee account happens to be overdrawn. [*John* v. *Dodwell*, (1918) A.C. 563.]

The position would still be worse if it could be proved to the satisfaction of the Court that the transfer money of the trust account to the overdrawn account of the customer is extended to the benefit of the banker. As in *Foxstone* v. *Manchester and Liverpool Banking Co.*, (1881) 44 L.T.N.S. 406, where Fry, J., laid down that :—

"The bank could not derive the benefit which they did from that payment; nothing had to be drawn from the trust fund unless they were prepared to show that the payment was a legitimate and proper one having reference to the terms of the trust. It is said that they did not know what the trust was at that time. That appears to me to be immaterial, because those who know that the fund is a trust fund cannot take possession of that fund for their private benefit except at the risk of being liable to refund it in the event of the trust being broken by the repayment of the money."

This rule laid down by Fry, J., has been supported and quoted with approval in a number of subsequent decisions and may be taken as most reliable. The position taken up by all Courts is that where trust money is misappropriated by someone, an effort should be made, as far as possible, to protect the trust, and if points are found in favour of the trust, the Court naturally stretches them with the result that some innocent party has to suffer the loss. The banker ought to see that he is not that innocent person.

Cases Where Fry, J.'s Dictum Apply.—The dictum of Fry, J., in the above case to the effect that " those who know that a fund is a trust fund cannot take possession of that fund for their private benefit, except at the risk of being liable to refund it in the event of the trust being broken " wsa quoted with approval by Farwell, J., in *Attorney General* v. *De Winton*, (1906) 2 Ch. 106. Thus, a banker should not permit a transfer of money by which he himself benefits, such as a transfer from the trust account to be personal account of the trustee, particularly when the latter is overdrawn. On the same principle, a banker should not collect or credit cheques drawn in favour of a trust fund to the personal account of the trustee. Neither has a banker any right of set-off against a trust fund for debts due by the trustee. If, however, bearer bonds were deposited with the banker and advances made by him on same and the banker thereafter learns that they were trust property, he will have a lien as far as he had no such notice at the time of making the advance. But in case where share certificates with blank transfers were lodged as security against advances and they turned out to be trust property, the banker could not succeed, though he had no notice at the time of advance, because his title was not completed by getting the shares transferred to his name or that of his nominee. [*Shropshire Union Railways and Canal Company* v. *The Queen*, (1875) 7 L.R.E. and I. Appeals, p. 500.] Any one trustee can stop payment of cheque drawn on the trust account.

There cannot of course be a right of set-off between the trust account and a personal account. Where the trustee mixes up money belonging to himself with trust money, and then overdraws the account for personal purposes, he is supposed to have drawn by cheques against his personal account in the first instance and not that which he holds as a trustee, and therefore the rule in *Clayton's case* does not apply. But supposing that the trustee is placing in the trust account money or income belonging to several beneficiaries connected with more than one trust, the first trust money paid in is considered to be the first trust money paid out, and thus the rule in *Clayton's case* comes into operation. [*Re Hallet's Estate*, (1843) 13 Ch.D. 196.]

The banker should see that cheques drawn payable to the order of the trust whether crossed or uncrossed are credited to the trust account and not to the private or personal accounts of the executors or trustees. The trustees have no implied powers to borrow money or pledge or mortgage trust property for the purposes of the trust unless the trust instrument provides for that power. If a trustee is insolvent, the trust property is not affected and his private creditors will have no claim on same except on any beneficial interest in the property which the trustee may have in his own right.

Specified Cases Discussed.—In this connection it is interesting to note a specified case given in questions and answers in Banking Practice published by the Institute of Bankers where the following three specimens were submitted for opinion of Sir John Paget. The question was whether either of the following would be a trust account :—

(1) William Smith *re* John Jones.

(2) William Smith Account John Jones.

(3) William Smith per John Jones.

The answer was—

(1) William Smith *re* John Jones does not necessarily indicate a trust account, because it was fairly to be supposed that the account was a private one of Smith opened with reference to a particular transaction or source of transaction with John Jones.

(2) In the second case, i.e. William Smith Account John Jones, the account was declared to be a trust account, because of the nature of the heading of the account coupled with personal name or a title indicating a purpose, whereas in law, it points to the account being a fiduciary one. In support of this the case *In re Kingston*, L.R. 6 Ch. 682, which we have already quoted above is cited.

(3) In this case William Smith per John Jones, the position in the opinion of the learned counsel was curious as the form was unusual and its meaning ambiguous. It might be described as an account opened by Smith to be drawn on by Jones or an account belonging to Smith consisting of money brought in by Jones. In the former case, it would be a trust account so far as Smith was concerned, and in the latter it would not.

In answer to the question whether the customer W. Smith, being a solicitor would make any difference, the learned counsel has given the opinion that that does not affect the question as established in the case of *Greenwood Teale* v. *Williams Brown and Co.* (1894) 11 T.L.R., 56.

The trustee will also be liable personally if he mixes trust funds with his own money in the bank account, and the bank fails. [*Wilkes* v. *Groom*, (1836) Drew 584.]

Trustee's Power to Borrow.—The power of the trustee to borrow money for the purpose of the trust, depends largely on the trust instrument. If the trust instrument directs the trustees to receive money by the sale or mortgage of the trust property, they may do so without leave of the Court. (*Earl of Bath* v. *Earl of Bedford*, 2 Ves. 590.) But if a suit regarding the trust has been instituted, the trustees cannot deal with the property without leave of the Court, because the matter is in the hands of the Court, and that too even where the trust instrument has given them authority to borrow and pledge. (*Walker* v. *Smallwood*, Amb. 676.) A trustee can advance money of his own as a loan with a view to secure and preserve the trust property in a litigation. If the suit is successful, he would be entitled to a lien on the property gained for the money due on this advance. If the trustee borrowed from a third party for a similar lien, the third party would be entitled to a similar lien on the property gained. [*Vatsavaya* v. *Poosapati*, 26 Bom. L.R. 786 (P.C.).]

When the trustee dies, much depends on the instrument of trust, as to whether the surviving trustees could act without the appointment of a new trustee in place of the deceased, because the instrument generally provides for this. The banker has, therefore, to carefully look into the instrument of trust to ascertain what the exact position is, before allowing survivors to operate on the account. When all the trustees die leaving none in their place, the Court would naturally appoint a new trustee.

Discharge of Trustee.—The trustee may be discharged from his office under any of the following circumstances :—

(1) By extinction of the trust.

(2) By completion of his duties under the trust.

(3) By such means as may be prescribed by the Instrument of Trust.

(4) By appointing under the Indian Trusts Act, 1882, of a new trustee in his place.

(5) By consent of himself and the beneficiary or where there are more beneficiaries than one, all the beneficiaries being competent to contract.

(6) Or by the Court, to which a petition for his discharge is presented under this Act. (Sec. 71, Indian Trusts Act, 1882.)

Appointment of a New Trustee.—According to the Indian Trust Act, 1882, Section 73, the following provision is made for appointment of new trustees on death, etc.—

"Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of Original Jurisdiction unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(a) The person nominated for that purpose by the instrument of trust (if any), or

(b) If there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power."

Section 74 shows principles to be observed by the Court, while appointing such trustees:—

"Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under Section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of Original Jurisdiction for the appointment of a trustee or new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard, (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (*b*) to the wishes of the person (if any) empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust, and (*d*) where there are more benficiaries than one, to the interests of all such beneficiaries."

The new trustees so appointed under the above sections get the same powers, authorities and discretions as if they had been originally nominated trustees by the author of the trust. In case of default of a co-trustee or executor, the general rule is that the others are not liable, unless it is shown that the innocent trustees were guilty of negligence. This is because the law requires from the trustees an active and vigilant service. (*Mahomood* v. *Rodrigues*, 7 Bom. L.R. 791.)

Deposit of Trust Money.—Where trust money is deposited with a bank, the said bank does not become a trustee. The relationship between the trustee so depositing and the bank is one of creditor and debtor. On this principle where a bank employee paid money to the bank by way of security for due performance of his duties and the bank deposited this money in another bank, the former bank was declared to be not entitled to claim priority of payment of this money over other creditors of the latter bank in liquidation proceedings. [*Nayar Modern Bank Ltd.* v. *The Official Liquidators of the Travancore National and Quilon Bank Ltd.*, (1941) Mad. 125.]

ACCOUNTS OF CLUBS AND OTHER SOCIETIES AND ASSOCIATIONS

Law Relating to Clubs.—Clubs may be either proprietary or members' clubs. Proprietary clubs are naturally controlled and directed by the owner or proprietor to whom the club property belongs with the result that profits or losses made by the club are exclusively his concern, more or less like a business carried on by a single proprietor, or where there is more than one proprietor on the footing of a partnership.

Members' clubs, on the other hand, are so to say, unincorporated societies or associations unless they have been registered or incorporated under the Indian Companies Act or some other similar statute, when they would be governed by the Act and Statute under which they are formed. If, as is universally the case, the club is an unincorporated members' club, it is one generally formed for some particular object, or objects, such as sport, social, political, or religious and is not an association formed for the purpose of making profits. Here, if any surplus of receipts or income over the expenditure is left over year after year, that, in law, belongs to the general body of members. As these clubs are not profit-making associations, they do not fall under the designation of partnerships and thus they are not

required to be registered as companies under the Indian Companies Act of 1913. [*Thellusson* v. *Valentia*, (1907) 2 Ch. I (C.A.); *Fleming* v. *Hector*, (1936) 2 M. & W. 172.] They are unincorporated non-profit clubs, that is neither a company nor a partnership, but an entity unrecognized by law. [*Steele* v. *Gourley*, (1886) 3 T.L.R. 119 and 772 (C.A.).]

Unregistered Associations.—In case of clubs and associations which are not incorporated under the Companies Act, or any other Acts, such as Registered Societies Act, or are not proprietary clubs belonging to one or more particular owners who make profit for themselves out of its income, their position is that the members constitute a community which is in a way unrecognized by law. The members subscribe entrance as well as periodical fees, and are joint owners of the property; but they are only entitled to the use of the said property and the privileges of the club as long as they are members who continue to pay the subscription or fee according to the rules. Only on dissolution the club members can claim to partition and share the property of the club.

Borrowing by Clubs.—The borrowing powers of the club entirely depend upon the construction and nature of the rules. The committee of the club, no doubt, have vested in them powers to act on behalf of its members, so far as the rules and regulations permit. In one case where the committee guaranteed the loan which was required for extension and improvement of the club property, and were compelled to pay up the loan, they were given a lien on the property. [*Minnit* v. *Lord Talbot*, (1876) L.R. 1 Ir. 143.]

Club Debentures.—The borrowing on behalf of the club on debentures could only be done on the authority of its rules. It may be remembered that debentures are certificates issued by the borrower to the lender stating the amount borrowed, the conditions under which it is borrowed, the interest payable, the dates on which it is payable and the date if any on which the principal is also returnable. With a proprietary club, the owner personally would be liable, whereas in the case of an incorporated club, its Memorandum and Articles of Association must give it the power to borrow, in which case it can borrow on debentures. When debentures are issued they may not be carrying a charge on the club's property, or they may be mortgage debentures giving a specific or floating charge on the assets and properties of the club. If an unincorporated members' club has to borrow on debentures, there are two methods of doing this: the trustees or the committee may either borrow personally, pledging their own credit, or if they are not willing to do so, they may borrow and insert in the debenture an undertakng to the effect that they will be paying the interest and the principal out of the funds of the club, and not otherwise. The

virtual effect of this arrangement will be that the property and the assets of the club are charged to debenture-holders as security for the payment of the loan. [*Parr* v. *Bradbury*, (1885) 1 T.L.R. 525; *Wylie* v. *Carlyon*, (1922) 1 Ch. 51.]

When receipts or debentures are issued by the trustees or the committee to members of the club, or outsiders advance money to the committee or the trustees, care should be taken to ascertain whether a charge on the assets of the club as security has been given in the construction of such debentures and it is to the lenders' own interest to have this fact specifically stated.

If debentures are issued as a charge by incorporated clubs, care should be taken by the lenders if the incorporation happens to be under the Indian Companies Act of 1913, to see that they get the said charge registered within twenty-one days so that their security may be safe, otherwise the charge will be void and the loan will remain an unsecured loan to the company or to the club. The liability of all members, even if regulated by the rules is too difficult and inconvenient to be put into actual practice, particularly in case of clubs where the membership is of a constantly changing character. The committee are the trustees of the club who generally make it clear while borrowing, that they undertake to pay only out of the assets of the club, and not otherwise, therefore making the club alone security for the repayment. Generally speaking, there is no power in the hands of the committee to make the members of the club personally liable for the club debts or borrowing. If such a personal liability is to be settled at all, the rules and regulations of the club must expressly do that. The banker should, therefore, see that when accounts are opened in the names of clubs or its committees, they are not overdrawn. If an overdraft would at all be allowed, the best thing is to take the personal guarantee of the members of the committee or some principal trustees or members. This precaution is specially necessary in case of unincorporated clubs.

The Property of the Club.—The property of the club in a proprietary club belongs to its owner, whereas that of a club incorporated under the Indian Companies Act belongs to the company itself, and the members have no claim on it except when the club is being liquidated under the Indian Companies Act. In actual point of fact the property belongs to all members jointly, though they have no right during the time the club is a going concern to claim distribution of the club property among themselves.

Alienation of club property, therefore, cannot be made in an unincorporated members' club without the consent of every member, unless it is being done in pursuance of the objects for which the club was established or incidental thereto. In one

case, a certain club had won a cup which the majority of members at a general meeting wanted to present to a distinguished player, but the minority resisted that action. It was held that the action of the majority to alienate the property of the club in that manner was *ultra vires*. [*Murray* v. *Johnston*, (1896) 23 R. Ct. of Sess. 981.] Thus it is always held that when goods such as food, drinks, etc., are supplied to a member at a price, although in law that constitutes a sale, technically it amounts to a release to other members of their interest in these goods under the regulations of the club. [*Graff* v. *Evans*, (1882) 8 Q.B.C. 373; *Metford* v. *Edwards*, (1915) 1 K.B. 172; *A. G.* v. *Swan*, (1922) 1 K.B. 682.]

Club Management and Members' Liabilities.—The management of clubs is usually entrusted to committees and the rules and regulations lay down the extent of the powers of such committees. The rules also provide for a quorum for the committee, failing which the whole committee must meet and act. [*Brown v. Andrew*, (1849) 18 L.J. Q.B. 153 ; *Re Liverpool Household Stores' Association Limited*, (1890) 59 L.J. 616.] As we have already seen in an unincorporated members' club, the trustees are as a rule separately empowered by the rules to deal with its properties and assets, and invest the assets at their own discretion, or according to the directions of the committee. These trustees are necessary in an unincorporated members' club, though not necessary in proprietary clubs or those incorporated under the Indian Companies Act of 1913. They would naturally have a claim by way of a lien on the property in their possession in connexion with the liabilities that they may have to incur on behalf of the club. The same rule would apply to the committee. In one case where the committee, directed by a general meeting of members, raised a certain amount of money and invested it in the club for the purpose of extending the club and adding fittings and furniture, and gave their own guarantee, it was held that when the loan had to be repaid out of their own pocket by those members of the committee who had guaranteed, they had a lien on the club premises and other property acquired from the sum borrowed with a view to recover their money. [*Minnitt* v. *Lord Talbot*, (1876) L.T. 1 Ir. 148.] In this case when the club property was sold and released, the amount realized was not sufficient to pay off this debt. It was thus further held that the committee members were entitled to be indemnified by other members of the club. The last rule, however, was upset by the Privy Council in the famous case of *Wise* v. *Perpetual Trustee Co., Ltd.*, (1908) A.C. 139, where the principle laid down was that an ordinary club is formed by the tacit understanding, judicially recognized, that no member as such becomes liable to pay to its funds or otherwise any money beyond the subscriptions required by its rules. On this footing it was held that the

trustees of a club who incurred liability through onerous covenants contained in a lease, are entitled to indemnity out of any property of the club to which their lien as trustees extends, but it was further held that the members were not by reason only of being *cestuis que trust* personally liable to indemnity, and there was no rule of the club imposing such liability upon them. These last words are important here, viz. that unless there is a rule of the club itself which imposes such a liability, it would not arise. Thus the principle laid down in the Irish case cited above was overruled by the Privy Council. The reason for this decision has been given by Lord Lindley in his judgment on page 149 as follows :—

> "The question which has got to be decided may be regarded as not yet covered by authority, and a choice must be made between either ignoring the essential features of a club or holding that the general rule established in *Hardoon* v. *Belilios*, (1901) A.C. 118 is inapplicable to such a body of persons. Their Lordships feel no difficulty in making this choice. The trustees of a club are the last persons to demand that the fundamental conditions on which their *cestuis que trust* have become such as shall be completely ignored."
>
> "Clubs are associations of a peculiar nature. They are societies, the members of which are perpetually changing. They are not partnerships; they are not associations for gain; and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to any one else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member. It is upon this fundamental condition, not usually expressed but understood by every one, that clubs are formed; and this distinguishing feature has been often judicially recognized."

With reference to the question of contribution between trustees or committee men when they have given such guarantee as in the above case, or incurred the liability and some of the trustees have had to pay out the amount, according to the law all the trustees or committee men who agreed to incur the liability at the committee meeting, or at the general meeting, or both, are liable to contribute proportionately particularly if they did not raise any objection at the time the incurring of the liability was considered. [*Mountcashell* v. *Barber*, (1858) 14 C.B. 58.]

The banker should remember that neither trustees nor members of the committee, nor the steward, nor the secretary, nor as a matter of fact any official of an unincorporated members' club, having any authority by implication simply because they

are holding these official positions to pledge the credit of members by entering into contracts on their behalf. Such authority as they may have, as we have seen above, must either be conferred by rules or through a resolution specially passed. [*Cockerell* v. *Aucompte*, (1857) 2 C.B. (N.S.) 440; *New Lands* v. *The National Employers' Accident Association*, 54 L.J. Q.B. 480.] Even the rules purporting to give such authority must be quite clear and unambiguous in that regard. The committee of a club, therefore, should be very careful before they obtain credit or borrow on behalf of members of the club on debentures, or in any other form. [*Re St. James' Club*, (1852) 2 De. G. M. & G. 383.] Once it is proved that the contract was made on behalf of the members and that through it they are liable, the members themselves have a right to enforce it. In such a case, however, they must do so jointly either as plaintiffs or defendants, as the case may be. [*Everett* v. *Tindall*, (1804) 5 Esp. 169.] Parties who wish to sue the members jointly must join them all as defendants because otherwise if they obtain a decree they can only enforce it against those whom they had joined and cannot bring fresh proceedings against the others in case they do not get full satisfaction from the enforcement of the decree against those whom they had joined. [*Kendall* v. *Hamilton*, (1879) 4 A.C. 504.] The trustees as well as the managing committee may be made personally liable if the terms or clauses of the agreements are such as to throw personal liability on them. [*Mountcashell (Earl)* v. *Barber* (1853) 14 C.B. 53.] They may be also personally liable if they act in excess of authority as decided in the above case. Generally speaking if the contract is made in the personal names of the trustees or in the names of the members of the committee and not in the name of the club, they would be personally liable to outsiders or third parties even though they may have been duly authorized by the members to pledge their credit, and the outsider with whom they have contracted may sue them personally, [*Queensbury (Duke)* v. *Cullen*, (1787) 1 Bro. Parl. Cas. 396 H.L.], although, of course, they would be entitled to recover the amount so paid from the club funds, or from the members of the club who authorized them.

Incorporated Societies.—The same rules will apply to all incorporated societies and associations either permanent or formed temporarily, such as the holding of a fancy bazaar, a charity bazaar, or some other temporary institution for the welfare of charity under a committee specially appointed for that purpose.

In connection with signatures convened in proper form, such as " the Rotary Club, J. Jones, Treasurer ", and the signatures are in that form also, neither J. Jones, Treasurer, would be personally liable nor the committee of the club, but all that

can be said to be obtained by the creditor is from the assets and property of the club itself. If, however, the account is opened in the personal name of John James as " John James, Treasurer of Rotary Club ", John James would be personally liable for all overdrafts.

Before opening accounts of clubs or similar societies, the banker should ask for a mandate in writing, signed by the chairman, and giving a copy of the resolution by which the bank is authorized to act as the bankers of the club or society, giving specimen signatures of those officers who are authorized to sign on behalf of the club. If there are some trust funds of which the club is the beneficiary or trusts are created in connection with the funds of the club, the banker should obtain the regulations as to the trust, and if there is any trust instrument, inspect same with a view to take note of powers of the trustees as to withdrawals, etc.

ACCOUNTS OF LOCAL AUTHORITIES

Their Power to Borrow.—With reference to local authorities such as a municipal corporation, county council, etc. everything will depend upon the powers reserved by the statute governing such corporations, as to borrowing, etc. The banker has, therefore, to see what these powers happen to be, and keep himself within the strict limits laid down there. When lending to a corporation or a public authority, the first point to be ascertained is whether the said public authority has the statutory power to borrow and if so, under what restrictions and conditions. The usual restriction is that the sanction of the Government is required before exercise of such borrowing power. To take a case in point, the power of the Bombay Municipal Corporation, under its Act called the City of Bombay Municipal Act, 1882, to borrow from the Secretary of State for India, is restricted by Sections 106 and 107 of the said Act, within certain limits. The Corporation is also given a certain limit within which it has the power to borrow from any person other than the Secretary of State for India-in-Council on the security of its immovable property taxes, etc. In connection with mortgaging also, special restrictions as to the form of debentures, etc. are provided for.

Their Deposits with Banks.—In case of deposits with banks of the municipal funds, various sections specify either the Imperial Bank of India in the City of Bombay, or other agency at any place beyond the city at which it may be desirable for the Corporation to have funds in deposit. The mode in which cheques are to be signed, is also laid down with statute, in case of public authorities, and so is the case with the Municipality for the City of Bombay, where the Commissioner or Deputy Commissioner has to sign them jointly with one mem-

ber of the Standing Committee and the Chief Accountant. In the event of illness or occasional absence of the Commissioner and Deputy Commissioner of Bombay City, the provision is that a member of the Standing Committee, jointly with the Chief Accountant and the Deputy Accountant has to sign in his stead. Almost all the municipal corporations of the principal cities of India have similar enactments.

Authority Dependent on Statute.—It has been laid down in *Attorney General* v. *Great Eastern Railway Co.*, (1880) 5 App.. Cas. 473, that whatever the statute which creates the public authority does not expressly or impliedly authorize to do, must be taken to be prohibited. Of course, the usual rule of law which applies to joint-stock companies applies here, viz. that all persons dealing with a public anthority are supposed to be acquainted with the contents of the statute which created them, the powers which are given to them under it, and the limitations imposed by the said statute. The result is that if a banker advances money to a public authority for a purpose which is *ultra vires* not only he could not recover the loan, but in case the same has been repaid to him by the public authority, the amount would have to be refunded. [*Attorney General* v. *Tottenham Urban District Council*, (1909) 73 J.P. 137.]

Municipal Trading.—Frequently municipal corporations under powers granted to them, do carry on various undertakings commonly known as municipal trading, such as the supply of electric power, running of tramways, etc. Here, specific powers are laid down by the statute, governing such corporations and where accounts are kept with the banker separately for each of the departments above, funds belonging to one such department are prohibited from being utilized for the other. Here the banker has to see that the transfer from one account to the other is not permitted unless a proper explanation is forthcoming.

CHAPTER XI

BANKERS' SECURITY FOR ADVANCES

General Observations.—The banker, while making advances and loans, naturally wants to secure himself by some reliable security. Modern banking has so highly developed and the securities offered today are of multifarious types so that he can spread his advances over a large variety, thereby reducing his risk. They may form advances on what are known as gilt-edged securities, i.e. Government loans, consols, debentures and shares on which interest is guaranteed by the State, or they may be what are known as Stock Exchange Securities in the form of stocks and shares as well as debentures of joint-stock companies, or guarantees of substantial parties, or deposit of title deeds, or mortgage of immovable property (deal property in English law), or the most familiar bills of exchange and promissory notes, *hundis* with proper endorsements and guarantees, or goods and shipping documents connected with them, or produce. These securities form a variety which require particular attention and care on the part of the banker while they are dealt with, with a view to see that the summaries and other titles he gets on them are not unsafe.

Influence of Location.—The location of the bank concerned naturally largely influences the type of securities on which it may be called upon to advance. In a fashionable town, or city like London, Calcutta or Bombay, the banker would naturally be offered a large quantity of shipping documents as security for his advances. On the country side, and in the interior, the security may be the produce of the agricultural area concerned which has to be financed for the purpose of being taken to various centres for consumption or export. Title deeds of property for the purpose of raising temporary loans are also handled in almost every locality, whether commercial towns or the country side. In the manufacturing area the ready goods, as well as raw material, would be offered for the purpose of advances as security. It is the purpose of this Chapter, to deal with most important types of securities from the practical banking and legal standpoint. A bank which possesses a large number of branches is undoubtedly in a more favourable position, not only because the securities on which its money is advanced are well spread out, but also because, in most cases, the banker is able to borrow cheaply in a town and lend out at a higher interest in the country side.

A SAFE MARGIN

The principle generally followed in these cases, with a view to arrive at the maximum which could be safely advanced, is

to take the market value of the security offered and leave a sufficiently safe margin both for fluctuations in value and interest accumulation. Care has to be taken to see not only that the valuation is accurate, but that in case of securities of a more or less speculative nature, subject to violent fluctuations the margin of safety is maintained in form of much higher percentage than in the other cases.

A MEMORANDUM OF PLEDGE

Generally speaking, when securities are left with bankers, it is their practice to take a memorandum in writing, in which the customer who borrows acknowledges the fact that the said securities were deposited by him with the bank against a particular advance, which he promises to repay with interest and all other accumulated charges, etc., on banker's demand or by the expiry of a specified time. The document also gives power to the banker to realize the security in case of failure to repay the loan when due. Frequently the securities deposited belong to a third party. Here, side by side with the customer's own undertaking to repay the loan and the authority to the banker to sell such security as may be belonging to him in case of failure, there is an additional authority taken from the third party to sell securities deposited by the latter in case the customer fails to repay the loan in time or becomes bankrupt. This document generally authorizes the banker to grant extension of time on the loan, making certain compromises and arrangements with the debtor in case of delay in payment, etc. Printed forms are usually used in case of simple transactions of daily occurrence. In important cases, however, lawyers would be called in to handle same. A register maintained by the bank records detailed particulars as to these securities against advances. The market value and other particulars are also entered in this "securities register."

Of course in case of ordinary charges on movable property deposited with the banker a written memorandum of deposit is not compulsory at law, but the banker always takes one to avoid all chances of future disputes or differences or misunderstanding. No doubt the fact that the property or documents were deposited with the banker by a customer with the intention to create a pledge or charge would in equity give the banker that right but in case the customer pleads that the said deposit was made not with a view to pledge the said value of it but only for safe custody the banker might be drawn into litigation in the absence of written evidence. This is the principal reason which has made the practice of taking a memorandum of pledge in writing universal. It may be noted that the pledge of documents of title to goods would in law amount to the pledge of goods themselves because the delivery of documents has been accepted by the Courts to be

constructive delivery of the goods concerned. In case, however, of collateral securities such a memorandum is absolutely essential. Such a collateral security is, as we have already seen a security belonging to an outsider or a third party which has been deposited with the banker to secure his customer's borrowings. As we have already dealt with elsewhere, the collateral securities are most advantageous from the banker's point of view because they give him the right, in case of bankruptcy of the customer concerned, of recovering all the money that could be recovered on a claim in bankruptcy without taking into account the collateral securities given by a third party. The word "collateral" indicates an additional security. In *Radha Raman* v. *Chota Nagpur Banking Association Ltd.* (1944) Patna 28 it was decided that a banker's right of lien can only attach to money as long as it remains an earmarked sum of money. After it has ceased to be such a separate earmarked sum no lien can continue to attach to it.

Lien versus Pledge.—A banker making an advance may be secured by either or all of the three methods, viz. (1) a lien, (2) a pledge, and (3) a mortgage. In the first two cases the ownership in the security remains with the borrower. In the third case also the ownership remains with the borrower in case it is an equitable mortgage. There is, of course, one distinction between a "lien" and a "pledge", viz. that a lien differs from a pledge inasmuch as the property, though in possession of the creditor is still in the full ownership of the borrower. In case of a pledge, however, not only the exclusive possession of the property is with the lender, but the lender also acquires a right or power to sell without express agreement by the end of the transaction after giving reasonable notice which in the case of a lien he does not generally possess. We have already seen that where a lien is exercised, all that the creditor could do is to obtain a decree for his debt and then execute same against the property on which he claims a lien. He cannot sell the property under lien as against the debt independently of the decree as in the case of a pledge. A pledge is defined by the Indian Contract Act, 1872, Sec. 172, as "the bailment of goods as security for payment of a debt or performance of a promise." The bailor being known as the "pawner" and the bailee the "pawnee." The Act further lays down in Sec. 176 that if the pawner makes a default in payment of the debt, or performance of the promise at the stipulated time, in respect of which the goods were pledged, the pawnee may bring a suit against the pawner upon the debt, or promise, and retain the goods pledged as collateral security, or he may sell the thing pledged, on giving the pawner reasonable notice of the sale. The section further lays down that if the proceeds of sale are less than the amount due in respect of the debt or promise, the pawner is still liable to pay the

balance. If the proceeds of sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawner.

Who May Pledge.—Of course, the owner may pledge his goods, but besides that, the goods, as well as the documents of title in connection with them, may be pledged by any person who is in possession with the consent of the true owner. Thus, a bill of lading, a dock warrant, a warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document may be pawned in the above case and the pledge would be valid as long as the pawnee acts in good faith and the goods or documents have been obtained from a lawful owner without offence or fraud. (Sec. 178, Contract Act.) It should be here noted that what is meant is that the article should be in possession, as distinguished from mere custody without authority to deal with same. A servant left in charge of goods of his master, or a wife left in charge by husband, cannot pledge same. [*Biddomoye* v. *Sitaram*, 4 Cal. 497; *J. W. Seager* v. *Rukma*, 24 Bom. 458.] If the interest of the pawner is limited, he can pledge the goods, or the documents, to the extent of his interest. It may be added that if a third person injures the goods pledged, or deprives the bailee of the use or possession of them, the bailee is entitled to all the remedies that the owner may have had in a like case if no bailment had been made. In short, either the bailor or the bailee may bring a suit against the offending third party. The compensation obtained in such a suit is divisible between the bailor and the bailee according to their respective interests.

It will thus be seen that in case of a pledge, on realization of the security of the borrower, the surplus has to be accounted for, after the debt has been fully discharged, but, if, on the other hand, the amount realized is insufficient, the lender can sue for the balance. The banker has no right to retain the security as cover for other debts owing to the borrower, but in case of lien he has the right to retain the money realized by such a sale as a set-off against other debts that may be owing to him. If the security deposited with the banker belongs to a third party who has stood a sort of guarantee for him and that third party pays all the debt, the securities may be delivered to him. In case of bankruptcy of the borrower, the banker should inform the trustee in bankruptcy in England, or the official assignee in India, of his intention to give up the securities under the circumstances.

COLLATERAL SECURITIES

Securities are deposited either by the borrower himself, or by some one else on his behalf as a guarantor. In the latter case, i.e. where security is deposited by a third party, the same will be known as *collateral security*. These collateral securities

are rather advantageous from the banker's standpoint, because in case of bankruptcy of the customer, the banker can prove for his whole debt in bankruptcy and receive from the customer's estate all he can in the course of distribution by the official assignee or the trustee in bankruptcy, and thereafter realize the securities with respect to the balance. To take an illustration, supposing a banker lent Rs. 10,000 to A on a deposit of collateral securities by B on his behalf, and supposing that A became bankrupt, the banker by proving in his bankruptcy for Rs. 10,000 gets eight annas in the rupee, i.e. Rs. 5,000. He can thereafter sell the collateral securities, and in case he realizes Rs. 5,000 or more, he practically gets his whole claim paid, in spite of the insolvency of the borrower. It will thus be seen that it is a great advantage while compared with their lien or pledge of securities by the customer himself. Supposing that A had deposited his own securities against the loan of Rs. 10,000 and in his bankruptcy the banker would have either to sell the securities or value same, deducting the proceeds or the value, as the case may be, from his total claim and prove only for the balance in insolvency. We shall now take it for our illustration that securities sold and realized were Rs. 6,000, the balance remaining unpaid would be in that case Rs. 4,000. If the estate paid at the rate of eight annas in the rupee, the banker would realize Rs. 2,000 from the insolvent customer's estate. He would thus lose the remaining Rs. 2,000. The usual practice is to obtain a memorandum of deposit in case of collateral securities in proper form. This is most essential because even though in law such a memorandum is unnecessary, the banker in his usual specially prepared form is able to protect himself by inserting clauses which experience has suggested to be necessary. We have seen that bankers have a "general lien" in law over cash and securities belonging to their customers, which come into their possession in the regular course of their business as bankers, for any debt that may be due to them from their customers. If, however, there is a specific agreement with the banker to the effect that he will not have a general lien or that he gives up same, that will be binding. (*Kuhan* v. *Bank of Madras*, 19 Mad. 234.) It may be added that in case of valuables or securities deposited only for safe custody, this lien does not arise. With regard to securities on which the banker is given the authority to collect interest and dividend, however, such a lien would extend to the dividend also. But the lien would not extend to title deeds casually left with bankers on which they had previously refused to make an advance. It has been laid down in an appeal in Patna High Court that where security is given to a bank to secure a particular overdraft or a particular sum the bank cannot enforce that security against another overdraft or another sum. [*Chota*

Nagpur Banking A. Ltd. v. *Lal Mohan Trivedi*, (1948) Patna 218].

STOCKS, SHARES AND GOVERNMENT SECURITIES

These form an excellent security from a banker's standpoint. These may be either bearer or registered securities. In the former case they are transferable by delivery, whereas in the latter, a transfer form has to be signed by the seller in favour of the buyer and presented for registration at the registered office of the company concerned. In case of Indian Government securities also, an endorsement is necessary as they are made out as payable " to order." Special transfer forms are generally supplied for the shares and debentures registered by the companies concerned. Stocks of certain foreign Governments, as well as those of the British Government known as " inscribed stock ", are issued where the names and other particulars with regard to the proprietors are inscribed, or entered in the register kept for the purpose, either by the Bank of England, the Colonial Office, or agents of these Governments. When these are transferred, that can only be done by the holder signing in the register at these offices either personally, or through a duly authorized agent, against the purchase money, for which the transferor or vendor gives a receipt. In connection with our Government loans also, a similar arrangement is made by the Reserve Bank of India by which holders of Government loans can register them as stock certificates in their names. Bearer securities need only to be deposited with the bank accompanied by a memorandum. The actual advance may be in the form either as an overdraft or a loan, at the option of the customer. In the case of stocks and shares which are registered the bank has to—

(1) either take a blank transfer for shares duly signed by the borrower, together with a memorandum of deposit and the share certificates, or,

(2) to get the shares transferred in the name of the banker or his nominee, stating the fact that this transfer is effected by way of mortgage or pledge and that on the repayment of same, the shares would be retransferred to the borrower or his nominee.

The latter course is the safest for the banker to adopt, because in case of the blank transfer arrangement, if the company to which the shares belong happens to have reserved what is called a " first and paramount lien " on its shares through its articles of association, as is usually done for all debts due to the company by its shareholders, the danger is that, when the customer fails, the banker is confronted with a claim by the company on these shares which may ultimately turn out to be paramount.

PRECAUTION NECESSARY FOR BLANK TRANSFERS

There are occasions where the banker has to accept a blank transfer. In such cases, he should take the precaution to immediately give notice to the company concerned informing them of the pledge of these shares with him. This will protect the banker, in case the debtor is not already indebted to the company at the date of the receipt of the notice, against subsequent indebtedness by giving him a priority, i.e. in case of the subsequent debt with the company, the latter's lien will be deferred to that of the banker's claim. The case in point is the *Bradford Bank* v. *Briggs*, (1886) 12 A.C. 29, where according to the articles, the company was to have a first and paramount lien over the shares for non-payment of calls, etc., and where a shareholder had mortgaged his shares against a loan by deposit at the bank and the bank had given due notice of such deposit to the company whose shares they were, and the shareholder in course of trading with the company thereafter became indebted to the company, it was held that the company having notice of the deposit cannot claim to enforce the lien given by the articles for a debt incurred subsequent to the notice. It was held here that the bank which had given notice of this mortgage was not giving a notice of trust, but only sought to effect the company in their capacity of traders with notice of interest of the bank. [See also *Mackereth* v. *Wigon Coal and Iron Co.*, (1916) 2 Ch. 293.]

It should be further noted here by the owner who has handed over the share-certificates with a blank transfer to a lender by way of security, that the lender can transfer all the title given to an innocent third party. [*France* v. *Clark*, (1884) 26 Ch. D. 257.]

In case of blank transfers, if the person receiving same improperly fills his own name or that of another person, he does not get the title to the shares or pass any title. If he however hands over a blank transfer, the transferee does not get a better title than the transferor as he receives a blank transfer with full knowledge and belief that absolute sale had not been made. [*France* v. *Clark*, (1884) 26 Ch.D. 257; *Williams* v. *The Colonial Bank*, (1888) 38 Ch.D.; *Fox* v. *Martin* (1895) W.N. 36.] The result will be the same if he receives the transfer duly filled in knowing and believing that the shares were not properly transferred. [*Sheffield* v. *London Joint Stock Bank*, (1888) 13 A.C. 333.] In case where the owner of the shares hands over a blank transfer to another for raising money, he would be bound by the acts of his agent and the person who lends same will be deemed to have notice of any limitation of the authority of the agent concerned. [*Fry* v. *Smellie*, (1912) 3 K.B. 282; *Brocklesby* v. *Temperance B. S.*, (1895) A.C. 173.]

A lien on shares can be enforced even on trustees as the shares are on the register on their names and no notice of trust can be placed on the register. The logical sequence is that the lien cannot therefore be claimed on such shares on the personal name of the trustees in respect of the debts due by the *cestui qui trust* who is in reality the beneficial owner. A purchaser of shares which are subject to a lien is bound by it. The exercise of a lien makes the company a secured creditor bankruptcy. [*In re Coolie, ex parte Manchester County Bank*, (1876) 3 Ch.D. 481.]

It should, however, be remembered that, generally speaking, transfers have to be made on the simple form of transfer, but in case it is provided that they should be made by a deed, the blank transfers should never be accepted because the deed must be complete before it is executed. [*Powell* v. *London and Provincial Bank*, (1893) 2 Ch. 555.]

We have already seen one drawback connected with blank transfer; the other is that where the shares are partly paid, the risk of being called upon to pay calls on unpaid balance is the other disadvantage. (See under the heading of " Title of Those Holding Shares With Blank Transfers " for Indian cases).

FORGED TRANSFERS

In case of forged transfers, if the banker gets same transferred to his name, or that of his nominee, unconscious of this fact, and thereafter sells the share on failure of the customer, he would be personally liable to the purchaser, as the forged transfer gives no title. The purchaser has also the right to recover damages from the company, on the footing that he relied on the certificate issued by the company to the bank. [*Bahia* v. *S. F. Ry. Company*, (1868) 3 Q.B. 584, at page 595.] Here also in case the company has to pay damages, it would in turn claim same from the bank as indemnity, whereas the banker's claim against his customer would most probably be worthless. In *Hazarimall Shohanlal* v. *Satish Chandra Ghose*, 46 Cal. 331, Chaudari, J., held that (*a*) a *bona fide* purchaser of shares from a person who is in possession of them by fraud, does not acquire a good title to them and, (*b*) share-certificates passing from hand to hand with blank transfer deeds do not thereby become negotiable instruments.

A company which removes the name of the true owner from the register on a forged transfer can be compelled to replace him there paying him all the dividends that may have been declared in the interval [*Barton* v. *North S. R. Co.*, (1888) 38 Ch.D. 458; *Barton* v. *The London and N. W. R. Co.*, (1889) 24 Q.B.D. 77]; but, however, a person who deposits a forged transfer, whether the alleged transferee or the broker, even though he does so in good faith, is liable to the company for

any loss it may suffer. [*Sheffield Corporation* v. *Barclay*, (1905) A.C. 392.] A company can on its own, remove the name of its transferee when it finds that he is acting on a forged transfer [*Simm* v. *Anglo-American Co.*, (1879) 5 Q.B.D. 211]; but of course it cannot do so if a *bona fide* purchaser has acted on a certificate issued by it on a forged transfer. Even where the secretary has fraudulently forged a certificate and issued it without the authority of the directors for his own purpose, the company is not stopped from denying the secretary's title. [*Ruben* v. *The Great Fingall Consolidated*, (1906) A.C. 439.]

In case of true owner of shares whose name has been removed from the company on a forged transfer, he can sue the company alone or jointly with the transferee with a view to get his name reinstated in the register, but if he sues the company alone, the company will be given leave to serve a third party notice of claim for indemnity on the transferee. [*Cashore* v. *North Eastern Ry. Co.*, (1885) 28 Ch.D. 344; *Barton* v. *The London and N. W. R. Co.*, (1888) 38 C.D. 144.] The limitation begins to run against this true owner in favour of the company from the time the company refused to replace him on the register, and not prior to that, as there was no complete cause of action. [*Barton* v. *North S. R. Co.*, (1888) 38 Ch.D. 458.]

TITLE OF THOSE HOLDING SHARES WITH BLANK TRANSFERS

The Appeal Court in *Abdul Vahed Abdul Karim* v. *Husanali Ghasia*, 28 Bom. L.R. 562, laid down that the registered owner of shares by handing over share-certificates with a blank transfer duly signed by him teo another person, does not represent to the world that such a person is entitled to deal with the shares, and therefore a *bona fide* purchaser from such a person does not acquire a good title to such shares. In this case the English cases, viz. *France* v. *Clark*, (1884) 26 Ch. S. 257, and *Fox* v. *Martin*, (1895) 64 L.J., Ch. 473, were followed. In *M. P. Bharucha* v. *Wadilal Sarbhai and Co.*, 28 Bom. L.R. 777, the Privy Council decided, however, that shares of a company are "goods" within the meaning of Section 76 of the Indian Contract Act, 1872, now S. 2 (7) of the Indian Sale of Goods Act. In case, therefore, where shares are sold with a blank transfer and a cheque is paid by the purchaser in payment thereof, in the event of the said cheque being subsequently dishonoured, the lender can sue to recover either on the dishonoured cheque, or on the original value of shares. He has no lien or claim on the shares as such. That as soon as the shares were sold, and share-certificates with the blank transfer were handed over to the buyer, the goods became ascertained goods and the property passed. With respect to the rule of the Bombay Stock Exchange that, in case the cheque paid against

purchase of shares is dishonoured, the shares are to be returned to the vendor, or resold the following day, their Lordships held that the said rule was not intended to make delivery of the share-certificates conditional on payment. The real purpose of the rule according to them was not for the purpose of perfection of the contracts, or the passing of the property, but for estimating promptly the damages resulting from the purchaser's failure to pay for the shares bought and accepted.

NOTICE IN LIEU OF DISTRINGAS

Frequently notices are lodged by a third party warning the company against transfer of certain shares without informing the giver of the notice as the latter claims some right or charge on these shares. This notice is given by a person who has an equitable claim to the shares, with a view to prevent his claim from being prejudiced by the registered holders of the shares dealing with same in any way. This notice can also be given with a view to prevent even the dividend being paid on such shares without notice being given to the person serving this notice. The procedure is that the claimant interested in shares or dividends, files an affidavit in the prescribed form made by himself or by his solicitors, in which he discloses the nature of his interest and the material facts of his case, at the proper Court having jurisdiction in this matter, which affidavit is accompanied by a notice in the prescribed form. He then procures an office copy of the said affidavit and an authentic duplicate of the notice filed as above and serves same on the company. This notice usually asks the company to refrain from registering the transfer of the share, or from paying dividend on same to the registered holder, without in the first instance notifying the claimant of such proposed registration of transfer or payment of dividend. The company which receives this affidavit is now bound to take a note of the fact, and in the case of application for registration of transfer, or for receipt of dividend when declared, the claimant is notified in the first instance of the fact. The claimant should thereupon take action with a view to prevent the transfer by obtaining an order or injunction of the Court in that connection within eight days, failing which the Distringas ceases to operate and the company must proceed to register the transfer or pay the dividend, as the case may be. [*Blaksley Trusts*, (1888) 28 Ch.D. 549; *Hobbs* v. *Wayet*, (1887) 36 Ch.D. 260.] If the party wishes to withdraw the Distringas he can do so by notice to the company which must be sent by the claimant and witnessed. This Distringas notice is frequently termed " Stock Notice " or " Stock Order."

THE BANK'S LIEN ON ITS OWN SHARES

It may be added here that similarly, i.e. on the same footing as other joint-stock companies, joint-stock banks usually

insert a clause in its articles to the effect that it will have a " first and paramount lien " on its own shares for any debt due by its customer who happens to be its shareholder also. Many banks, relying on this power, allow their customers a small overdraft, if they happen to be their shareholders also. The articles generally reserve a power of sale in connection with the lien, so that the banker might not have to go to the Court for that purpose.

When the lien is given on shares it usually extends to dividends also. In *Bradford Bank Co.* v. *Briggs*, (1886) 12 A.C. 29, where, according to the Articles, the company was to have a first and paramount lien over the shares for non-payment of calls, etc. and where a shareholder had mortgaged his shares against a loan by deposit at the bank and the bank had given due notice of such deposit to the company whose shares they were and the shareholder in course of trading with the company thereafter became indebted to the company, it was held that the company having notice of the deposit cannot claim to enforce the lien given by the Articles for a debt incurred subsequent to the notice. It was held here that the bank which had given notice of this mortgage was not giving a notice of trust, S. 38; but only sought to affect the company in their capacity of traders with notice of interest of the bank. [See also *Mackereth* v. *Wigan Coal and Iron Co.*, (1916) 2 Ch. 293.]

A lien on shares can be enforced even on trustees as the shares are on the register on their names and notice of trust cannot be placed on the register and the logical consequence is that the lien cannot therefore be claimed on such shares on personal name of the trustees in respect of the debts due by the *cestui qui trust* who is in reality the beneficial owner.

POSITION OF EQUITABLE MORTGAGE OF SHARES

In a Privy Council case an equitable mortgage of shares was held entitled to priority over the company which had attached under a decree the shares for a debt incurred by the shareholder after the date of the equitable mortgage in spite of the fact that the company had no notice of the change. [*Bank of N. T. Butterfield and Son* v. *Golinsky*, (1926) A.C. 738.] In a recent House of Lords' case the bank gave notice to the company of the deposit of shares as security against advance made by the bank and though the company had the first and paramount lien by its Articles on the shares for debts due to it, it was held that for any money advanced or debt incurred after the notice by the bank to the company, the company was not to have a priority. [*Bradford Banking Co.* v. *Briggs*, (1887) 12 A.C. 29.]

STOCK-BROKERS' LIEN

Stock-brokers generally secure loans on deposit of stocks and shares on which they themselves happen to have advanced money to their clients. The transfers here are usually blank with their clients' signature. It has been held that such securities may be treated by the banker as belonging to the stock-brokers in the usual course of business. On the principle laid down in *Bentinck* v. *London Joint Stock Bank*, (1893) 2 Ch. 121, to the effect that persons who deposit share-certificates and sign transfers with a stock-broker are estopped from denying the stock-broker's authority to pledge them, and that the banker who takes the instrument *bona fide acquires* a good title to them. [See also *London Joint Stock Bank* v. *Simmons*, (1892) A.C. 201.] The banker should, wherever possible, get the shares registered in his own name or in that of his nominee.

LEEMAN'S ACT

This Act was passed by the English Parliament for preventing speculation in bank shares under which all contracts for the sale or purchase of bank shares, or stock, are required to state the serial numbers of such shares or stock, or the name of the registered holder of such shares, in case there are no numbers allotted. Failing that, the contract is null and void under the Act. In this connection the case of *Perry* v. *Barnett* (1885) 15 Q.B.D. 388, is interesting. Here, stock-brokers were instructed by purchasers to purchase for them certain shares in a joint-stock bank, which they did in the usual manner, without inserting in the contract the distinguishing numbers of shares, or the name of the seller who was the registered holder. The purchases challenged the validity of the contract as being in violation of the Leeman's Act, when it was held that the usage of the stock exchange to disregard the Leeman's Act and to regard as valid a contract which was made contrary to the Act was unreasonable as against strangers who did not know it and therefore was not binding on them.

In another case, viz. *Seymour* v. *Bridge*, (1885) 14 Q.B.D. 460, the same principle was followed, and, as here, the knowledge of the usage of the stock exchange was shown, and therefore the contract could not be repudiated by the brokers' client. The Leeman's Act does not apply to the contracts for the sale of bank shares in India.

ADVANCES AGAINST GOODS

The modern banker does a large business in advances against goods and produce, though at one time considerable prejudice existed against this form of security. The prejudice was based on the ground that as the value of these commodities was subject to constant fluctuations, they did not afford a suffi-

cient protection to the lender. There is no doubt some justification for this attitude, but the modern tendency happens to be that with due caution and care, this risk can be safeguarded against. Besides, it is argued that under present conditions, the bank must come forward to finance trade and assist merchants in this branch also. Here the customer should be one whom the banker can trust as honest and reliable. The banker here has carefully to watch the markets concerned, by keeping himself in close touch with its fluctuations. During the period of great speculative excitement, when rings and corners are frequent, advances should not be made on the footing of the inflated value, but the margin of safety should here be considerably extended. The value of the commodities, on which advances are made on the footing of a dock warrant, warehouse-keeper's certificate, or the mortgage of godown, has to be done with the help of reliable experts. Though it is not legally necessary to take a written agreement in such cases, the banker always takes it on the usual forms. Instead of a simple pledge, sometimes a mortgage is taken in the form of a conveyance. The other most popular method is to get a letter of hypothecation on either the goods, or the documents of title to the goods. The goods should be periodically revalued, the valuation being carefully noted in proper books kept for the purpose. In this connection, it should, however, be noted that the banker should take care to see that the person borrowing on the goods has, what is known in law, a proper title to them.

A Mercantile Agent.—Under the English Factors Act, 1899, as well as the Indian Sale of Goods Act, 1930, Section 27, there is one exception to the rule, which says that " only the owner, or his duly authorized agent, can sell and transfer the title to the goods." This rule is that " where a mercantile agent is, with the consent of the owner, in possession of goods or of documents of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell." A mercantile agent is defined by the English Factors Act as " one having in the customary course of his business as such agent, authority either to sell goods or to consign for the purpose of sale, or to buy goods, or to raise money on the security of goods," which is also the definition under the Indian Sale of Goods Act, 1930.

Therefore, if the person who borrows money from the banker on goods, or documents of title to the goods, is a mercantile agent who has received the goods with the consent of the rightful owner, the banker is safe. In one case, viz. *Lamb* v. *Attenborough*, (1862) 31 L.J., Q.B., 41, where a wine

merchant's clerk, who was authorized to sign delivery orders for wine sold, obtained through the medium of such delivery order warrants for certain quantities of wines from the Dock Company with which his master's wine was stored, and thereafter pledged them in the name of his master the Court held that the relation here was that of a master and servant, and not that of principal and agent, with the result that the protection under the Factors Act did not apply. The term " mercantile agent " includes both the factor to whom the goods are entrusted by the principals for sale, as well as the broker. In another case, *Calek* v. *North-Western Bank*, (1875) L.R. 10, C.P. 354, it was decided that a warehouse-keeper was not a mercantile agent, and therefore, a pledge by him would give no protection under that section.

DOCUMENTS OF TITLE

We shall now proceed to deal separately with the various documents of title.

Definition.—" Documents of Title to Goods " are defined by Section 2 (4) of the Sale of Goods Act, 1930, as including " a bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipts, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented."

Bill of Lading.—We shall first consider the bill of lading which is one of the most important documents of title to goods used in connection with shipments and which is signed by either the master of the ship, or the owner, or the agent of the owner.

The peculiarity of a bill of lading as a document of title to the goods is that in case the goods are made deliverable to the " bearer ", or to a particular person, or to his " order ", or " assigns ", the bill of lading can be transferred by the original holder to anyone he chooses, and the transferee in his turn can also transfer it. This transfer can be made by endorsement or delivery, as the case may be, and the transferee acquires, by such a transfer, all the rights as to the goods shipped that the tronsferor had, and is also subject to the same liabilities as that of the transferor. If, therefore, a bill of lading is transferred by the shipper to some other person, whether such a person is a buyer, or his mercantile agent lawfully entrusted with the bill of lading, and if that person shipped that the transferor had, and is also subject to the same in favour of some other person, who purchases the goods in good faith and for valuable consideration, the right of stoppage

in transit of the original holder cannot be exercised against this last party.

SPECIMEN FORM OF BILL OF LADING

Shipped in good Order and well conditioned by Steam Ship called the " Rajputana " whereof is Master for this present voyage John Smith, and now riding at anchor in Princess Docks, Bombay and bound for London, 500 bales of Cotton, marks ABC, 1-500, being marked and numbered as *stated*, and are to be delivered in the like good Order and well conditioned at the aforesaid Port of London (the Act of God, the King's Enemies, Fire, Machinery, Boilers, Steam, and all and every other Dangers and Accidents of the Seas, Rivers, and Steam Navigation, of whatever nature and kind soever excepted) unto David & Jackson or to *their* Assigns, *landing charges and* Freight for the said Goods *to be paid by the consignees* with primage and Average accustomed.

In Witness whereof the Master or Purser of the said Ship hath affirmed to *three* Bills of Lading all of this Tenor and Date, the one of which *three* Bills being accomplished, the other two are to stand void.

JOHN SMITH,
Master.

31*st March* 1943.

A Quasi-Negotiable Document.—A bill of lading is frequently described as a negotiable instrument though it is not one in the strict sense of the term. There are undoubtedly many points of resemblance between a bill of lading and a negotiable instrument, e.g. its transferability by delivery, with or without indorsement, and without any notice to the person liable on it, and also that the transferee of a bill of lading can sue in his own name and give a valid discharge to the person liable. Thus, some authors have called it *quasi*-negotiable document. It differs from a bill of exchange on the point of negotiability, because in case of a bill of lading, a holder cannot give a better title than he himself has, whereas in case of a bill of exchange a holder in due course, who receives same for value and in good faith, receives same free from all defences as to defect in title that could have been successfully pleaded against a previous holder, except, of course, forgery.

The bill of lading is generally made out in a set of two or three. It sometimes happens that these get into the hands of two or three different parties. In such cases the first transferee

gets the best right at law. As far as the master is concerned, if he *bona fide* hands over the goods to any one of these holders, he is free from responsibility, and incurs no liability to the person who happens to claim a prior right, because the bills of lading provide for this contingency by a clause usually inserted in them, laying down that as soon as one of these documents is accomplished the others stand void.

Its Peculiarities.—It will thus be seen that the peculiarity of a bill of lading is :—

(1) It is a receipt for the goods.
(2) It embodies the contract of carriage for the goods as between shipper and the ship owner.
(3) It constitutes a document of title.
(4) It is transferable under conditions similar to a negotiable instrument and has got to be regarded as *quasi*-negotiable.

The proviso of Section 53 of the Sale of Goods Act, 1930, lays down that the right of stoppage in transit of an unpaid seller who has parted with possession of the goods, but has retained the right of disposal can exercise his right only under certain circumstances. In other words, the proviso says that " where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee." The English law is also similar on this point.

Sir John Paget, in his book on the *Law of Banking* (4th Edition, page 381), states that " the only exceptional feature akin to negotiability possessed by bills of lading is their acknowledged capacity to defeat the unpaid vendor's right of stoppage in transit when transferred with authority to a *bona fide* transferee for value." He is further of opinion that bills of lading are not fully negotiable instruments. If they are, there would be no need for their being included as they are with other documents of title in the English Factors Act of 1889, and English Sale of Goods Act, 1893. However, as we have already stated above, they are *quasi*-negotiable instruments, or similar to such instruments, in many particulars. In case of a banker who accepts the bills of lading as security for advances, the position to be noted is that where this document is drawn " to order " and is endorsed in blank, the banker would receive a good title to the goods if given to him as a

deposit for a loan. He could, on non-payment of loan, immediately sell the goods by handing over the bill of lading to the buyer. It has been also held that simply because the bill of lading is endorsed over and delivered to the bank by way of a pledge for a loan, that does not pass the property in the goods to the endorsee, so as to transfer to him all liabilities in respect of goods. (*Sewell* v. *Burdick*, 10 A. Cas. 74.) At the same time, the bank acquires all rights of action at law as if the contract in the bill of lading had been made with the bank. This is because, according to Sir John Paget, absolute property does not pass to the bank in this case, but only equitable property passes, he having obtained the bill of lading by way of a pledge for a loan.

If the intention of the banker was to create a mortgage instead of a pledge, the banker would incur full liability of the shipper of the goods because there he becomes the lawful owner.

There are cases where when the bills of lading are not ready on the delivery of the goods on board, the Mate of the ship gives a receipt to the shipper in which he acknowledges receipt of the goods specified in same having been delivered to him for shipment for a particular destination. This receipt is thereafter exchanged for a regular bill of lading and thus forms a sort of *kuchha* receipt showing that the goods have been consigned on board the ship. The value of this receipt as a document of title on which the banker is called upon to advance money is not perfect and thus the bankers do not consider it as a desirable document. The reason is that the said receipt is signed by the Mate and not the Captain of the ship who in law has the implied authority to acknowledge receipt of the goods on board given for shipment and the Mate may not have actual authority to sign the same.

SHIPPING DOCUMENTS

In course of financing of shipments to foreign countries, bankers advance money on shipping documents. These are made up of :

(1) Export Invoice,
(2) Bill of Lading,
(3) Consular Invoice or Certificate of Origin, and
(4) Policy of Insurance.

A bill of exchange is drawn by the shipper on the party to whom the shipment is sent which has to be accepted and paid as arranged. This bill is discounted by the shipper with his banker on condition either that the banker is to hand over the documents on acceptance to the drawee, or that the same may be held over until the bill is paid for. In the latter case, of course, the banker relies on the credit more of the shipper

than that of the drawee. A letter of hypothecation is generally taken under this arrangement. The Marine Insurance Policy should be a complete policy, because an incomplete form of insurance such as broker's receipt does not fall within the designation of shipping documents according to the decisions, both Indian and British. [*Steel Brothers and Co.* v. *Dayal Khataj and Co.*, 25 Bom. L.R. 1063.] In this case Mulla, J., laid down that " in case of goods comprising *c.i.f.* contract they must be covered by an effective policy of insurance; an open cover taken out by the seller protecting all goods shipped by him is not sufficient."

Received for Shipment Bill of Lading.—With reference to the bill of lading, the point to be noticed is that the banker should accept only the document known as the " shipper's bill of lading ", and not the one called " received for shipment bill of lading " or " delivered for shipment bill of lading "; because in the famous case of *Diamond Akali Export Corporation* v. *Bourgois*, (1921) 3 K.B. 443, it was held that a bill of lading which did not acknowledge shipment, i.e. " received for shipment bill of lading " was not a bill of lading within the *c.i.f.* contract, and also that a document of insurance which is in the form of a certificate of insurance purporting to represent and take the place of the policy, was not a proper document of insurance to be tendered in such cases. What was required was an insurance policy which fell within the provisions of the English Marine Insurance Act, 1906. On the same footing, the " Mate's receipt ", which is not a bill of lading, is not a sufficiently perfect document, from the banker's standpoint. The shipping companies, in order to meet the banker's objections, have now adopted the practice of issuing bills of lading for a named steamer and undertake that in case the goods are ultimately shipped, they would supplement the bill of lading by a " certificate of shipment." This practice is now recognized by the Carriage of Goods by Sea Act of 1924, Section 7, on the footing of which our Indian Carriage of Goods Act of 1925 has been passed. The wording of the Act relating to this point is " After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a ' shipped ' bill of lading, provided that if the shipper shall have previously taken up any documents of title to such goods, he shall surrender the same as against the issue of a ' shipped bill of lading ' but at the option of the carrier such documents of title may be noted at the port of shipment by the carrier, master or agent, with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a ' shipped bill of lading '."

The other point to be noted in this connection is that the bills of lading are usually drawn in sets of three, on condition that "one being accomplished the others are to stand void." The banker, however, should get hold of all the copies of the set, because otherwise the danger is that in case the shipper fraudulently endorses any of the set, which has not been handed to the banker, to an innocent third party for valuable consideration, and in case that party were to present the bill first and obtain goods, the banker may be forced into unnecessary litigation. If circumstances do arise under which any of the copy of the set is not received by the banker, he should take the precaution to see that an immediate notice is given to the shipping company concerned, as to his lien on the bill of lading as well as his rights on the goods on arrival of the ship. In case of dispute between two "holders for value" in good faith of a bill of lading, the Court would decide in favour of the party who was the first to obtain the title by a prior transfer.

Through Bills of Lading.—On some occasions, goods have to be carried, partly across the sea and partly by land, in which case the shipowner generally charges an inclusive rate which covers the charge for the transport both by sea and land. In such cases, a "through bill of lading" is issued. As in this case, the control over the goods passes through the hands of more than one carrying company, whereas the contract is made only with the first clause and conditions are inserted in the bill, limiting the liability of each company to loss or damage suffered by the goods while they happen to be under their actual control.

Dock Warrant.—This is a document which is virtually a certificate from the Dock Company that certain goods which are described therein are in their possession which they agree to deliver to any person specified by the owner. In other words the goods are held at the disposal of the depositor. This document requires to be stamped. The usual form in which dock warrants are issued is the following:—

DOCK WARRANT

(Stamp) .....Docks Co.

No..... 19.....

Warrant for.....imported in the ship.....

.....Master

.....from.....

entered by.....on the.....

deliverable to.....or assigns by indorsement hereon.....Rent commences on the.....

and all other charges from the date hereof.

Rate charged

Mark	Numbers	Weight	
		Gross	Tare

Ledger No..... Folio.....

.....Clerk.

.....Warrant Clerk.

The question as to the suitability of this dock warrant as a security for an advance largely depends on the integrity of the parties concerned, as well as on the reliability and the substantial financial position of the dock or warehouse-keeper concerned. The banker here has to rely on the integrity of both these parties, accepting the contents of the warrant as accurate, which lays down the specification of the goods concerned, on the valuation of which the necessary advance is made. The fact that these companies have a lien on the goods for their charges for rent, etc. has to be borne in mind, though, of course, this lien gives them no right to sell the goods. Against the deposit of this warrant a " memorandum of deposit " in the usual form, or a letter of hypothecation is taken. Proper conditions as to keeping the goods insured against fire by a correct type of policy has to be inserted in the documents.

Warehouse-keeper's Certificate.—This is a mere receipt, certifying that the goods are held by the warehouse-keeper, which is usually expressed to be non-transferable, though, in some cases it is transferable by an endorsement. The mere statement as to the holding of the goods on behalf of the owner in no sense makes it a document of title. It is for this reason that this certificate is not considered to be a proper security for loan by the bank. The form of warehouse-keeper's certificate is as follows :—

WAREHOUSE-KEEPER'S CERTIFICATE

No..... (Stamp)

Not transferable

Messrs.....

We hold at your disposal in our warehouse as per conditions on back hereof.....*ex S. S.*.....

.....

.....

Warehouse-keeper.

Delivery Order.—A Delivery Order, as its name implies, is an order on the warehouseman from the owner to deliver the goods mentioned therein to a particular person. When a bank makes an advance on such orders it takes care to see that the goods are transferred to its own name before making the advance, as otherwise, the holder of a second delivery order in connection with the same goods, who has no notice of the banker's claim, may obtain the goods by giving his copy to the warehouse. This point was decided in *Imperial Bank* v. *London and St. Catherine Dock Co.* (1877) 5 Ch.D. 195. Delivery orders are exempt from stamp duty.

Life Policies.—In connection with life policies as a security for advances, we have already seen that if there has been no misrepresentation or inaccurate information at the time of the proposal, the policies of substantial companies form a good security against advances on the footing of the actual surrender value. The other consideration for the banker to make sure of is whether the policy was effected by the person himself on his own life. In case the policy is affected on the life of some other party, it should be ascertained that the party effecting this insurance had an insurable interest in the life insured. The banker will also have to see that premium receipts are constantly deposited with him and that the policy is not allowed to lapse.

Mortgage of Life Policy.—The policy may be taken against a loan on the footing of an equitable or legal mortgage. A simple deposit of a policy with a creditor as security for a debt does not constitute an assignment, but only gives him a lien. Generally when this is done, with a view to create an equitable mortgage, it is accompanied by a written agreement determining the purpose of a deposit. Thus an equitable mortgage is defined as meaning an agreement or memorandum under hand only, relating to the deposit of any title deeds or instruments constituting or bearing evidence of the title to any property whatever or creating a charge on such property.

A legal mortgage of a life policy is effected by a " deed of assignment ", the operative part of which includes a covenant by the borrower for repayment of principal and interest, and an assignment of the policy subject to a proviso for redemption. There are, of course other covenants as to payment of premiums, etc. There is also a clause in the deed authorising the sale of the policy by the mortgagee in case of failure of payment of capital or interest, which may be exercised by surrendering the policy to the insurance office.

Notice of Policy Mortgage.—It is the duty of the banker, with a view to protect his own interest, to inform the company of the mortgage by an immediate notice, and to get same registered by the company. The policy should also be taken

possession of so that a subsequent mortgagee may not obtain a prior right of assignment to the banker by giving earlier notice and obtaining possession of the policy concerned. A well-drawn deed of mortgage always contains a power to sell the policy in default. Again, if the premium is not regularly paid by the mortgagor, the banker must pay same himself, with a view to keep the policy alive, for which advance also he acquires a lien on the policy. Generally speaking, the bankers insist upon a deed of assignment being executed in their favour in preference to a simple deposit against advances. A notice of assignment of mortgage to the insurance company is usually given in duplicate with a request for the return of one part endorsed by the company. The company must also be asked at the time of giving notice as to whether a notice of any other prior claim had been lodged.

MORTGAGES

Different types of mortgages are defined by Section 58 of our Indian Transfer of Property Act of 1882, which Act was considerably amended in the year 1929.

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 the mortgagor, transferee the 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.

A Simple Mortgage.—In case of a simple mortgage, the mortgagee has two rights, viz. (1) to sue the mortgagor personally on his personal covenant to repay, or (2) to recover the amount from the property itself which is virtually hypothecated with him. Both these remedies may be resorted to at the same time, or in succession. Here the "transfer" is said to be that of the right of sale. A simple mortgage differs from a "charge" inasmuch as a charge may not necessarily be given on a specific property but may extend over all the property including movables and it does not involve a "transfer" which is the essence of a mortgage as governed by this Act.

***Mortgage by Conditional Sale.**—Here the mortgagor* ostensibly sells the mortgaged property on condition that :—

(*a*) the sale shall become absolute on default of mortgage money being repaid on a certain date; or

(*b*) on payment of such money the sale shall become void; or

(*c*) that on such payment being made the buyer shall transfer the property to the seller.

Note.—These conditions must be embodied in the document which effects or purports to effect the sale.

Usufructuary Mortgage.—This is a form of mortgage in which the repayment of the loan begins as soon as the mortgage is effected. Here the mortgagor delivers possession of the mortgaged property to the mortgagee, or expressly or impliedly agrees to do so, and authorises him to retain same until the repayment of mortgage money. Meanwhile, he is authorized to receive the rents and profits accruing, from the property or any part of same, in payment of interest or part payment of the mortgage money or both.

An English Mortgage.—In an English mortgage the possession of the property generally remains with the mortgagor, whereas the real legal estate in the property passes to the mortgagee. The condition here is that on payment of the money, *plus* interest, the mortgaged property will be reconveyed by the mortgagee to the mortgagor. If there is no express condition in an English mortgagee as to a certain time for which the possession is to remain with the mortgagor, then the mortgagor becomes a mere tenant at sufferance and is liable to be ejected by the mortgagee without any notice and without any claim as to rent or interest due. English mortgages are most common in presidency-towns and the Courts in such towns have accorded to the parties the same rights as in English law.

Equitable Mortgage.—The amended Act of 1929 further provides that in the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab, and any other town which the Governor-General by notification may specify, a mortgage by deposit of title deeds may be effected by a person handing over to a creditor or his agent documents of title to immovable property with interest to create a security thereon.

This is what in English law is termed an equitable mortgage but our Indian Act gives it a very limited import. In English law, for instance, a lien is also regarded as a species of an equitable mortgage and generally a much wider meaning is given to this term than that provided for by our Indian Act. Thus what is required in India to create an equitable mortgage is (1) a debt, (2) deposit of title deeds, and (3) intention to create a mortgage.

Anomalous Mortgage.—A mortgage which does not fall under any of the above-mentioned classes is called an anomalous mortgage.

The Form of Mortgage.—When the principal money secured is Rs. 100 or upwards, a mortgage of immovable property can

be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal money secured is less than Rs. 100 the mortgage can be effected either by a registered instrument, signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property. This rule does not affect mortgages made in the towns of Calcutta, Madras, Karachi, Rangoon, Bombay, Moulmein, Bassein and Akyab by delivery to a creditor or his agent of documents of title to immovable property, with intent to create a security thereon, (Sec. 59). If the instrument is not registered it fails as a mortgage and is inadmissible in evidence, but it may be made use of for any other purpose for which registration is not necessary, e.g. for proving a simple personal debt. It may also be noted that in the absence of an express agreement the cost of stamping a mortgage and the cost of reconveyance has to be borne by the mortgagor.

RIGHTS AND LIABILITIES OF MORTGAGOR

Redemption.—At any time after the principal money has become due, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in possession or power of the mortgagee to the mortgagor and at the cost of the mortgagor either to retransfer 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 order 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 the payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee 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 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 the mortgagor, Sec. 60.

This right of redemption is one of which the mortgagor cannot be deprived by an agreement to the contrary because no

clause in the mortgage agreement which impedes or prevents redemption would be allowed by the Court on the grounds of its being oppressive and unreasonable. The other point to be noted is that a mortgagor can claim to redeem only when the money becomes payable and due and cannot insist on redeeming before that date. If, however, there is an agreement that the mortgagor can, before the money becomes due, redeem on payment of the mortgage money with interest, he can do so. On redemption the mortgagor would be entitled to the return of the mortgage deed and the return of the mortgaged land if the possession of same is with the mortgagee. He can also get the land retransferred to himself, or get an acknowledgment to the effect that no right in derogation of the interest transferred under the mortgage exists any longer. If two separate properties are mortgaged under separate mortgages to the same mortgagee, the mortgagor seeking to redeem any one of these shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under the separate mortgage, Sec. 61.

Implied Contracts by the Mortgagor.—In the absence of a contract to the contrary the mortgagor shall be deemed to contract with the mortgagee :—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property; and

(*d*) where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts; and

(*e*) where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay

the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*) or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest in the mortgage as such, and may be enforced by every person in whom the interest is, for the whole or any part thereof, from time to time vested, Sec. 65.

In case any of these implied contracts are broken, the mortgagee can take advantage of Section 68 and institute a suit for the recovery of the mortgaged property. In case the mortgagor fails to pay the public charges as required by sub-section (*c*) the mortgagee can pay same and add it to his charge.

Mortgagor in Possession.—A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act, Sec. 66.

What this section means is that the mortgagor in possession is not responsible for what is known as " permissive waste ". He is, of course, at liberty to recover rents and profits from the property as long as he is in possession and is not bound to account for same. The mortgagor, however, is not allowed a waste of more or less active nature which reduces the value of the security such as removing valuable fixtures or cutting down of timber. If he does so and the value of the security is lowered, he may be called upon to furnish further security to repay the mortgage money, particularly when the security has become insufficient. With the exception of usufructuary mortgages, the mortgagor can lease the property in the regular course of management, but this is, of course, subject to the qualification that no lease, with exceptionally favourable conditions and particularly for a very long period in return for a premium or a lump sum, can be given without the concurrence of the mortgagee.

Rights and Liabilities of the Mortgagee.—The rights of mortgagees fall under one or more of the following :—

(1) The right to foreclosure or sale. This right is now restricted by the Amending Transfer of Property Act, 1929, only to mortgages by conditional sale and to anomalous mortgage.

(2) The right to sue for mortgage money.

(3) In case of a subsequent mortgage the right of the subsequent mortgagee to pay off the prior mortgagee.

(4) Rights of mesne mortgagee against prior and subsequent mortgagees.

Right to sell may be given by the mortgage deed without the intervention of the Court :—

(1) In case the mortgage is an English mortgage and neither of the parties is a Hindu, Mohammedan or Buddhist.

(2) When the mortgagee is the Secretary of State for India.

(3) When the mortgaged property is situate within the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and any other town or area notified by the Governor-General.

Before executing such a power a notice in writing requiring payment must be given to the mortgagor. Of course, the notice is with respect to capital or interest overdue for at least three months, Sec. 69. The mortgagee who is given the power of sale by such a deed can also appoint a receiver himself either from the person or persons named in the deed or failing that any person appointed by the mortgagee to whose appointment the mortgagor agrees or failing that the Court appoints the receiver on application of the mortgagee, Sec. 69A.

Modern English Land Mortgage.—In case of the modern mortgage under the English Law of Property Act of 1925, the old form of mortgage which still subsists in India is altered. There, instead of conveying the legal estate to the mortgagee, with a proviso that the same should be reconveyed to the mortgagor on his paying the capital and interest as reserved in the deed, i.e. providing a right in the mortgagor known as the equity of redemption, now in England a legal mortgage can only take the form of a *demise*, or *sub-demise* for a term of years absolute, subject to a provision for cessor on redemption, or a charge by way of legal mortgage which has the same effect. This alteration for all practical purposes is, according to the best authorities, a mere change in form. The legal mortgage still gets irredeemable after expiration of the time specified, though in equity the Courts permit redemption even after the time has expired.

Banker and Immovable Property Mortgage.—According to Mr. Sykes, in his excellent book entitled *Banking and Currency*, the banker, while dealing with mortgages and title deeds connected with them, should note the following :—

(1) The deeds should be immediately submitted to a competent solicitor for a report as to their genuineness and correctness.

(2) The property should be valued at frequent intervals. Certain classes of house property rapidly deteriorate in value if they are not kept in a proper condition of repair.

(3) In dealing with leasehold properties, allowance must be made for the fact that their value declines as the term of expiry approaches.

(4) The customer should be required to produce the receipt for the ground rent of leasehold properties as soon as the period for payment has passed, since, if this be not paid, the lease may be forfeited.

(5) All house property should be insured against fire, and the customer should produce for the banker's inspection the receipt for each annual premium as it falls due.

(6) Second mortgages of all kinds should be avoided. The first mortgagee may elect to foreclose and a forced sale may leave nothing for the second mortgagee. Furthermore, the bank may find that by a process called " tacking " the holder of a third mortgage has joined his charge to that of the first mortgagee and that both take precedence of the second mortgage. This, however, may be effectively guarded against by giving to the first mortgagee notice of the existence of the second charge.

Note.—" Tacking " at one time was the greatest anxiety of a banker or any one advancing money on a mortgage in England. It never was acknowledged in India. Now under the English Transfer of Property Act of 1925, the same is practically abolished. There, this can now be done either (1) with the consent of the subsequent mortgagees, or (2) where further advance is made without the knowledge of a subsequent mortgage, or (3) the mortgage deed itself imposes an obligation on the mortgagee to make such further advances. If the second mortgagee seeks the protection to register his mortgage as prior mortgage, the difficulty, as in the circumstance No. 2, as above stated, would be obviated.

(7) If a notice, e.g. legal " notice " as before explained, be received of a second charge on the property, the banker cannot, after receipt of the notice, safely continue to make advances. All such advances will create a charge postponed to the second charge of which notice was received.

Mortgage of Movable Properties.—In India, the mortgage of chattels. having the effect of immediately transferring the property thereunder from the mortgagor to the mortgagee, can be made by mere parole and without the transfer of possession. (*Tehilram Girdharidas* v. *Longin D'Mello*, 18 B.L.R. 587). It would thus be seen that the mortgage of movable property can be made in India without a writing or a transfer of possession and thus forms a very simple transaction unattended by the various legal formalities so familiar to the immovable

property mortgage. The banker should, of course, always take this in writing.

A Bill of Sale.—A bill of sale in English law, under the Bills of Sale Acts of 1872 and 1882, is a document under which, for consideration, the title of the personal chattels is transferred from the person to another though possession is not transferred. Thus here the transaction defers from a pledge inasmuch as in case of a pledge the possession is handed over to the pledgee. The bills of sale may be either (1) absolute, or (2) conditional. In case of an absolute bill of sale, a complete assignment of the goods is made to another person without any provision for redemption. This document requires an *ad valorem* stamp at the rate of 5*s*. for each £25 or part up to £300 and thereafter at the rate of 10*s*. for each £50 or part. The conditional bill of sale is virtually a mortgage of movable property. There is no complete assignment, but the property in the chattel rests in the mortgagee as security for the debt, whereas the possession remains with the mortgagor. The condition is that the creditor has a right to sell the goods with a view to reimburse himself, should the debt not be paid by a specified date. Bills of sale require to be registered under the Act within seven days of its execution and must be re-registered every five years if the loan is continued. The Act does not apply to India.

FORM OF BILL OF SALE

This Indenture made the day of between A. B. of of the one part, and C. D. of of the other part, witnesseth that in consideration of the sum of £ now paid to A. B. by C. D., the receipt of which the said A. B. hereby acknowledge (or whatever else the consideration may be), he the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specially described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent, per annum (or whatever else may be the rate.) And the said A. B. doth further agree and declare that he will duly pay to the C. D. the principal sum aforesaid, together with interest then due, by equal payments of £ on the day of (or whatever else may be the stipulated times or time of payment). And the said A. B. doth also agree with the said C. D. that he will (here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to or the maintenance or defeasance of the security).

Provided always that chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in Sec. 7 of the Bills of Sale Act (1878), Amendment Act, 1882.

In witness, etc.

Signed and sealed by the said A. B. in the presence of me E. F.
(Add witness's name, address and description.)

As far as the banker is concerned, bills of sale are not a very desirable class of security for loans and advances for the simple reason that the very fact that the owner of the goods, or furniture, or other movable chattel, wishes to enter into such a transaction is a sign of financial weakness. The Act provides a special form which must be followed. The following is the form as given in the schedule of the Act of 1882.

GUARANTEES

Definition.—A contract of guarantee is defined by the Contract Act "as a contract to perform the promise or discharge the liability, of a third person in case of his default." The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor" and the person to whom the guarantee is given is called the "creditor". In Indian law, "a guarantee may be either oral or written." (Sec. 126, Contract Act). In English law the guarantee agreement must be in writing—the indemnity may not be. In English law, a guarantee is defined as "a promise made by one person to another to be collaterally answerable for the debt, default or miscarriage of a third person" and must be evidenced in writing.

The Differences.—It will be seen, therefore, that in case of a guarantee the primary responsibility lies on the principal debtor and the surety's obligaton depends substantially on the default of the principal debtor. If there was no principal debtor, or if the principal debtor was there, but the surety took upon himself the primary responsibility of paying the debt, it will come under the heading of indemnity and not of guarantee. Our section also makes contracts of guarantee binding even when they are oral, whereas in England, as we noticed above under the Statute of Frauds, contracts of guarantee must be evidenced by a memorandum or note in writing. It may be added here that it is necessary that these contracts should be supported by consideration like all other simple contracts. It will be considered a sufficient consideration if anything is done or promised by the creditor for the benefit of the principal debtor, surety or any other person. The other point is that the guarantor is "collaterally liable", and therefore if he pays out the debt the principal debtor is not released from his liability, but the guarantor steps in the place of the creditor.

The Promisee in Indemnity Contracts.—The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor :—

(1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit, if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. (Sec. 125, Contract Act.)

Under this section the person who is indemnified against losses and damages may not only recover the losses and damages that he may have to pay, but he is also entitled to recover costs of defending any suit that may be brought against him in connection with this contract of indemnity, provided, of course, that he does not defend this suit contrary to the orders of the promisor and that in conducting the suit he acts as a reasonable and prudent man would have acted in his own case. Again, if the promisee compromises the suit with the authority of the promisor, he would be entitled to recover the amount paid towards the compromise from the promisor. If he acted without consulting the promisor, even then the amount paid as compensation could be recovered if he could prove that the compensation was not contrary to the order of the promisor and was one which it would have been prudent for the promise to make if there was no contract of indemnity.

The Security in Guarantee Contracts.—The liability of the surety is co-extensive with that of the principal debtor, unless the contrary is provided for, as for example, if a person guarantees payment of a bill of exchange, and if the bill is not paid, he would not only have to pay the amount of the bill that the principal debtor would have to pay but also any interest that the principal debtor would be liable for. (Sec. 128, Contract Act.)

Where a guarantee is given for a running balance of account, say by A to B not exceeding Rs. 1,000 with respect to debts contracted between B and C supposing that C becomes insolvent and the debt owing to B is Rs. 1,500 on which a dividend of 8 annas a rupee is paid, say in all Rs. 750, A can be called upon to pay the balance of Rs. 250 only. Here it has been clearly laid down that the creditor B cannot claim from A his whole loss of Rs. 750 in this case, as the guarantee was for Rs. 1,000. Of course, by a special agreement his position may be altered but in that case the condition that such a rule was not to apply ought to be clearly expressed. [*Bardwell* v.

Lydall, (1881) 7 Bing. 480; *Hobson* v. *Bass*, (1871) L.R. 6 Ch. 792-94.]

Specific and Continuing Guarantee.—A specific guarantee is a promise to be collaterally answerable for one specific transaction only, or which comes to an end on repayment of the advance for which it was given.

A guarantee is a continuing guarantee when it extends to a series of transactions (Sec. 129, Contract Act), e.g. where A in consideration that B will employ C in collecting the rent of B's Zamindari, promises B to be responsible to the amount of Rs. 50,000 for the due collection and payment by C, of those rents, it is a continuing guarantee.

A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. Of course, for all transactions entered into previous to the given notice, the guarantee would be binding on the guarantor, (Sec. 180, Contract Act). Of course, this section (Sec. 180) applies to cases where a series of distinct and separate transactions are contemplated; the words " future transactions " seem to imply that if the continuing guarantee is given for an entire consideration, it cannot be revoked during the continuation of the relationship which constitutes that consideration, unless a material change occurs in the situation, such as dishonesty of the person whose fidelity is guaranteed, in which case the surety may, if he likes, ratify or revoke the guarantee contract.

A Guarantee Bond as a Banker's Security.—From the banking standpoint, the value of a guarantee as a security naturally largely depends upon the financial credit and position of the guarantor and also on the form in which the guarantee bond is taken, i.e. the terms and conditions that are imposed therein. The banker has, therefore, to make very careful enquiries as to the stability of the guarantor, and continue to keep himself in touch with his financial position. In taking the guarantee bond, the bankers have to be particularly careful as to the clauses and conditions most suitable to them. They usually keep special forms which long experience has proved to be safe from the point of self-protection. These clauses are so framed as to exclude any possibility of the surety being able to avoid his obligation on technical grounds. If there is any doubt as to the financial position of the guarantor, a collateral security should also be insisted upon.

Disclosure of Material Facts.—The most important factor in connection with guarantee is that the guarantor should enter into his agreement with a full knowledge of facts and the nature of the responsibility of his undertaking. This, of course, does not mean that the banker should volunteer to give all information about his debtor's dealings with him, but anything

peculiar in connection with the accounts of the debtor *that he may be questioned about*, he should disclose accurately. The next point to remember is that no alteration in connection with the contract should be allowed to be made without the notice and consent of the guarantor, otherwise the guarantor is freed from his liability. In case of certain alterations such as extension of credit, or a large overdraft given than that guaranteed, if a power is taken in the guarantee bond by the banker, he would be safe, otherwise the guarantor should be the consenting party. A guarantee bond may be given by more than one person, either jointly, or jointly and severally, in which case the ordinary rules of joint and several contracts would apply. In one case, the non-disclosure by a bank to the guarantor of a customer's overdrawn account of facts from which the banker has suspicions that the customer is defrauding him, does not discharge the guarantor. [*National Provincial Bank* v. *Glanusk*, (1913) 3 K.B. 335] This is on the principle that the banker is not there to volunteer any information, but he is bound to answer questions correctly as to facts he is aware of, when asked. [*Hamilton* v. *Watson*, (1815) 12 Cl. and F. 109.] The principle, no doubt, is sound, though the tendency of the Courts has always been to treat the guarantor as a favoured person and in case of the slightest excuse which brings the banker under the law, the chances of his being relieved from liability are very great.

Capacity of Parties to give Guarantee Bonds.—The capacity to give a guarantee bond is analogous to the capacity of being able to enter into contracts. There are, however, a few points connected with different types of persons which may be considered separately.

Partnership as Sureties.—In case of a partnership, standing as surety, all partners must join unless the giving of guarantees, forms part of the partnership business, or all the co-partners definitely authorize one particular partner to sign a particular guarantee bond. In the latter case, the banker should take care to see that the authority given by the co-partners is in writing, which writing he should keep with him. He should also bear in mind that the death or retirement of a partner dissolves the partnership and puts an end to the guarantee. As soon as therefore he hears of the *death* or *retirement* of any of these partners, he should close the account of the principal debtor, until a fresh guarantee bond is obtained from the surviving partners. Otherwise the rule in *Clayton's case* will apply.

Companies as Sureties.—In connection with guarantees given by companies, the banker should study carefully the memorandum of association with a view to find out whether the document contains a power entitling the company to bind itself

by a guarantee. Otherwise though the directors may be personally liable, the signing of the bond would be declared *ultra vires* the company and may not be binding on the company or its assets.

Married Women as Sureties.—In case of married woman, she can bind her separate property by a guarantee in the same manner as she could bind these properties, by entering into a separate contract, independently of her husband. However, when the guarantee of a woman is taken, it is desirable that she should be independently advised and represented by a lawyer, with a view to obviate the plea of undue influence on the part of her husband, or other relative, specially in cases where the relative is the principal debtor who is to be guaranteed. [*Bank of Montreal* v. *Stuart*, (1911) A.C. 120.] Thus, a Hindu woman can stand guarantee in connection with her *stridhan*, whereas the position of the Parsi, Christian and Mahomedan woman would be the same as in the case of an English married woman. To sum up, bankers should be very cautious in accepting guarantees from women, and are usually, in practice, reluctant to do so.

Variation in the Terms of a Guarantee Contract.—Any variation made without the surety's consent, in the terms of the contract between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variation. (Sec. 133, Contract Act.)

This rule is wide and general, whereas the rule in English laws lays down clearly that the sureties will not be discharged under the circumstances above mentioned, unless the alteration is of a particular nature which would prejudice the rights of the surety. In India, on the contrary, it appears that even if the alteration were to be of a nature which would be beneficial to the guarantor, it would entitle him to claim a discharge. The principle followed being that " the party who is surety for another for the performance of an agreement, can only be called upon to guarantee the performance of that engagement when that engagement is carried into completion to literal and strict effect." [*Bonser* v. *Cox*, (1844) 13 L.J. Ch. 260.]

" The surety ", according to Cunningham and Shepherd's Contract Act, " enters into the contract upon the understanding that a certain condition of things exists and will continue to exist. If, therefore, any alteration is made in the contract between the creditor and the principal debtor, the surety is discharged because the liability which is sought to be enforced under the present state of circumstances is not that which he originally understood."

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor

is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor (Sec. 134, Contract Act), e.g. A gives guarantee to C for goods to be supplied by C to B. C supplies the goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship. This is because the surety is entitled in case he is called upon to pay to be placed in the position of the creditor, and to acquire all the rights which a creditor possesses against the debtor. If, therefore, the creditor by an act or omission, the legal consequence of which is the discharge of principal debtor, deprives the surety of that right which the surety is entitled to claim, the surety is released. Also, where the default of the principal debtor was brought about through the connivance of the creditor or through gross negligence on the part of the creditor, the same rule will apply. In one case, where the creditor instituted a suit against the principal debtor as well as the surety on a contract and subsequently waived his claim against the principal debtor, it was held that the surety was also discharged from his liability. A discharge of the principal debtor in the Insolvency Court does not, of course, discharge the surety.

Joint and Several Guarantee.—The rules as to ordinary joint and several debts would apply here. In case of a joint guarantee, the banker would have to sue the guarantors jointly and obtain a decree against them in order to make them all responsible, because if he chooses to select one or two, in the first instance, and fails to get satisfaction for the whole debt out of the decree, so obtained, he cannot sue the others for the balance. In case of a joint and several guarantee, however, he can sue each of them in rotation until his full claim is paid. The usual guarantee forms of bankers are joint and several forms. The death or bankruptcy of any of the guarantors does not release his estate from liability for advances made by the banker, because he receives notice of such vent. The banker should, however, as soon as he hears of either of the incidents, close the account guaranteed until a fresh guarantee bond is given. In case of bankruptcy of the guarantor, after closing the guaranteed account, the banker should demand immediate payment from the debtor and failing to recover the money put in a claim in the estate of the guarantor, either fully or for any balance unrecovered. The above precaution in case of death is now necessary, because though the earlier decisions tended towards the idea that the mere fact of death did not put an end to guarantee, the later decisions have been less positive as in *Coulthart* v. *Clementson*, (1879) 5 Q.B. 42, which implied

that a constructive notice of death would prevent a bank from claiming advances made thereafter from the estate of the deceased. This decision was dissented from later in *Re Silverter*, (1895) 1 Ch. 573, but was not quite definite, on the question of the effect of death. For safety, however, it is best, as far as the banker is concerned, to close the account and deal with the guarantee as having terminated as soon as he gets a notice of the death of the customer. The same position is created in case of insanity of guarantor, in which case the banker should stop future advances, as soon as he gets notice of same. [*Bradford Old Bank* v. *Sutcliffe*, (1918) 2 K.B. 833]. On the death or bankruptcy of a joint guarantor, his estate is freed from liability and the banker has to look to the remaining guarantors for the whole amount, whereas, in case of a joint and several guarantee, he can prove in case of bankruptcy or death against the estate of the bankrupt or the deceased guarantor.

Compounding with the Principal Debtor.—If the creditor arranges with the principal debtor without consulting the surety for composition, or agrees to give time, or agrees not to sue him, these acts will immediately discharge the surety. (Sec. 135, Contract Act.) It is held that the creditor has no right in law to give time to his debtor without the consent of the surety, even where the time given may have been with a view to protect the interests of the surety or for his benefit. It has also been held that where time is given for a part of the debt, the surety would be discharged only with regard to that part. Of course, if there is an express clause in the surety agreement, entitling the creditor to give such time, that agreement will hold good. If, on the other hand, the contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged. (Sec. 136, Contract Act.) As for example, where C, the holder of an overdue bill of exchange drawn by A, as surety for B and accepted by B, contracts with M to give time to B, A is not discharged; also mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety. (Sec. 137, Contract Act.) The "mere forbearance" here means that there is no express agreement to give time.

Failure to sue within the Period fixed by the Limitation Act.—Where the creditor fails to sue the principal debtor within the period fixed by the Limitation Act, the surety is not discharged, according to the judgments of the High Courts of Madras, Bombay and Calcutta. The High Court of Allahabad had held differently but the English decisions are the same as those of the High Court of Bombay, Madras and Calcutta.

The Madras High Court has argued that barring by limitation does not discharge the debtor from his obligation as far as the debt is concerned, whereas in England the ground on which the surety is not discharged is that the surety himself could have brought an action against the principal debtor before the expiration of the time-limit. (*Sankana Kalana* v. *Virupaksha*, 7 Bom. 146; *Krishto Kishori Chowdrain* v. *Radha Raman Munshi*, 12 Cal. 220; *Subramania Aiyar* v. *Gopala Aiyar*, 38 Mad. 308; *Ranjit Singh* v. *Naubat*, 24 All. 504).

Limited Guarantee.—The amount actually covered by the guarantee should be specifically stated in the guarantee bond. Again, it should be clearly stated whether the guarantee is for the whole of the customer's debt or for part of the whole debt, subject to a certain limit. If the whole debt is guaranteed, subject to limitation, then the banker can, in case of bankruptcy of his customer, prove for whole of the debt and for the balance that may remain over, he may claim from the guarantor, whereby he may be in a position to recover all the sixteen annas in the rupee. This is on the same footing as collateral securities which were dealt with, with illustration, in the early part of this Chapter. If the guarantor has deposited any security over and above his guarantee bond, that will also be on the footing of collateral security. The banker's guarantee forms therefore are generally to be drafted on the footing of the whole of the debt, though the guarantor limits his liability up to a certain amount. According to Sir John Paget, in his book on the *Law of Banking*, 4th Edition, page 427, " the liability of the guarantor should be defined as being for all monies advanced to, or paid for or on account of the principal debtor and interest thereon remaining unpaid or until repayment thereof, or words to that effect, or otherwise fitted to avoid any such question. [*In re Fitz George*, (1905) 1 K.B. 462.] The consideration for the guarantee should also be carefully stated, whether it be for the overdraft already allowed and that which is to be further allowed or whether it is for a debt which is already due, or is likely to fall due through loans and advances by the banker in future. It should be also, as far as possible, made clear as to how the future advances are to be made and proper clauses added, enumerating the charge for interest, banking commission, etc. In case of interest, it will be better if it is made clear that it is going to be charged with yearly or half yearly rests.

In case of the banker, usually the security is given for an overdraft on current account. The items on the debit and credit of the account are not considered by the banker at any rate as separate debts, but the usual practice is to deal with the balance of account at any given moment or date. We have also seen the practice of combining current accounts for the

purpose of set-off or other claims. In law, however, the rule of appropriation of payments applies and the old rule of *Clayton's case* governs this account. Generally, the security is deposited by the guarantor against the balance of account that may be due and the banker's guarantee bonds make that point clear. The ruling case on this point is *Re Sherry, London and Canada Banking Co.* v. *Terry* (1884) 25 C.D. 692 where the principle laid down was that the balance which is guaranteed by the surety is the general balance of a customer's account and with a view to ascertain that balance all accounts existing at the time the guarantee comes to an end must be taken into consideration.

Rights of Surety.—If the surety discharges his liability under the guarantee, he is subrogated, or steps into the shoes of the bankers. Here the guarantor would be entitled to claim that all the securities that happen to be deposited with the banker by the principal debtor in connection with this guarantee be transferred to him. These securities may be those that were originally deposited or those subsequently added in connection with the same loan. [*Duncan Fox and Co.* v. *North and South Wales Bank*, (1880) 6 A.C. 1.] The banker's guarantee forms the reserve power of proof in case of bankruptcy. In the first instance he has to lodge his proof and recover all he can, before resorting to the guarantor for recovering the amount. If, however, the debt was partially guaranteed, and the securities are for the whole debt, on paying part of the debt, the guarantor would be entitled to receive only a *pro rata* share of the securities so deposited. The banker's forms however make a provision to the effect that in such a case the security will only be released provided the whole of the debt due to the banker is first recovered and if any excess in the security is left over, the same is to be handed over to the guarantor. If there are more than one surety, they have rights *inter se* for adjustment of the amount they are called upon to pay by the banker.

Termination of Guarantee.—The guarantee may be terminated by :—

(1) Revocation. (Sec. 130, Contract Act).

(2) Death of the Surety. (Sec. 131, Contract Act).

In the second case it is not necessary that the creditor should have known of the death of the surety, and even where the creditor has entered into fresh transactions after the death of the surety without knowledge of such death, the rule will come into operation and the estate of the surety would not be responsible for such transactions entered into after his death. As to all debts incurred previous to his death the surety will be liable. In English law notice to the creditor of the surety's death is necessary in order to bring the liability of the surety to an end.

Section 182 of the Indian Contract Act, 1872, lays down the rule applicable to cases where two persons contract with a third person to undertake certain liabilities, and also contract among themselves by which these two persons agree that one of them would act as surety, whereas the other shall be personally liable for the whole debt to the creditor. As far as the creditor is concerned, such an agreement between these two persons will not affect his position and he can hold both of them responsible under the contract as principals. This holds good under this section even though the creditor knew of the existence of this arrangement between these two debtors at the time the contract was entered into by them with him, on the ground that the second agreement between the debtors by which one debtor makes himself responsible for the full amount and makes the other debtor's liabilities that of a surety would not bind the creditor who was not a party to it. This rule is opposed to the rule in English law where the fact that the relation between these two debtors, viz. that of the principal debtor and the surety, will affect the consequences of the contract. As for example, if A and B give jointly and severally a promissory note to C and if A signs the note on the understanding that he signs as the surety of B and that B is the principal debtor who is to pay for the note, the fact of C, the creditor, knowing this will not affect A's position in India, and A will be bound to pay as the principal debtor and not as the surety for B.

In case of death of the guarantor the other point to be noted is that the banker stops or rules off the account of his customer so that the amount borrowed may not be wiped out by any further payments made by the customer to his credit. In case of insanity of the guarantor the position is the same as in case of death.

In case of the bankruptcy of the guarantor, the banker should at once stop the account and demand payment from his customer. Failing to receive that, he must prove the claim in connection with money lent against the guarantor's estate in the guarantor's bankruptcy.

Promissory Notes and Bills in Lieu of Guarantee.—The other method of guaranteeing without entering into an actual bond or agreement is to give a promissory note jointly and severally. Frequently a bill which is drawn and accepted is endorsed by a party not because he is a party to the bill, but because he acts in the capacity of a guarantor or surety. This course has one drawback, viz. that the banker will not here get the benefit of the protective clauses which, a regular banker's guarantee form carefully drawn out, contains. In this case the banker is allowed to present bills on the due date if it is payable after the expiry of a specified period. He is here in the position of holder in due course and in case of dishonour, he is bound to

carry out all the duties of a holder in due course, whose bill has been dishonoured, i.e. in connection with noting, protest, giving notice of dishonour, etc. The promissory note of the principal debtor as well as the guarantor may sometimes be taken as a deposit and a separate memorandum of deposit may from the banker's guarantee. In these cases the promissory notes are generally demand promissory notes which would be renewed before the period of limitation expires, if the overdraft is allowed to run on for a long period. Care should, however, be taken to see that the accompanying memorandum or guarantee bond is in order.

With reference to promissory notes it has been held in *Belgaum Bank Ltd.* v. *Bando Raghunath*, B. L. R. (1945) 836; that under Rule 98 Clause (*g*) of the Negotiable Instruments Act, 1881, that the unconditional promise to pay need not be express here an endorsement on a promissory note that " a certain amount has been paid towards the satisfaction of interest due on the note " amounts to such unconditional promise to pay as expenses with the notice of dishonour.

CHAPTER XII

RESERVE BANK OF INDIA

The Reserve Bank of India Act was passed by our Legislative Assembly in 1934 and India can boast of, since that date, a Central Reserve Bank functioning on most modern lines side by side with similar institutions in other important centres of the world. There may be points on which differences of opinion must prevail in connection with legislation of this character, but generally speaking, the Bill as framed was satisfactory, except perhaps on the question of fixation of exchange ratio on which public opinion is very sharply divided. It is proposed to clarify here in simple language the salient points as laid down by this important enactment, because to all of us in India the Reserve Bank is the most important financial institution of the country.

WHAT IS A CENTRAL BANK

While proceeding to deal with our subject it is best that we should have a correct perception as to exactly what a Central Bank is expected to represent by that denomination. A Central Bank as it has come to be known in every important centre of the world is the principal bank of the country to which are assigned principally the following functions :—

(1) To act as a depository of the Government cash balances and as its financial agent and treasurer in general.

(2) To manage, supervise and direct the currency of the country and to maintain the currency reserve.

(3) As the treasurer or cashier of the State to manage different remittances of the Government and to act generally as a banker of the Government.

(4) To manage the public debts of the country.

According to our Central Banking Commission (Majority) Report, 1931 :—" The two principal tasks of the Reserve Bank will be to maintain the international value of the rupee and to control the credit situation in India, which would include the rate of interest at which credit would be available to trade and industry.

The other peculiarity is that the Central Bank is not expected generally to do commercial business, or to compete with commercial banks, but generally to act as bankers' bank, i.e. keep accounts of all the principal banks in the country and help them with finances wherever necessary.

Happily the Central Banking Commission is unanimous on this point when they state that :—" We agree that the Reserve

Bank should not ordinarily compete with commercial banks for profit."

The Central Bank not only manages the currency reserve of the State, but also controls the reserves of these commercial banks, with the result that they can manipulate the currency in the interest of the country's credit on the market by tightening the money market by appropriate operations, wherever so desired, by reducing the supply of cash held by the commercial banks. In their valuable work entitled " Central Bank " Kisch and Elkin observe : " The Central Bank of a country stands in a special relationship to the Government seeing that by its discount policy and the subsequent reactions on credit, gold reserves and note issues, it controls the amount of purchasing power available, and is thus responsible for safeguarding the currency standard established by law."

A SHAREHOLDERS' BANK

After thoroughly overhauling the question whether our Central Bank should be a Shareholders' Bank or a State Bank, the Legislative Assembly decided in favour of the former. Personally we submit that it is a correct decision in spite of the fact that there was a certain section opposed to our Central Bank being a Shareholders' Bank. The reason is that in all the important centres of the world, Central Banks are generally Shareholders' Banks, because experience has proved that otherwise the Central Bank might be over-shadowed by the influence of the State and the political parties in power, instead of functioning as independent institutions as far as they can, under the circumstances that they have to manage the country's currency and to act as bankers to the Government. To a certain extent no doubt Government influence must prevail in connection with the Central Banking institutions as in every part of the world, but expert opinion is almost unanimous on the point that undue interference by the State can only be most efficaciously avoided by making the bank an independent organisation, giving such specific and limited powers to the State as may be considered essential under the peculiar circumstances by which these institutions are surrounded. To achieve this, State ownership should be avoided as far as possible in our opinion, because otherwise such ownership affords " A facile pretext for the exercise of Government pressure ". Our Central Bank under Shareholders' ownership functions as a joint-stock company under a special Act of the Assembly with the original capital of five crores of rupees divided into shares of Rs. 100 each, which are fully paid. Arrangements are made to maintain register of Shareholders at Bombay, Calcutta, Delhi, Madras and Rangoon and a separate issue of shares has been made in each of the areas served by these registers. The object of fixing the

areas and the register happens to be to enable the election of representative directors from each of these centres as we shall see a little later.

THE SHAREHOLDER

As to who should be entitled to purchase shares in our Reserve Bank and be registered in that capacity, the Act lays down that no person who is not domiciled in India and is not either an Indian subject of His Majesty or the subject of a State in India or a British subject ordinarily resident in India and domiciled in the United Kingdom shall be a shareholder.

With reference to British subjects of the Dominions, a restriction is said down, viz. that such a subject shall not be a shareholder in case the Government of that dominion discriminates in any way against Indian subjects of His Majesty. Besides this a company registered under the Indian Companies Act of 1913 or a Society registered under the Co-operative Societies Act of 1912 or under any other law for the time being in force in British India relating to Co-operative Societies or a Scheduled Bank, a Corporation or a company incorporated by or under the Act of Parliament can be a shareholder. In case of companies and similar institutions registered in the dominions under the British Crown, the same condition as to discrimination in the case cited above is imposed. The share capital of course can be increased or reduced on the recommendation of the Central Board with the previous sanction of the Governor-General. The sale or allotment of shares at different centres is also regulated according to the importance of each province and thus the shares to the nominal value may be allotted as follows :—

	Rs.
Bombay Register	1,40,00,000
Calcutta Register	1,40,00,000
Delhi Register	1,15,00,000
Madras Register	70,00,000
Rangoon Register	40,00,000

A provision is made that if at one centre like Delhi applications for shares for lesser value are received, they will be distributed to the other two, viz. Bombay and Calcutta registers in equal proportion.

THE MANAGEMENT

The management of the Bank shall be under the supervision and control of (1) The Central Board of Directors, and (2) Local Boards.

The Central Board of management shall be made up of the Governor and two Deputy Governors, four directors to be nomi-

nated by the Governor-General in Council, eight directors to be elected on behalf of the shareholders as two for Bombay, two for Calcutta, two for Delhi, one for Madras and one for Rangoon and in addition to this one Government Official is to be the director as nominated by the Governor-General in Council. The Governor and the Deputy Governors are full-time officers.

The Central Board of Directors for each of the above are to be elected or selected by the directors of the Local Boards of each centre soon after the elections of the Local Board are complete, from among themselves, to represent the shareholders on the register for the area for which these Local Boards are constituted, on the Central Board.

The Local Board is to be constituted of five members elected from among themselves by the shareholders who are registered on the register for that area and qualified to vote and not more than three members nominated by the Central Board from among the shareholders register, on the register for that area who may be nominated at any time. These Local Boards are to be constituted for each of the five areas as stated above, where separate registers are to be maintained. In connection with nominated directors on the Local Board, the Central Board is expected in the exercise of their power of nomination to aim at securing the representation of territorial or economic interests which are not already represented through the course of election, particularly the representation of agricultural interest and those of co-operation banks. As to the voting power it is provided that a shareholder who has been on the register for the area concerned for period of not less than six months, ending with the date of the election, shall have one vote for every five shares subject to a maximum of ten votes. Thus voting power may be exercised either personally or by proxies appointed on each occasion, the proxy being always a brother shareholder entitled to vote at the election and should not be an employee of the bank. This particular clause thus discourages the use of proxies by bank officers at the time of similar elections, as in case of our joint-stock banks. The Local Board will have the power to advise the Central Board on such matters as may be generally or specifically referred to it and to perform such duties as the Central Board may by regulations delegate to it.

DISQUALIFICATION OF A DIRECTOR

The Act lays down that the following shall not be members of a Local Board, viz. (1) A salaried Government official or a salaried official of a ruling State in India, (2) a person arjudicated an insolvent or who has suspended payment or has compounded with his creditors, (3) a lunatic or a person of unsound mind, (4) an officer or employee of any bank and, (5) a

director of any bank, except a bank which is a society registered or deemed to be registered under the Co-operative Societies Act 1912 or similar law as to Co-operative Societies in British India.

The directors as well as the Governor and Deputy Governors are removable from offices by the Governor-General in Council, except that in case of elected directors and the directors nominated, the power of removal can only be exercised on a resolution passed by the Central Board by a majority consisting of not less than nine directors. The share qualification of directors is the holding of unencumbered shares of the Reserve Bank of a nominal value of not less than Rs. 5,000. This qualification must be acquired at any time after six months from the date of his election or nomination, otherwise his place would be vacant. Even if he ceases to hold these shares at any time the result would be the same. He would be also disqualified in case he absents himself for three consecutive meetings of the Central Board without the consent of the Governor-General in Council. The same disqualification would apply to the members of the Local Boards. The directors of course can resign their offices, the difference being that the Central Board directors must address their resignation to the Governor-General in Council, whereas the Local Board offices may be resigned by a resignation addressed to the Central Board.

GENERAL MEETINGS

The General Meeting of the shareholders is to be held annually at any of the offices of the bank within six weeks from the date on which the annual accounts of the bank are closed, provided that these meetings shall not be held consecutively on two occasions at any one place. The meetings of course are to be convened by the Central Board. Here the shareholders are given power to discuss the annual accounts as well as the report of the Central Board and the auditors on the working of the bank and the annual balance sheet and accounts respectively. The voting power is the same as in case of election of directors, proxies being used on demand of a poll.

THE BUSINESS OF THE BANK

The business of the bank will be naturally divided into two separate compartments, one being that of note issue commonly known as " Central Banking Functions " and the other is... banking business proper.

CENTRAL BANKING FUNCTIONS

In connection with Central Banking functions the most important naturally is the right to issue bank notes which is a monopoly right in the hands of the Central Reserve Bank. The Indian Government has naturally ceased to issue notes

having transferred the whole function to this bank. The issue department functions as a separate and distinct department from the banking department as in case of the Bank of England and other similar banks and the assets of the issue department are not subject to any liability other than the liability of the issue department. The issue department liability will constitute a total amount made up of the currency notes of the Government of India and the bank notes for the time being in circulation. This is because on the date that Chapter Third of the Act came into force, the issue department of the Reserve Bank took over from the Indian Government the liability for all currency notes of the Government of India in circulation and in return the Government of India transferred to the issue department of the said bank gold coins, gold bullion, sterling securities, rupee coins and rupee securities to the aggregate value equal to the total of the liabilities transferred by the Indian Government in connection with its notes in circulation. The requirement is that, of the total amount of assets held as such security against notes, there shall be at least two-fifths of the total value made up of gold coins, gold bullion and sterling securities, and that, the amount of gold coins and gold bullion must not at any time be less than 40 crores of rupees in value. The remaining assets are to be held in rupee coins, Government of India rupee securities of any maturity and such Bills of Exchange and Promissory Notes payable in British India as are eligible for purchase by the Bank under the Act. Here the further provision is that the amount held in the Government of India rupee securities must not at any time exceed one-fourth of the total amount of the assets or 50 crores of rupees, whichever amount is greater or with the previous sanction of the Governor-General in Council such amount plus the sum of 10 crores of rupees. In connection with the valuation of these securities it is further provided that gold coins and gold bullion shall be valued at 8.47512 grains of fine gold per rupee, rupee coin shall be valued at its face value and the securities are to be valued at the market rate for the time being obtaining. Of these gold coins and gold bullion held as assets against note issue, not less than 17/20ths shall be held in British India and such holding must be in the custody of the bank or its agencies. Details are given as to what form of sterling securities may be held as part of these assets against the note issue in the Act.

With reference to note issued by the Reserve Bank of India, a interesting case was decided in 1944 by the Allahabad High Court, viz. *Radha Krishna and another* v. *The Reserve Bank of India* (1944) All. 685 where it was laid down that the governing clause of s. 28 states that a mutilated note is one from which a portion is missing; therefore where two halves of a currency notes are placed before a currency officer, when they

both are identifiable as parts of one note, the currency officer should allow the claim. It was further held that under Reserve Bank of India (Note Retund Rules, 1935) Rule 2(*e*), before a note can be described as a mutilated note, it is an essential condition that a portion of that note should be missing. If that is not so, the note cannot be regarded as a mutilated note.

The Bank must issue rupee coins on demand in exchange for bank notes and currency notes of the Government of India and must issue currency notes or bank notes on demand in exchange for coins which are legal tender under the Indian Coinage Act, 1906.

Besides this, the much debated Sections 40 and 41 threw an obligation on the bank to purchase and sell sterling for immediae delivery in London at a ratio not below 1*s*. 5*d*. and 49/64ths of a penny for a rupee and not over 1*s*. 6*d*. and 3/6ths of a penny for a rupee, the only protection being that no person is entitled to demand to sell to the bank an amount of sterling less than £10,000 and that no person shall be entitled to receive payment unless the bank is satisfied that the payment of the sterling in London has been made.

Scheduled Banks.—There are a number of banks in India which are given in Second Schedule to the Act, which are to be known as " Scheduled Banks ", which banks must maintain with the Reserve Bank a balance which must not be less at the close of any day than five per cent of the " demand liabilities " and two per cent of " time liabilities " of each of such bank in India. These liabilities for the purpose of calculation would not include the paid-up capital or reserves, or any credit balances in the profit and loss account of the bank, or the amount of any loan taken from the Reserve Bank. Managers of these Scheduled Banks have thus to send a return showing their position in connection with these liabilities at the close of business on each Friday and in case such Friday happens to be a public holiday under the Negotiable Instruments Act at the close of business on the preceding working day. The names of these " Scheduled Banks " are given below :—

Allahabad Bank Ltd., American Express Company, Inc., Banco Nacional Ultramarino, Bank of Baroda, Ltd., Bank of Hindustan Ltd., Bank of India, Ltd., Bank of Taiwan, Ltd., Canara Bank, Ltd., Canara Industrial and Banking Syndicate Ltd., Central Bank of India, Ltd., Chartered Bank of India, Australia and China, Comptoir National D' Escompte de Paris, Eastern Bank, Ltd., Grindlay & Co., Ltd., Hongkong & Shanghai Banking Corporation, Imperial Bank of India, Indian Bank Ltd., Industrial Bank of Western India, Ltd., Lloyds Bank Ltd., Mercantile Bank of India, Ltd., Mitsui Bank, Ltd., National Bank of India, Ltd., National City Bank of New York, Netherlands India Commercial Bank, Netherlands Trading

Society, P. & O. Banking Corporation, Ltd., Punjab National Bank, Ltd., Thomas Cook & Son (Bankers), Ltd., Travancore National and Quilon Bank Ltd., Union Bank of India, Ltd., Yokohama Specie Bank, Ltd.

The Function as the Banker of the Government.—The bank is given the privilege of acting as a banker of the Government and is to have under its exchange and management the provincial revenues on conditions that may be agreed, together with all money remittances and exchange in banking transactions in India. All cash balances of the Government are to be in deposit free of interest with the bank. This is subject to the fact that where the bank has no branches or agencies, the Government is free to hold such balances, at such places as they may require. The design and form of notes must be according to the approval of the Government of India and as to the note issue, it is to be the monopoly of the bank. No person other than the bank can in British India draw, accept, make or issue any Bills of Exchange, Hundi, Promissory Note or engagement for payment of money payable to bearer on demand or borrow, owe or take up any sum or sums of money on bills, hundis, or notes payable to bearer on demand from any such person. From this regulation, cheques or drafts including *hundis* payable to bearer on demand and drawn on person's account against a banker, *shroff* or agent are excluded. Any violation of this rule is punishable with a fine.

Banking Business of the Reserve Bank.—The Bank can (1) receive money on deposit without interest from any person, Bank, Government, etc.

(2) discount or purchase Bills of Exchange and Promissory Notes drawn on and payable in India which arises out of *bona fide* commercial or trade transactions, the condition here being that they must bear at least two or more good signatures, one of which must be that of a Scheduled Bank, and that they must mature within 90 days from the date of purchase or re-discount exclusive of the days of grace.

(3) make similar purchase, sale and re-discount Bills of Exchange and Promissory Notes under similar conditions bearing at least two good signatures of which one must be either of a Scheduled Bank or a provincial co-operative bank and which has been drawn or issued for the purpose of financing seasonal agricultural operations or marketing of crops and maturing within nine months from the date of purchase of re-discount exclusive of the days of grace. Similar purchase and re-discount of Bills and Promissory Notes, with at least the signature of a Scheduled Bank under similar conditions, which are issued or drawn for holding or trading in securities of Government of India, or a Local Government, or that of States in India, as may be specified by the Indian Government on

recommendation of Central Board, these Bills to mature within 90 days from the date of purchase or re-discount excluding days of grace.

(4) purchase and sell to Scheduled Banks of sterling in amounts not less than Rs. 1,00,000.

(5) purchase and sell and re-discount Bills of Exchange including Treasury Bills drawn in the United Kingdom maturing within 90 days from the date of purchase. Those transactions if made in India must be through a Scheduled Bank.

(6) keep balances with banks in the United Kingdom.

(7) make loans and advances either to States in India and provincial co-operative banks against securities as laid down by the Act, viz. the recognized Trust Securities for investment by trustees, gold or silver or documents of title of same, bills and promissory notes eligible for purchase by the bank, promissory notes of Scheduled Banks, provincial co-operative banks which are supported by documents of title to goods and which were assigned or pledged to such banks as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions for the purpose of financing seasonal agricultural operations or marketing of crops.

(8) grant loans to Governor-General in Council and other Local Governments for the purpose of management of provincial revenues, etc.

(9) issue Bank Post Bills and demand drafts payable in their own offices.

(10) dealings in purchase and sales of Government securities with certain reservations.

(11) take moneys, valuables and securities in safe custody.

(12) act as an agent for the Secretary of State, Governor General in Council or the Local Government or of any State in India in connection with specific businesses such as purchase and sale of gold or silver, bills of exchange, securities, collection of proceeds whether principal, interest or dividends of securities or shares and remittances of same by Bills in India or elsewhere.

(13) manage public debt.

(14) manage the purchase and sale of gold coins and bullion on its own account.

(15) open an account with or make an agreement with any bank which is the principal currency authority of any country under the law for the time being in force in that country or any international bank formed by such banks. It may invest funds of the bank in the shares of any such international bank.

(16) the bank is allowed to borrow money for a period not exceeding one month for the purpose of its business and may give security for such money. Here the loan must be taken either from one of the Scheduled Banks or from a bank outside India which is the principal currency authority of that country. The restriction here is that the total amount of such borrowings shall not in any case exceed the amount of the share capital of the bank.

(17) the making and issue of its own notes as authorized by the Act.

PROFITS AND ACCOUNTS OF THE BANK

It is here laid down that after providing for, from the profits of the bank, for all bad and doubtful debts and depreciation of assets and contributions to the staff and super-annuation funds, cumulative dividend not exceeding 5 per cent per annum can be paid by the bank on the shares issued by it. As to an additional dividend over this maximum of 5 per cent, the Act has provided a gradation in Schedule Fourth according to the terms of which the same may be paid. The balance after payment of such dividends is to be paid to the Government of India. It is further provided here that in case if at any time, the reserve fund of the Bank is less than its share capital at least 50 lacs of rupees of its surplus which goes to the Government should be transferred to the Reserve Bank Fund and where the said surplus is less than 50 lacs, the whole of it will be transferred to the said fund. This means that the Act contemplates the creation of a reserve fund out of profits at least equivalent to its share capital and for that purpose the surplus which would otherwise go to the Government is to be taxed to the extent of at least 50 lacs of rupees annually until this objective is achieved. The bank is exempted from paying income-tax or super tax on any of its incomes, profits or gains. The obligation is also thrown on the bank to publish from time to time its standard rate for purchasing or rediscounting bills of exchange or other commercial paper which it is authorized to deal in. The usual provisions as to auditors is also inserted who are not to be less than two. Those auditors are to be elected at general meetings by the shareholders and as usual a director or officer of the bank is declared not eligible for this position, the first auditors being appointed by the Central Board. The Governor-General in Council, i.e. the Government of India can appoint special auditors, if they so require, to examine and report upon the accounts of the bank. The duties of those auditors are more or less on the same footing as that of the joint-stock company auditors and their powers are laid down on similar lines.

The bank has to publish weekly accounts of its issue department and banking department in a form set out in

Schedule V on more or less the same basis as in the case of Bank of England.

AGRICULTURAL CREDIT DEPARTMENT

The bank has also to maintain an agricultural credit department where the expert staff has to study all questions of agricultural credit and will be available for consultation by the Government of India, Local Governments, Provincial Co-operative Banks and other banking organizations. They are also expected to co-ordinate the operations of the bank in connections with agricultural credit and its relations with provincial co-operative banks and any other banks or organizations engaged in the business of agricultural credit.

EXTENSIONS OF THE ACT

A special section throws a duty on the bank to make a report at the earliest practicable date and in any case within three years from the date on which Chapter Fourth of the Act comes into force, to the Government of India embracing proposals if it thinks fit for legislation with a view to the extension of the provisions of the Reserve Bank Act as to the addition in the number of the Scheduled Banks of persons and banks not included in same and as to the improvement of the machinery for dealing with agricultural finance and matters affecting a closer connection between agricultural enterprise and the operations of the bank. The bank is also to report to the Government of India its views when it is of opinion that the international monetary position had become sufficiently clear and stable in order to make it possible to determine what will be suitable as a permanent basis for the Indian monetary system and to frame permanent measures for a monetary system. Thus a provision is clearly made for reports in the right direction for improvement and advancement in connection with this most important banking institution of our country.

WEEKLY RETURNS

The following is the Form in which the Reserve Bank of India issued its weekly Balance Sheet divided into two compartments, viz. (1) for the Issue Department regarding its note issue, and (2) for the Banking Department regarding its Banking business.

RESERVE BANK OF INDIA

BANKING DEPARTMENT

Statement of the affairs as on the 20th April, 1945.

LIABILITIES	Rs.	ASSETS	Rs.
Capital paid-up	5,00,00,000	Notes	9,31,04,000
Reserve Fund	5,00,00,000	Rupee Coin	25,05,000
Deposits:—		Subsidiary Coin	2,11,000
(*a*) Government		Bills Purchased and Discounted:—	
(1) Central Government of India ...	2,82,66,25,000	(*a*) Internal	...
(2) Government of Burma ..	1,31,39,000	(*b*) External	...
(3) Other Government Accounts ...	23,10,79,000	(*c*) Government Treasury Bills ...	8,97,65,000
(*b*) Banks	78,67,67,000	Balances held abroad*	3,94,18,67,000
(*c*) Others	24,91,40,000	Loans and Advances to Governments ...	64,00,000
Bills Payable	3,25,68,000	Other Loans and Advances	2,00,000
Other Liabilities	15,85,38,000	Investments	21,48,94,000
		Other Assets	4,89,10,000
Total Liabilities Rs.	4,39,78,56,000	Total Assets Rs.	4,39,78,56,000

*Includes Cash and Short-term Securities.

RESERVE BANK OF INDIA

An Account in pursuant to the Reserve Bank of India Act, 1934, for the week ended the 20th day of April, 1945.

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
	Rs.			Rs.	
Notes held in the Banking Department ...	9,31,04,000		A.—Gold Coin and Bullion :—		
Notes in circulation ...	11,08,68,92,000		(*a*) Held in India ...	41,41,43,000	
			(*b*) Held outside India ...	...	
			Sterling Securities ...	9,98,32,89,000	
Total Notes issued		11,17,99,96,000	Total of A		10,42,74,32,000
			B.—Rupee Coin		17,41,38,000
			Government of India Rupee Securities ...		57,84,26,000
			Internal Bills of Exchange and other Commercial Paper		...
Total Liabilities Rs.		11,17,99,96,000	Total Assets Rs.		11,17,99,96,000

Ratio of Total of A to Liabilities : 93·254 per cent.

Dated the 25th day of April 1945.

C. D. DESHMUKH, *Governor*,
(Sd.) C. E. JONES, *Secy.*

By order of the Governor of Bombay,
B. VENKATAPPIAH, *Joint Secy.*

RESERVE BANK OF INDIA

Balance Sheet as at 30th June 1944

ISSUE DEPARTMENT

LIABILITIES	Rs.	a.	p.	Rs.	a.	p.	ASSETS	Rs.	a	p.	Rs.	a.	p.
Notes held in the Banking Dept. ...	12,02,09,440	0	0				A.—Gold Coin and Bullion.—						
Notes in circulation ...	931,37,43,090	0	0				(*a*) Held in India ...	44,41,43,323	4	11			
Total Notes issued ...				943,39,52,530	0	0	(*b*) Held outside India	Nil.					
							Sterling Securities ..	828,32,89,317	1	4			
							Total of A ...				872,74,32,640	6	3
							B.—Rupee Coin ...				12,81,41,448	2	3
							Govt. of India Rupee Securities ...				57,83,78,441	7	6
							Internal Bills of Exchange and other Commercial Paper ...				Nil.		
Total Liabilities Rs.				943,39,52,530	0	0	Total Assets Rs.				943,39,52,630	0	0

Ratio of Total of A to Liabilities: 92·511 per cent.

BANKING DEPARTMENT

LIABILITIES	Rs.	a.	p.
Capital paid-up	5,00,00,000	0	0
Reserve Fund	5,00,00,000	0	0
Deposits:—			
(a) Government			
(1) Central Government of India ...	65,24,81,282	1	4
(2) Government of Burma ...	79,21,413	11	6
(3) Other Government Accounts ...	16,79,12,247	7	0
(b) Banks	94,35,14,856	15	1
(c) Others	3,44,55,564	9	2
Bills Payable	2,97,14,470	10	9
Other Liabilities	8,08,92,460	10	4
Total Liabilities Rs. ...	201,68,92,296	1	2

ASSETS	Rs.	a.	p.
Notes	12,02,09,440	0	0
Rupee Coin	27,38,049	0	0
Subsidiary Coin	1,37,507	3	11
Bills Purchased and Discounted:—			
(a) Internal	Nil.		
(b) External	Nil.		
(c) Govt. of India Treasury Bills ...	2,59,33,202	2	3
Balances held abroad*	173,74,45,290	7	1
Loans and Advances to Governments ..	72,00,000	0	0
Other Loans and Advances	10,00,000	0	0
Investments	11,10,49,843	4	0
Other Assets†	1,11,78,963	15	11
Total Assets Rs. ..	201,68,92,296	1	2

* Includes Cash and Short-term Securities.

† Included in the above is the sum of Rs. 6,13,763-0-0 being the book value of Dead Stock now in enemy occupied territory.

L. PERTWEE,
Chief Accountant.

WAJAHAT HUSSAIN,
C. R. TREVOR,
Deputy Governors.

Dated the 17th July, 1944.

RESERVE BANK OF INDIA

Profit and Loss Account

	For the year ended								
	30th June 1944.			30th June 1943.			30th June 1942.		
INCOME	Rs.	a.	p.	Rs	a.	p	Rs.	a.	p.
Interest, Discount, Exchange, Commission, etc.	12,00,42,797	9	8	9,19,19,375	10	1	4,56,44,511	1	0
EXPENDITURE									
Establishment	51,69,962	4	5	43,40,598	2	3	39,08,266	2	5
Directors' and Local Board Members' fees and expenses ...	91,153	10	0	92,372	13	0	85,833	8	0
Auditors' fees	15,000	0	0	12,000	0	0	12,000	0	0
Rent, Taxes, Insurance, Lighting, etc.	3,81,731	5	5	4,10,419	15	5	4,56,461	12	7
Law charges	5,228	11	0	2,777	0	0	1,467	0	3
Postage and Telegraph charges	1,15,525	11	2	1,10,864	12	6	1,15,581	0	11
Remittance of Treasure	24,84,238	7	1	28,95,141	15	0	19,50,516	10	1
Stationery, etc.	1,74,963	12	2	1,48,066	13	3	1,55,997	15	3
Security Printing—(Cheque, Note Forms, etc.)	27,99,636	9	7	21,12,237	13	5	8,88,215	12	5
Depreciation and Repairs to Bank's Property	3,74,655	8	9	3,47,496	10	2	4,25,378	1	2
Agency charges	52,84,327	1	9	39,89,934	11	11	29,67,134	1	11
Contributions to staff and superannuation funds	67,900	0	0	73,300	0	0	75,300	0	0
Miscellaneous expenses	4,20,664	0	5	4,03,424	12	2	4,48,677	14	0
Net available balance	10,26,57,810	7	11	7,69,80,740	3	0	3,41,53,681	2	0
Total Rs. ..	12,00,42,797	9	8	9,19,19,375	10	1	4,56,44,511	1	0

Amount set aside for payment of dividend at the rate of 3½ per cent. per annum	17,50,000	0	0	17,50,000	0	0	17,50,000	0	0
Amount transferred to the Reserve Fund	Nil.			Nil.			Nil.		
Surplus available for payment of an additional dividend at the rate of ½ per cent	2,50,000	0	0	2,50,000	0	0	Nil.		
Surplus payable to the Central Government	10,66,57,810	7	11	7,49,80,740	3	0	3,24,03,681	2	0
Balance carried forward	Nil.			Nil.			Nil.		
Total Rs. ...	10,26,57,810	7	11	7,69,80,740	3	0	3,41,53,681	2	0

RESERVE FUND ACCOUNT

	Rs.	a.	p.
By Balance on 30th June 1944	5,00,00,000	0	0
By transfer from Profit and Loss Account	Nil.		
Total Rs. ...	5,00,00,000	0	0

L. PERTWEE,
Chief Accountant.

WAJAHAT HUSSAIN,
C. R. TREVOR,
Deputy Governors.

Dated the 17th July, 1944.

REPORT OF THE AUDITORS

To The Shareholders

of The Reserve Bank of India

We, the undersigned Auditors of the Reserve Bank of India, do hereby report to the Shareholders upon the Balance Sheet and Accounts of the Bank as at 30th June 1944.

We have examined the above Balance Sheet with the Accounts, Certificates and Vouchers relating thereto of the Central Office and of the Offices at Calcutta, Bombay, Madras and with the Returns submitted and certified by the Managers of the other Offices and Branches, which Returns are incorporated in the above Balance Sheet, and report that where we have called for explanations and information from the Central Board such information and explanations have been given and have been satisfactory. In our opinion, the Balance Sheet is a full and fair Balance Sheet containing the particulars prescribed by, and in which the assets have been valued in accordance with, the Reserve Bank of India Act, 1934, and the Regulations framed thereunder, and is properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs according to the best of our information and the explanations given to us, and as shown by the Books of the Bank. Owing to war conditions we have accepted telegraphic returns from London.

S. B. Billimoria & Co.,
P. K. Ghosh,
Sastri & Shah,
Auditors.

Dated the 17th July, 1944.

CHAPTER XIII

THE IMPERIAL BANK OF INDIA

The Imperial Bank of India was founded in the year 1921 under a Special Act of the Legislative Assembly called " The Imperial Bank of India Act of 1920 ". Since the formation of the Reserve Bank of India under the Reserve Bank of India Act of 1934, the Imperial Bank of India Act had to be amended in various particulars in the year 1934. The original Act of 1920 was passed with a view to bring about fusion of the three Presidency banks of Bombay, Bengal and Madras and bring into existence one Central Institution for India around which all the joint stock and other banks should cluster. In old days each Presidency had its separate Central Banking Institution, as India had not sufficiently developed in Inter-Provincial trade and Inter-Provincial finance, as the means of communication and transport were not as advanced as they had become at the date of passing of the Imperial Bank of India Act. By the year 1920 the country had sufficiently advanced to claim that one large bank for all India, instead of one in each of the Presidencies, should be established having branches all over the country and with principal offices at the three important centres of Bombay, Calcutta and Madras. The best method of bringing about such an institution was naturally the amalgamation of the three principal banks. This amalgamation had one other objective, viz. the prevention of the amalgamated banking units of England from opening branches in this country and obtaining a footing which would be a menace to Indian banking.

India has been long burdened with a large number of outside banks, commanding a virtual monopoly of the exchange business, as well as controlling a large proportion of the deposit business of the country. As these banks have their head offices and board of directors located outside the country, it was increasingly felt that a powerful Indian bank under predominantly Indian directorate, with capital held by Indian shareholders, run in a large measure by Indian officers, was a necessity. This aspiration was sought to be answered by the amalgamation of the three presidency banks into one gigantic unit in the year 1920 in the form of the Imperial Bank of India, controlling Indian commercial banking business all over the country through the help of a large number of branches at all important centres.

Though at the time the constitution was drafted on the footing of a joint-stock bank, the objective was that the bank should occupy the important position of the banker of the Government of India and control as such the rates of interest on the money market. This function the old Imperial Bank

performed to great satisfaction, but owing to the fact that it had not the control of the issue of currency and various other factors, it could not function satisfactorily as a Central Banking Institution as it is expected to function under modern conditions. Thus when the Reserve Bank of India Act was passed with a view to provide for India a Central Bank in the real sense of the term, the Imperial Bank Act had to be amended in various particulars in the year 1934, the main object of amendment being to remove certain restrictions which had to be hitherto imposed as the bank had the monopoly of acting as the Banker of the Government and handle the state money and public accounts. As these functions were transferred to the Reserve Bank on its inauguration, naturally many of these restrictions had to be removed, though it could not be placed on the same footing as an ordinary joint stock bank happens to be, because under the new arrangement, though the Imperial Bank ceases to be the Banker of the Government of India, it has been, by a special agreement between it and the Reserve Bank of India, appointed as the Sole Agent of the latter bank at all places in British India where the Imperial Bank had branches at the commencement of the Reserve Bank of India Act and where no branch of the Banking department of the Reserve Bank happens to be located. We shall deal with this agreement in detail a little later.

BANK'S CONSTITUTION

The capital of the three Presidency banks was made up of Rs. 3,75,00,000 in shares of Rs. 500 each fully subscribed. The additional capital authorized was Rs. 7,50,00,000 also in shares of Rs. 500 each of which Rs. 125 has been called up making in all the present capital of the Imperial Bank at Rs. 11,25,00,000 of which Rs. 5,62,50,000 has been paid up. The bank is authorized under the Act to have what are known as local head offices at Calcutta, Bombay and Madras. It has also a branch office in London which is now under the new Amended Act of 1934 permitted to open cash credit or keep cash accounts for or receive deposits from any person without restraint. Under the old Act it was not so but Section 9 of the old Act which placed a restraint in this direction has now been repealed. Further the bank is allowed under agreement with the Reserve Bank of India to pay, receive, collect and remit money, bullion and securities as Agent for the Reserve Bank of India on behalf of the Government and to undertake and transact any other business which the Reserve Bank of India may from time to time entrust to the bank. The old Act also made it compulsory for the bank to establish and maintain not less than 100 new branches of which at least one-fourth had to be established at places such as the Governor-General in Council may direct. This compulsion has now been removed and it is now

left optional for the bank to maintain branches or agencies at its discretion at places where they were in existence in connection with Presidency banks or in other places where the bank deems advantageous for its own interest and the bank is also given the full liberty to discontinue any branch or agency if it so desires. The bank is also given the permission in Section 18 to enter into negotiations with the sanction of the Governor-General in Council, for purchase and taking over the business, including the capital assets and liabilities of any banking company carrying on business in India or elsewhere, of which the capital is divided into shares and may pay the consideration for such purchase either in cash, or by the allotment of shares in the capital of the bank, or partly in one and partly in other of these ways and may (subject to the provisions of this Act relating to the increase of capital) for the purpose of any such allotment of shares, increase capital of the bank by the issue of such number of shares as may be determined on by the bank. Any business so purchased must after the purchase be carried on subject to the provisions of the Act. The bank may either alone, or co-jointly with other persons, for the purpose of averting the winding up of any company having a share capital which is expressed in rupees in its Memorandum of Association or of any society registered under the Co-operative Societies Act of 1912, or any other Law for the time being in force in British India relating to Co-operative Societies or where any such company or society is being wound up, of facilitating the winding up, advance or lend money to or upon a cash credit in favour of such company or society or the liquidators thereof, as the case may be, for any period upon the security of all or any of the assets whatsoever of such company or society. Thus the power of the Imperial Bank to come in and help a company which has come into financial difficulties in various ways if it so desires and as it has done on previous occasions to great public advantage, has been maintained intact and unaffected.

BOARDS OF MANAGEMENT

The control of the Bank is vested into two Boards of Management (1) The Central Board, and (2) the Local Board. The general superintendence of the affairs and business of the bank is entrusted to a Central Board of Directors, who are authorized to exercise all powers and do all such acts and things as may be exercised or done by the bank and are not expressly directed or required by this Act to be done by the Bank in general meeting. The Local Boards are to be established at Caucutta, Madras and Bombay and at such other places in British India as the Central Board may determine. The sanction of the Governor-General in Council in this connection which was compulsory under the old Act is now not necessary. The other alternative is that instead of being called Governors, the

members of both the Central and Local Boards will now be known as Directors.

CONSTITUTION OF CENTRAL BOARD AND POWERS TO MAKE BYE-LAWS

Sec. 26.

(1) The Central Board shall consist of the following Directors, namely :—

(i) the presidents and vice-presidents of the Local Boards established by this Act;

(ii) one person to be elected from amongst themselves by the members of each Local Board established by this Act;

(iii) a Managing Director who shall be appointed by the Central Board for a period not exceeding five years on such terms as the Central Board may direct, and may be continued in his appointment by the Central Board for such further periods not exceeding five years in each case as the Central Board thinks fit;

(iv) such number of persons not exceeding two and not being officers of the Government as may be nominated by the Governor-General in Council. Such persons shall hold office for one year but may be renominated;

(v) a Deputy Managing Director who shall be appointed by the Central Board;

(vi) the secretaries of the Local Boards established by this Act; and

(vii) if any Local Board is hereafter established under this Act, such number of persons to represent it as the Central Board may prescribe.

(2) The Directors specified in clauses (*v*) and (*vii*) of sub-section (1) shall be at liberty to attend all meetings of the Central Board and to take part in its deliberations, but shall not be entitled to vote on any question arising at any meeting :

Provided that the Deputy Managing Director shall be entitled to vote in the absence of the Managing Director.

(3) The Governor-General in Council shall nominate an officer of Government to attend the meetings of the Central Board, and such officer shall be entitled to attend all meetings of the Central Board to take part in its deliberations but shall not be entitled to vote on any question arising at any meeting.

The Central Board has the power to make bye-laws with the previous approval of the Governor-General in Council consistent with the Act on the following matters under Section 31 :—

(*a*) the maximum amounts which may be advanced, or lent to or for which bills may be discounted for any individual or partnership, without the security mentioned in sub-clauses (*i*) to (*iv*) of clause (*a*) of Part I of Schedule I, the conditions under which advances may be made on the said security and the extent of the sums to which accounts may be overdrawn without security.

Note.—The above sub-clauses refer to the authority of the bank to lend money or open cash credits on the security of stocks, and securities other than immovable property in which a trustee is authorized to invest, securities issued by state-aided railways, debentures or other securities for money issued under the authority of a legislature in British India or a District Board or Municipal Board or Committee or with the sanction of Governor-General in Council or debentures and other similar securities issued under the authority of a Prince or Chief of any State in India; the debentures of companies with limited liabilities as directed by the Central Board and goods or documents of title to goods either deposited with or assigned to the bank or hypothecated to it as securities for such advances.

(*b*) the conditions subject to which alone advances may be made to Directors, members of Local Boards, or officers of the Bank, or the relatives of such Directors, members or officers or to companies, firms or individuals with which or with whom such directors, members, officers or relatives are connected as partners, directors, managers, servants, shareholders or otherwise :—

Provided that the bye-laws shall provide that no advance without security shall be made to any officer of the Bank without the specific sanction of the Local Board under which he is serving :

(*c*) the particulars to be contained in the annual and half-yearly balance sheets, and

(*d*) any matter which by this Act is directed to be prescribed.

The Central Board may, with the previous approval of the Governor-General in Council, make bye-laws consistent with this Act regulating the following matters or any of them namely :—

(*e*) the keeping of the register and branch registers of shareholders;

(*f*) the distribution of business amongst the Directors and their remuneration, if any;

(*g*) the distribution of business among the members of a Local Board and their remuneration, if any;

(*h*) the delegation of any powers of the Central Board or of a Local Board to committees consisting of Directors or members, as the case may be;

(*i*) the procedure to be followed at the meetings of the Central or Local Boards or of any committees thereof;

(*j*) the first appointment and the appointment of members of a Local Board established under this Act;

(*k*) the powers of Local Boards established by or under this Act;

(*l*) the localities in, and with respect to which such Local Boards shall exercise their powers;

(*m*) the books and accounts to be kept at the local head offices of the Bank;

(*n*) the renewal of certificates of shares which have been worn out or lost;

(*o*) the conduct and defence of legal proceedings and the manner of signing pleadings;

(*p*) the constitutions and management of pension and provident funds for the offices and servants of the Bank;

(*q*) all matters which are by this Act permitted to be prescribed; and

(*r*) generally, the conduct of the business of the Bank.

LOCAL BOARDS

As we have seen under Section 25, Local Boards are allowed to be established at Calcutta, Madras and Bombay and at such other places in British India as the Central Board may deem necessary. These Local Boards are to have power generally to transact all the usual business of the Bank without prejudice to the powers reserved to the Central Bank and shall also have power as regards entries in the Branch Registers kept at these places where the Boards are situated and to examine and pass or refuse to pass, transfer and transmissions, and to approve or refuse to approve transferees of shares and to give certificates of shares. (Sec. 26).

COMMERCIAL BUSINESS OF THE BANK

Business Authorized.—Under the new Amended Act of 1934, the Bank's scope of doing business has been enlarged than was the case under the original Act. The type of business which is now permitted to be done by the Imperial Bank under Schedule I—Part I is the following:—

(*a*) the advancing and lending money, and opening cash credits upon the security of—

(*i*) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament or by any Act of the Governor-General in Council, any securities of a Local Government or the Government of Ceylon and shares of the Reserve Bank of India,

(*ii*) such securities issued by the State-aided railways as have been notified by the Governor-General-in-Council under Section 36 of the Presidency Banks Act, 1876, or may be notified by him under this Act in that behalf;

(*iii*) debentures or other securities for money issued under the authority of any Act of a legislature established in British India by, or on behalf of, a district board or a municipal board or committee or, with the sanction of the Governor-General in Council, debentures or other securities for money issued under the authority of a Prince or Chief of any State in India;

(*iii*a) subject to such directions as may be issued by the Central Board, debentures of companies with limited liability whether registered in India or elsewhere;

(*iv*) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits;

(*iv*a) goods which are hypothecated to the Bank as security for such advances, loans or credits, if so authorized by special directions of the Central Board;

(*v*) accepted bills of exchange and promissory notes endorsed by the payees and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership, and

(*vi*) fully paid shares of companies with limited liability, or immovable property or documents of title relating thereto as collateral security only where the original security is one of those specified in sub-clauses (*i*) to (*iv*), and subject to such directions as may be issued by the Central Board where the original security is of the kind specified in sub-clause (*v*);

Provided that such advances and loans may be made, if the Central Board think fit, to the Secretary of State for India in Council, without any specific security;

(*b*) the selling and realisation of the proceeds of sale of any such promissory note, debentures, stock-receipts, bonds, annuities, stock-shares, securities or goods which or the documents of title to which have been deposited with or pledged, hypothecated, assigned or transferred to the bank as security for such advances, loans or credits, or which are held by the Bank or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit, pledge, hypothecation, assignment or transfer;

(*c*) the advancing and lending money to Courts of Wards upon the security of estates in their charges or under their superintendence, and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Local Government concerned, and that the period for which any such advance or loan is made shall not exceed nine months in the case of advances or loans relating to the financing of seasonal agricultural operations or six months in other cases;

(*d*) the drawing, accepting, discounting, buying and selling of bills of exchange and other negotiable securities;

(*e*) the investing of the funds of the Bank upon any of the securities specified in sub-clauses (*i*) to (*iii*) of clause (*a*) and converting the same into money when required, and altering, converting and transposing such investments for or into others of the investments above specified;

(*f*) the making, issuing and circulating of bank-post—bills and letters of credit to order, or otherwise than to the bearer on demand;

(*g*) the buying and selling of gold and silver whether coined or uncoined;

(*h*) the receiving of deposits and keeping cash accounts on such terms as may be agreed on;

(*i*) the acceptance of the charge of plate, jewels, title deeds or other valuable goods on such terms as may be agreed on;

(*j*) the selling and realising of all property whether movable or immovable, which may in any way come into the possession of the bank, in satisfaction or part satisfaction of any of its claims and the acquisition and holding of, and generally the dealing with, any right, title or interest in any property, movable or immovable, which may be the Bank's security for any loan or advance or may be connected with any such security;

(*k*) the transaction of pecuniary agency business on commission; and the entering into of contracts of indemnity, suretyship or guarantee with specific security or otherwise;

(*l*) the administration of estates for any purpose whether as an executor, trustee or otherwise and the acting as agent on commission in the transaction of the following kinds of business, namely :—

(*i*) the buying, selling, transferring and taking charge of any securities or any shares in any public company;

(*ii*) the receiving of the proceeds, whether principal, interest or dividends, of any securities or share;

(*iii*) the remittance of such proceeds by public or private bills of exchange, payable either in India or elsewhere;

(*m*) the drawing of bills of exchange and the granting of letters of credit payable out of India.

(*n*) the buying of bills of exchange payable out of India, at any usance not exceeding nine months in the case of bills relating to the financing of seasonal agricultural operations or six months in other cases ;

(*o*) the borrowing of money for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise;

(*p*) the subsidizing from time to time of the pension funds of the Presidency Banks, and

(*q*) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various kinds of business including foreign exchange business hereinbefore specified.

The relaxation of old restrictions in connection with the business that the Imperial Bank can do, is due to the fact that it is no longer now the banker of the Government, though it does act as the Agent of the Reserve Bank of India and as such indirectly looks after the business of the Government in connection with its financial operations in places where the Reserve Bank of India has not its own offices.

However, as a certain amount of State business has to be done by the Imperial Bank, it has been restrained in a few particulars with a view to secure safety of the State money, though not to the extent it originally was. It is thus free to lend money on debentures of companies with limited liability whether registered in India or elsewhere or on goods which are hypothecated to it as security for advance and not exclusively on goods or documents of title deposited with it as was the case formerly. In connection with transactions in discounting of bills it is now entirely free and unfettered to advance or lend money on bills of exchange and other negotiable securities, bank post-bills and Letters of Credit to order or other-

wise than to the bearer on demand, or to draw, buy of sell same anywhere in the world, instead of being restricted as before in connection with these operations to India and Ceylon. It is further given the power in addition to that of selling and realising of immovable property which came into its possession in satisfaction or part satisfaction of its claims, to acquire and hold same and generally to deal with the same if the bank has acquired it as security for any loan or advance. The bank is further empowered to enter into contracts of indemnity, suretyship or guarantee or specific securities or otherwise, which it did not possess before. The Bank is further given the most important power of doing business in foreign exchange which it did not possess before.

Business Prohibited.—The Bank is not authorized to carry on the following business according to Part II of Schedule I :—

(1) It shall not make any loan or advance—

(*a*) for a longer period than six months, except as provided in clause (*c*) and clause (*n*) of Part I or,

(*b*) upon the security of stock or shares of the Bank, or

(*c*) save in the case of the estates specified in clause (*e*) of Part I, upon mortgage or in any other manner upon the security of any immovable property, or the documents of title relating thereto.

(2) The Bank shall not (except upon a security of the kind specified in sub-clauses (*i*) to (*iv*) of clause (*a*) of Part I) discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed or lend or advance in any way to any individual or partnership firm an amount exceeding in the whole at any one time such sum as may be so prescribed.

(3) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable instrument of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(4) The Bank shall not discount or buy, or advance and lend, or open cash credits on the security of any negotiable security (not being a security in which a trustee may invest trust money under Section 20 of the Indian Trusts Act, 1882) having at the date of the proposed transaction, a longer period to run than nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases, or if drawn after sight, drawn for a longer period than nine months if a bill drawn for the purpose of financing seasonal agricultural operations and six months in other cases.

Provided that nothing in this part shall be deemed to prevent the bank from allowing any person who keeps an account with the bank to overdraw such account, without or with security, to such extent as may be prescribed.

BALANCE SHEETS

The Balance Sheets of the Imperial Bank of India and the Reserve Bank of India respectively appeared as follows immediately after the last named bank began to function and the transfer of the Government Accounts was duly effected :—

IMPERIAL BANK

STATISTICS

The following is the Imperial Bank return for the week ended April 5, 1935 :—

LIABILITIES		ASSETS	
	Rs		Rs.
Subscribed Capital ...	11,25,00,000	Government Securities	42,02,49,000
Capital Paid-up ...	5,62,50,000	Other Authorised Securities for the Act	9,28,000
Reserve Fund ...	5,35,00,000	Loans	8,65,54,000
Fixed Deposit, Savings Bank, Current and other Accounts ...	74,82,28,000	Cash Credits ...	20,15,44,000
Loans against securities per contra ...	*Nil.*	Bills Discounted and Purchased ...	3,54,77,000
Acceptances for Constituents	*Nil.*	Liabilities of Constituents for Acceptances per Contra ...	*Nil.*
Sundries	67,71,000	Dead stock ...	2,39,51,000
		Sundries	57,13,000
		Bullion	*Nil.*
		Balances with other Banks	10,59,000
		Cash in hand and with the Reserve Bank of India ...	8,92,74,000
TOTAL Rs....	86,47,49,000	TOTAL Rs ...	86,47,49,000

RESERVE BANK OF INDIA

The following is a statement of the affairs of the Issue and Banking Departments of the Reserve Bank of India for the week ended April 5, 1935:—

ISSUE DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Notes held in the Banking Department	19,05,29,000	A.—Gold Coin and Bullion—	
Notes in Circulation...	1,66,99,97,000	(*a*) Held in India...	41,55,19,000
		(*b*) Held outside India ..	2,86,98,000
		Sterling Securities ..	48,62,95,000
Total Notes issued ...	1,86,05,26,000	Total of A ...	93,05,12,000
		B —Rupee Coin ...	49,94,95,000
		Government of India Securities	43,05,19,000
		Internal Bills of Exchange and other commercial Paper	...
Total Liabilities ...	1,86,05,26,000	Total Assets ...	1,86,05,26,000

Ratio of Total of A to Liabilities: 50.013 per cent.

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid-up ...	5,00,00,000	Notes	19,05,29,000
Reserve Fund ...	5,00,00,000	Rupee Coin ...	3,30,000
Deposits—		Subsidiary Coin ...	1,04,000
(*a*) Government ...	18,36,41,000	Bills Discounted—	
(*b*) Banks ...	7,82,07,000	(*a*) Internal ...	*Nil.*
(*c*) Others	*Nil.*	(*b*) External ...	*Nil.*
Bills Payable ...	43,000	(*c*) Government of India—	
Other Liabilities ...	1,85,000	Treasury Bills	*Nil.*
		Balances held abroad*	11,94,95,000
		Loans and Advances to the Government ...	...
		Other Loans and Advances Investments ...	5,00,00,000
		Other Assets ...	16,18,000
Rs. ...	36,20,76,000	Rs. ...	36,20,76,000

* Includes Cash and Short Term Securities.

Note.—(1) For the present, the figure shown under Bank's Deposits represents the balance deposited by the Imperial Bank of India.

(2) The increase in the Government balance as compared with that shown by the statements previously published by the Imperial Bank is due to the fact that the balance now includes a credit on account of sterling assets of Government transferred to the Banking Department.

CURRENCY STATSTICS OF GOVERNMENT

Immediately Prior to Transfer

The following is the abstract of the accounts of the Currency Department on 31st March, 1935:—

	Rs.
Notes in Circulation	1,86,10,25,276
Reserve—Coin and Bullion India—	
Silver Coin	77,25,30,254
Gold Bullion	41,55,19,103
Silver Bullion	13,12,47,327
In England	.....
In His Majesty's Dominions	.....
In transit between England, India and His Majesty's Dominions	.....
Total Coin and Bullion	1,31,92 96,684
Securities (purchase price)—	
In India of the nominal value of Rs. 36,07,00,000 ...	35,89,71,125
In England of the nominal value of £13,715,000 ...	18,27,55,467
Total Securities ...	1,86,10,23,276
Internal Bills of Exchange held on account of Government under sec. 20 of the Indian Paper Currency Act, 1923 ...	.....
Percentage of metallic reserve to circulation	70.89

The Gold Standard Reserve

The balance of the Gold Standard Reserve on the 29th February, 1935, amounted to £40,000,000 and was held in the following form:—

	£
1. Cash at short notice at the Bank of England ...	3,075
2. British Treasury Bills	11,618,280
3. Other British and Dominion Government Securities ...	26,226,311
4. Gold in England	2,152,334
Total ...	40,000,000

Balance Sheet of the Imperial Bank as it was immediately prior to the transfer of Government Accounts.

CHAPTER XIV

BANK OF ENGLAND

We have dealt with our principal Indian banks, viz. the Reserve Bank of India and the Imperial Bank of India. We shall now take up the case of the Bank of England which occupies a position more or less similar to that of our Reserve Bank. The Bank of England was established in the reign of William III, following a period of revolution during which the credit of the country had been entirely destroyed owing to civil war, as well as want of confidence in monarchs like King Charles the first and second, who had confiscated for their own purposes money lodged by the public in the Exchequer. William III, though a foreigner, did great service to the country of his adoption, by introducing many wholesome reforms in connection with currency which had fallen into a state of great deterioration, and by re-establishing peace, tranquillity, stable government, as well as confidence in the State and its integrity. During this monarch's reign the Bank of England was established by the grant of a Royal Charter from the King. It is said that the idea was suggested by a Scotchman named Patterson and taken up by Montagu, the Chancellor of the Exchequer. During early stages in its career, the bank enjoyed a virtual monopoly of note issue as a joint-stock bank, thereby hindering the development of other joint-stock banks in England, because in those days, note issue was considered to be the most important function of a bank. Later on, this monopoly was restricted to a radius of sixty-four miles from London, to which position it stands to-day. However, during the last Great War, and the period immediately following, a number of banks of issue lost their privilege of note issue through amalgamations with other non-issue banks, or some similar causes, with the result that to-day the Bank of England is the only bank of issue in the country. The Bank Charter Act of 1844, with which we have already dealt in Chapter VI, is the Act which regulates the issue of bank notes in England and is the principal enactment which at present governs the working of this bank.

Bank of England as a Central Bank.—The position of the Bank of England as a central bank is rather peculiar. As we have already seen, the main idea governing the organization of a central bank is to provide a constitution for it that would be directed towards the furtherance of public interests, i.e. the interests of the State and Industry in general. The central banks in all civilized countries work in close relationship to the State (in some States they are conducted directly under the guarantee of the Government) and manage the currency of the country, for which purpose they have to manipulate gold

reserves and adopt various methods for protecting their currency. Their stability, in short, is the particular concern of the State to which they relate. Generally, all the Central Banks of the world are shareholders' banks, except in three most insignificant centres like Australia, Latvia and Estonia, where central banks are State banks without capital. But, of course, the right of shareholders, as we know them in connection with joint-stock companies, are considerably restricted here, particularly in connection with the election of directors, receipt of dividends and the exercise of various other powers. One of the principal functions of a central bank happens to be, as we have seen, the maintenance and care of the currency and the control of the money market in public interest.

A Shareholders' Bank.—The Bank of England is a shareholders' bank and is thus owned by private individuals, on the same footing as the Bank of France or the Reichsbank of Germany. The shareholders are given votes on the footing of one vote for every £500 of stock held by them. In case of the Bank of France, this right of voting is restricted to 200 larger shareholders, whereas in case of the Reichsbank, very little voting power is granted to the shareholders. The directors of the Bank of England, known as Governors, are elected by the shareholders though in actual practice, the nominees of the directors are automatically confirmed. The Governor and Deputy Governor of the Bank of England are chosen from the directors on the footing of their seniority and hold office for two years. The management is in the hands of permanent officers who are subject to the supervision of committees such as "Committee of Treasury", "Committee of Daily Waiting", "Committee for Law Suits", "Committee of Management of Branch Banks", "Committee for the Inspection of Cashier's and Accountant's Office", etc. This practice is similar to that followed by the Bank of France. The Bank of England is the banker of the Government, as well as the nation, and as such, has accounts of almost all the principal joint-stock banks with it, where all surplus cash and other money of each of these banks happens to be deposited. Thus the "Central Gold Reserve" of the Bank of England is looked upon as the Gold Reserve of England. It occupies the position of the bankers' bank as far as the London Money Market is concerned. Though the Bank of England discounts bills for a few customers, it does not do so for the general public. The Bank of England has only ten branches: The Western and Law Courts Branches in London, and branches in Manchester, Birmingham, Liverpool, Bristol, Leeds, Newcastle, Hull and Plymouth. The opening of a current account with the bank is considerably restricted as far as private persons are concerned, because a minimum balance of £500 is insisted upon.

Bank Return (Balance-Sheet).—Under the Banking Act of 1844, the Bank of England has to publish every week, ending Wednesday, a statement in the form of a balance-sheet, showing the position of its departments, viz. (1) the Issue Department, and (2) the Banking Department, which under the Act, should be kept distinct and separate. The Issue Department restricts itself to the sole function of note issue, and has to take care to see that the present limit of the fiduciary issue of £260,000,000 is not exceeded. The balance-sheet, published weekly, as far as its issue department is concerned, exhibits exactly what the position of the fiduciary issue happens to be. We have given two balance-sheets hereunder, issued under these regulations, one of them being for the week ending Wednesday, November 21st, 1928, i.e. a week before the date on which the treasury and the Bank of England notes were merged into one issue, and the other balance-sheet is for the date, 28th November 1928, as it appeared after the fusion of the Treasury note issue with the Bank of England notes, with a view to afford a comparison as to what changes took place in connection with the issue department figures after the said fusion.

BANK OF ENGLAND RETURN

An account for the week ended on Wednesday, November 21, 1928

ISSUE DEPARTMENT

	£		£
Notes Issued ...	180,964,085	Government Debt ...	11,015,100
		Other Securities ...	8,734,900
		Gold Coin & Bullion ...	161,214,085
£ ...	180,964,085	£ ...	180,964,085

Dated November 22nd, 1928. (Sd.) C. P. MAHON,
Chief Cashier.

BANKING DEPARTMENT

	£		£
Proprietors' Capital	14,553,000	Government Securities ...	48,340,327
Rest	3,204,147	Other Securities ...	34,757,491
Public Deposits—(Including Exchequer, Savings Banks, Commissioners of National Debt and Dividend Accounts)...	14,898,189	Notes	48,161,710
		Gold and Silver Coin ...	870,504
Other Deposits ...	99,472,105		
Seven Day and other Bills	2,591		
£ ...	132,130,032	£ ...	132,130,032

Dated November 22nd, 1928. (Sd.) C. P. MAHON,
Chief Cashier.

From the foregoing balance-sheet, it will be noticed that on the date in question, the total Notes issued amounted to £180,964,085, of which the fiduciary portion of the Issue amounted to £19,750,000. The Bank Reserve stood at £49,082,214, and the proportion of cash to liabilities was 48.8 per cent. Now let us see the startling changes effected in the Bank Return of the following week given below :—

BANK OF ENGLAND RETURN

An account for the week ended on Wednesday, November 28th, 1928.

ISSUE DEPARTMENT

	£		£
Notes Issued :—		Gold Coin and Bullion ...	159,088,945
In circulation ...	367,001,148	Government Debt ...	11,015,100
In Banking Department	52,087,797	Other Government Securities ...	233,568,550
		Other Securities ...	10,176,193
		Silver Coin ...	5,240,157
£ ...	419,088,945	£ ...	419,088,945

Dated November 29th, 1928. (Sd.) C. P. MAHON,
Chief Cashier.

BANKING DEPARTMENT

	£		£
Proprietors' Capital ...	14,553,000	Government Securities	52,180,327
Rest	3,254,001	Other Securities :	
Public Deposits (Including Exchequer, Savings Banks, Commissioners of National Debt and Dividend Accounts) ...	21,452,051	Discounts and Advances ...	13,586,293
		Securities ...	20,214,855
		Notes	52,087,797
		Gold and Silver Coin ...	757,041
Other Deposits :			
Bankers	62,379,409		
Other Accounts ...	37,185,203		
Seven Day and other Bills	2,649		
£ ...	138,826,313	£ ...	138,826,313

Dated November 29th, 1928. (Sd.) C. P. MAHON,
Chief Cashier.

ISSUE DEPARTMENT

The Fiduciary Issue at Fusion and Before.—To deal with these figures in proper order, let us begin with the Issue Department, where it will be noticed from the balance-sheet of 28th November 1928, which we will take in hand first for purpose of our explanation, that the notes actually issued and

in circulation were £867,001,148, and the notes that were transferred from the Issue Department to the Banking Department and were still lying there, as will be noticed from the figure on the right hand side of the Banking Department balance-sheet, is £52,087,797, making up in all a total of £419,088,945. As against that the Bank happens to have on the credit side a figure of £11,015,100 under the heading of " Government Deposits ", which is a debt due to the Bank of England by the British Government, being an equivalent amount of money lent to the latter from time to time by the Bank of England in virtue of the privilege of exclusive banking granted to it. The next figure is that of " Other Securities ", made up of £243,447,743 and Gold Coin and Bullion £150,088,945, *plus* Silver Coin £5,240,157. All these show that the bank has maintained the limit of £260,000,000, which is represented by fiduciary limit allotted to it. At the date when the balance-sheet of 21st November 1928 was issued, i.e. before the fusion the fiduciary limit was only £19,750,000.

BANKING DEPARTMENT (LIABILITIES)

The Bank Capital.—Now, if we direct our attention to the Banking Department, we find the first figure on the " Liabilities Side " under the heading of Proprietors' Capital of £14,558,000. This is the amount of Capital Stock at present in the hands of the proprietors, or stock-holders, which has remained unchanged since 1833. The relation between these figures of Proprietors' Capital, to the bank's liability to the public, is said to be high in England, which has resulted in the dividend being restricted to about ten to eleven per cent per annum.

The Rest.—The next item of £3,254,001 under the heading of " Rest " represents the Reserve Fund of the Bank of England, *plus* its accumulated profits of the current year which are not yet divided. This is a peculiar method adopted by the Bank of England in this connection, because in case of all other joint-stock banks, and joint-stock companies, the Reserve Fund created out of the profits would appear as a separate fund, whereas the accumulated profits of the current year not yet divided or appropriated, would come under the heading of " Unappropriated Profits ", at the foot of the left hand or liabilities side, of the balance-sheet. By a long-established practice, the Bank of England shows the two figures amalgamated as in the above statement, but there is no inconvenience caused to the public who know that the excess over £3,000,000 represents the accumulations and profits to the date of the return. In the present case, this excess is £254,001.

The Public Deposits.—The next figure is that of " Public Deposits ", which, in the balance-sheet under review, happens to be £21,542,051. This figure is an accumulation of various

Government Current Accounts belonging to the Exchequer, Savings Banks, Commissioners of National Debt, etc.

Other Deposits.—The next item is that of "Other Deposits" which means deposits with the Bank of England by its current account customers, other than the departments of the British Government. These include not only accounts by private individuals, but also accounts of a large number of joint-stock banks and all clearing bankers who are customers of the Bank of England. When the Government floats a loan, or borrows from the market, or when taxes are being collected in large amounts, the "Public Deposits" figures increase and the other deposits decrease for the simple reason that the public draw from various joint-stock companies and pay to the Bank of England to the credit of the various Departments. Under such circumstances, the current account balance in the hands of joint-stock banks is decreased and that in the hands of the Government in current accounts with the Bank of England increases. When the interest on various loans is payable at certain periodical intervals, a large number of dividend warrants are issued to the public who are holders of these loans, who pay in these interest warrants in their accounts with the joint-stock banks who collect same from the Bank of England. The resulting effect is that the balances from the public deposits in the Bank of England are decreased and the balances in the current account of joint-stock banks increase. This inflow and outflow of money from the Bank of England as a central bank to the other joint-stock banks, and *vice versa*, exercises a tremendous influence on the rates of interest in the Money Market.

Seven Days and Other Bills.—The next figure of "Seven Days and Other Bills" is that of the bank's "Post Bills" which the bank issues to the public to facilitate remittances from London to the country-side of England. These bills are drawn by the Bank of England upon itself at a seven or sixty days' sight. They were originally introduced in lieu of many highway robberies in days when notes were sent by registered post, through postchaises. They are being issued, though the demand for them is under the present circumstances small, and not of much importance.

BANKING DEPARTMENT (ASSETS)

Having finished the "liabilities side" of the balance sheet, we may now proceed to the "assets side" where the first item happens to be Government Securities of £52,180,227, and the next item is other Securities of £33,801,148. The item of Government Securities represents the amount invested in British Government Stocks and Treasury Bills including (Deficiency Bills and Ways and Means Advances) are all lumped together

according to an old-established practice, though there is no reason why the bank should not give the public more detailed information, showing each type of Government Security and the quantity in which it is held. The other securities figure includes Discount and Advances as well as collateral securities held by the bank against these loans. It also includes bank's own investment in securities.

Notes.—The next item of £52,087,797 corresponds with the figure we have dealt with under the heading of " Issue Department " which has been shown under this balance-sheet as Notes in " Banking Department ". These notes happen to be in the hands of the bank in the " Banking Department " for purposes of daily use and which are not yet put into circulation in the hands of the public.

Gold and Silver Coin.—The last item is made up of Gold and Silver Coin of £757,041, which is the till money of the bank, i.e. cash in actual coins for daily use.

A balance-sheet of the Bank of England as on 1st December 1937, is given below for facility of comparison :—

BANK OF ENGLAND

The following is the Bank of England Return for the week ended December 1, 1937 :—

ISSUE DEPARTMENT

	£		£
Notes Issued :		Government Debt ...	11,015,100
In circulation ...	485,676,440	Other Govt. Securities...	208,323,841
In Banking Dept. ...	60,730,185	Other Securities ...	648,882
		Silver Coin ...	12,177
		Amount of Fiduciary issue	220,000,000
		Gold Coin and Bullion...	326,406,625
Total ..	546,406,625	Total ...	546,406,625

BANKING DEPARTMENT

	£		£
Proprietors' Capital ...	14,553,000	Government Securities...	78,823,165
Rest	3,297,698	Other Securities :	
Public Deposits ...	11,984,958	Discounts and Advances... ...	10,522,202
Other Deposits :		Securities ...	20,707,977
Bankers	105,672,871	Notes	60,730,185
Other Accounts ...	36,565,503	Gold & Silver Coin ...	1,290,501
Total ...	172,074,030	Total ...	172,074,030

CHAPTER XV

INDUSTRIAL AND LAND MORTGAGE BANKS

So far, we have dealt principally with commercial banks. It is not out of place to take a hasty survey of two other special types of banks, which play an important part in the world of finance, in a book of this character, viz. the Industrial and Land Mortgage Banks.

In modern times, tendency towards specialization is universal in all branches of human activity. Same has been the case with banking. There are many avenues of finance and banking where commercial banks find themselves unequal to meet the growing demands for finance owing to the fact that the basic principle in their case is " short term credit ". To take only two cases, viz. the industrial and agricultural finance where, besides short term credits, long term loans are so essential for their natural development and progress. The commercial banks do help here to a limited extent, but it was soon noticed that for the adequate handling of the essential wants of industrial and agricultural finance special types of banks, able to provide " long term credits " and " long term loans " were absolutely necessary. The State at the earlier stages stepped in to a certain extent, but later, Co-operative Credit Societies in case of smaller industries and small agricultural holdings, began to fill up the gap. In case, however, of the requirements of large industries and large landholders these agencies were found not to be adequate, with the result that industrial and mortgage banks gradually came on the scene.

Industrial Banks.—The primary object of industrial banks is to provide finance for large and small scale organized industries. The extent to which this financial assistance can be given depends upon the type and nature of organization. The ideal industrial bank is one which provides finance both for the " block " capital, as well as for the " floating " capital. The capital of these industrial banks may be raised either through the issue of shares or partly by shares and partly through the issue of debentures. The deposits received by these institutions are mostly long term deposits. The short term deposits here are utilised only for the purpose of lending money for floating capital to industrial concerns, the mode of providing finance to new industrial concerns is through the underwriting of shares of industrial companies or purchase of their debentures. Direct loan on proper securities is also an additional method.

Industrial banks have made very great progress in Germany. The following remarks of our Central Banking Inquiry Commission in this connection are rather interesting :—

"An industrial firm in Germany has what is called a current account connection with its banks, which is distinct from the current account as used in relation to banks and their clients in England or in India. In the ordinary current account connection, the customer is sometimes in debt to the bank and sometimes has a balance to his credit. Many claims thus arise on both sides which are not settled individually but are settled periodically, usually every six months. The extent of the customer's indebtedness, the maximum period for which it may be outstanding, and the security to be given, are fixed by agreement from time to time after consideration of all the circumstances of the case. The current account advances are used by the average German firm not only for the purpose of providing itself with working capital but also for supplying block for extensions in anticipation of recourse to the investment market.

"Industries in Germany provide themselves with initial capital in two ways. Either the promoters invite the public to subscribe the capital and to help to bring the company into existence; or the promoters themselves take over the entire capital in the first instance with the intention of placing the shares among the public subsequently. Although promotion of industrial companies by subscription was the general practice at an early period of German industrial development, the second method is said to have completely supplanted the first in later years. In connection with the second method of promotion, because the investing public either require a lead or feel a reluctance to decide on participation in an undertaking before it is fully launched, banks in Germany have played an important part in providing the greater part of the initial capital, which is subsequently placed among the investing public either by offering them for public subscription or by direct sale to customers or to banking firms in relation with the banks. In order to reduce the risk borne by a single bank, and to ensure the success of the issue, it is very common for several banks (or bankers) to join together in what is called a *konsortium* and pledge themselves to accept a certain portion of the issue. It is important to notice that the investment of German banks in shares of industrial companies is not a long term investment and is resorted to merely as a safe and liquid investment for part of the bank's resources in first class securities. It is not inconceivable that circumstances may arise when on account of the issue proving unsuccessful, the banks may be compelled to hold the securities along indefinitely. But such a situation is regarded as involuntary and incidental. From the bank's point of view, its participation in the promotion of new industrial companies is considered useful for acquiring business connections or extending the bank's influence.

"It will thus be seen that when industrial companies wish to procure new capital, whether from existing shareholders or by issue of new shares or debentures in the general capital market, the German company arranges the transaction with the bank with which it is in permanent banking relations. The ordinary banking business in which deposits from the general public are employed is decidedly the most important business of German banks. In addition, there is a department for industrial and similar finance, with a limited share of the bank's own resources, for carrying on financial transactions arising from time to time in the relations of the bank with the industrial and similar joint stock companies. These financial transactions require a certain amount of capital investment which is kept in conservative relation to the share capital and reserves of the bank. While it remains more or less stable in the aggregate, its composition is changing as

quickly as market conditions will allow. If the public is not responsive to the offer of securities resulting from such industrial financing, it follows that the banks cannot continue their assistance to industries until the public is again prepared to put up the new capital required."

In India a number of industrial banks, or banks calling themselves by that designation, have been floated. Some of these are trying to imitate the German industrial banks, but most of them are doing a sort of mixed banking business. Unfortunately, as far as can be judged from the results, not much progress of the type which one would like to see in this country in this branch of banking has been done. The Central Banking Commission recommends the establishment in each province of a Provincial Industrial Corporation with branches within the province and working capital initially, or permanently, supplied by the Provincial Government itself. This recommendation was based by them on the assumption that the impending changes in the constitution of India in contemplation at the time will obviate undue interference on the part of the Central Authority with the borrowing powers of the Provincial Governments as may have taken place in the past. The assistance should be given to such enterprises as will benefit the public and add to the productive power of the province and provide employment for its people. The probable advantage to the promoters of the industries should not at all be weighed in the balance in this connection. They prefer that the Corporation should obtain its share capital, as far as possible, from the public; but that considering the present circumstances in India the Government should take such portion of the share capital of the Corporation as cannot be raised by public subscription. They do not approve of the suggestion that the Government should guarantee the share capital of the Corporation or the dividends on such capital, as in their opinion the provision of share capital by Government would give greater confidence to the public than either of the above two measures. They think that the shareholders of such a Corporation should be prepared to go without dividend for a certain initial period and they do not think it reasonable to expect Government to guarantee dividends on shares in regard to the Industrial Corporations they recommend. On the contrary, in their opinion, it would be cheaper from the point of view of the Corporation that Government should borrow and supply any deficiency in share capital, than that the Corporation should raise the whole of the share capital even with the Government guarantee of the dividend. This share capital, according to them, should be supplemented by debenture capital not exceeding at the outset twice the amount of the share capital. In their opinion there should be no difficulty in raising this proportion of debenture capital if the investments of the Corporation are sound. Here they

recommend that if found necessary the Government should offer a guarantee of interest on these debentures. The guarantee here may be a limited guarantee, e.g. limited to the first issue of debenture or limited to a certain period of currency of the debenture issue. These debentures need not be given the status of trustee securities. They state that the industrial corporation they have suggested may secure additional resources by long term deposits from the public, but an immediate beginning with deposits for less than two years is undesirable, as it was their intention that the proposed Corporation should specialize in the provision of long term capital to industries which should continue to obtain their working capital from existing institutions. They further suggest that when long term deposits are taken, the money thus acquired should not be lent out for longer periods than the currency of the deposits. In order to safeguard the interest of the Government they suggest that the Government should be represented on the Board of Directors of this Corporation by a representative or nominee, though they do not approve of such a nominee having the power of vote in the deliberations of the Board, but the representative may if he does not agree with the majority of the Board of Directors, refer the matter to the Government on important questions such as the increase or reduction of capital, granting of loans in any particular cases and appointment of chief officials of the Corporation.

Besides recommending industrial corporations for each province the Central Banking Commission has further hinted on the formation of an All-India Corporation to secure proper "Liaison" in the matter of finance and a direct connection with the large spending departments of the Central Government. This is because the Commission thinks that it would be necessary for the expansion of industries to have co-relation for the said industries with railway rates, customs, stores, produce and other policies of the Central Government.

Agricultural Credit and Mortgage Banks.—Considering that the proportion of the population of India living on agriculture is very large (it was 61% in the year 1891, rose to 66 in 1901 and 73% in 1921, and it is said that this percentage has gone much higher since that date) the importance of providing ample finance for our rural population dependent on agriculture and land is enormous. The farmer or the agriculturist requires both short term and long term finance and the security for such long term credit which he can offer is the land itself. This is exactly the type of security which a commercial bank mostly considers unsuitable because of the difficulty of being able to sell same with a view to realize the loan in case of default. The other reason is that legislation in India imposes at present various restrictions on the right of transfers of agricultural

land. The agriculturist in India may be a cultivating proprietor, i.e. the landlord who has a freehold interest in the land, or he may be one who works at or cultivates other peoples' land under tenures and sub-tenancies recognized by customs or law or both. These peculiar conditions of the agricultural industry make the application of the usual bank finance even more difficult in this country than in others. It is thus that even in advanced countries like England, America, etc., it was found that ordinary credit machinery in case of the agricultural industry has to be treated as a special question requiring special organization and even special legislation.

Generally speaking, the agriculturist wants credit on short terms to meet current outgoings and to facilitate production such as buying of cattle, agricultural implements, manure, seeds, expenses of transportation, improvements of land, etc., as well as long term credit in form of fixed capital to be invested permanently in the purchase of land, acquisition of costly equipments, consolidation and improvement of holdings and repayment of past debts. Over and above these, credit facilities both short term and long term are necessitated for the purpose of marketing and movement of produce. The short term loan is purely seasonal in character, whereas what are called Intermediate Credit may be for a period of from one to three years. The long term credits are required for redeeming prior debts and improvement of lands. The period for which these credits are required would entirely depend upon the capacity of the borrower to repay same by instalments. In European countries, viz. in Finland, 30 years are allowed for repaying such loans, 38 years in Chile, 30½ in New Zealand, 42 in Australia, 50 in Italy and Japan, 51½ in Austria, 57 in Switzerland, 60 in Denmark, 63 in Hungary, 68 in Ireland and 75 in France. The agriculturist in India obtains the finance from money-lenders, indigenous bankers, co-operative organizations, Government in certain cases, commercial banks including the Imperial Bank of India, exchange banks, loan offices in Bengal, *Nidhis* and *Chitfunds* in Madras. We have already dealt with indigenous banking and the service which indigenous banker or money-lender renders in this connection in great detail in a separate chapter. In the opinion of the Central Banking Commission, the efforts of indigenous bankers deserve encouragement and help.

The Co-operative Credit Societies are largely helping the agriculturist in connection with his finance, particularly in case of smaller agricultural holders as to his short term credit. Rural co-operative societies worked on the basis of mutual guarantee and on unlimited liability are, according to the Central Banking Commission now generally employed as agencies for granting short and intermediate credit to agricul-

turists. The forms of credit it dispenses with are either on personal guarantee or on surety. In addition, mortgage security is also taken and in case of certain districts of Madras Presidency loans are granted on immovable property.

Land Mortgage Banks.—In the opinion of the Central Banking Commission, the type of land mortgage bank best suited for India, as far as relief to small agriculturists and owners of small holdings are concerned, are the co-operative type. This is because unfortunately in this country agriculture will remain in their opinion for a long time to come on individual effort or that of the family.

With regard to agriculturists who are outside the co-operative movement and who require substantial loans as landlords, the Central Banking Commission has recommended that commercial land mortgage banks or those on joint stock basis or on the model of English Land Mortgage Corporation should be established. This last named Corporation is dealt with later in this chapter. As to land mortgage banks on joint stock basis we make reference a little later with regard to an attempt which is being made at present in Madras where a joint stock agricultural bank has just been incorporated, i.e. in 1937. The working fund of such institutions according to the Central Banking Commission should be derived both from shares and debentures.

It will not be out of place to state here that many advanced countries of the world have planted very carefully formulated organizations in connection with land mortgage finance. Germany has taken a lead in this connection and particularly its landschaften, both new and old, has been used as a model for credit developments in other countries. These landschaften organizations of Germany were virtually speaking credit land banks for long term loans on more or less co-operative basis. The Government exercises a sort of supervision and though these banks raise money by borrowing on debentures, they do not have share capital. They are more or less confined within certain localities in their operations and the loans are repayable by amortisation payments in about 53 years. Modern Germany has extended these institutions by placing public funds for the purposes of long termr loans at their disposal.

The other country which has taken the lead in this direction is France where various similar land banking institutions have been started and developed. The Credit Foncier of France acts as the Apex bank for the mortgage banks of France under the patronage and help of the Government of that country. It is given special privileges such as reduction of payment in Stamp Duty on deeds, on registration, transfer debentures, etc., and the debentures issued by it are recognized by the State. Loans both long term and for short duration

on the mortgage of lands are given here. Later, private individuals have also been allowed loans for the improvement of that purpose to a certain extent.

On the same principle, countries like the United States of America, Union of South Africa, etc., have organized their system of rural finance.

Government Assistance.—The Indian Government has under its working of the Agriculturists and Land Improvement Loans Acts gone to a certain extent to help the agriculturist with loans. In the opinion of Central Banking Commisssion this assistance is more or less insignificant compared to the wants of the country. The drawbacks complained of with regard to Government assistance in this connection are (1) delay in the disposal of the loan applications, (2) insufficiency of loans, (3) strictness in realization, and (4) unfairness in realization of joint bonds.

It is also stated that the facilities available are not sufficiently known by the public. The Central Banking Commission agrees with Provincial Banking Committees that loans should be confined to times of emergency and stress, because in their opinion it is out of question for Government to provide the whole of the loan requirements of agriculturists.

LAND MORTGAGE BANKS IN INDIA

The idea of having a number of proper and large land mortgage banks on the footing of similar institutions in advanced countries is of late developing into shape. The original idea of solving the problem of rural indebtedness was discussed years ago by prominent public men of the time such as late Sir Dinsha Watcha, late Justice R. G. Ranade and late Sir William Wedderburn. Later on, late Sir Lallubhai Samaldas actively took up this question earnestly as far as Bombay Presidency was concerned. At the early stages it appears that attempts were made in the form of meeting the wants of the agriculturists through the working of Co-operative Credit Societies under the Co-operative Societies Act of 1904. In the year 1911 late Sir Lallubhai Samaldas with late Sir Vithaldas Thackersey started the Bombay Provincial Co-operative Bank with Government help, inasmuch as the interest on debentures up to three times the share capital of the Bank and the maximum of twenty lacs of rupees was guaranteed by the Government of Bombay. Similar efforts were made in Madras through Co-operative Credit Societies to finance the agriculturist as well as in Punjab and other centres. However, the assistance to the agriculturist of finance was mostly confined here to his current agricultural needs as well as the assistance in connection with redemption of their debts in selected cases. However, what the agriculturist in this country largely required and does require at present are regular land mortgage banks

which can provide them with long term finance for improvement of their lands, purchase of costly machinery and similar purposes for which loans may be arranged to be repaid conveniently by them in easy instalments spread over a number of years, through the help of the increased income obtained by them from these lands. In addition, long term loans are also required by the agriculturist for redemption of old debts in one form or other due to the fact that our agriculturists are heavily indebted to the *Sahukar* and other grasping moneylenders through whose clutches it is very difficult for them to extricate themselves without active assistance by this type of institutions and without active co-operation of the State. However, here it should not be lost sight of that the real object of a land mortgage bank is " to lend money in order to finance improvements and not to liquidate previous debts "as rightly pointed out in the Bulletin No. 2, page 56 of the Reserve Bank of India, Agricultural Credit Department. This function according to that authority " should only be undertaken, where necessary, to make possible the former function, viz. agricultural improvements ". Many co-operative credit banks have been " compelled to realize their securities and have become encumbered with unsaleable lands " through neglect of this important principle. Thus in case of agricultural indebtedness the land mortgage banks formed under independent auspices cannot venture much further but here lies the primary duty of the State which should either directly or indirectly assist the agriculturist in the redemption of his debts. Considering the fact that the principal industry of this large country is agriculture, on which not only the prosperity of the State but also that of the large agricultural population depends, and any material assistance which the State can give in this direction will ultimately be repaid through the increased return to the State in revenue. The prosperity of the agricultural population would also reflect most favourably on the Indian industries also through the improved purchasing power of this large population. The State can also utilize its increasing revenue more liberally towards nation-building activities to general benefit of all. Hence the problem of land mortgage banks and State assistance through them is of peculiar importance both to the student of banking and those interested in this country's prosperity. The land mortgage banks wherever they exist obtain their funds either through a direct loan granted to them by the State or through obtaining finance from the public, either in form of shares or debentures the interest on the last named being guaranteed by the State. In cases where the State assists the bank by providing the whole finance, naturally the scope of the bank is curtailed and limited compared to that of an independent land mortgage bank obtaining from the public on business lines and

getting the assistance of the State through its guarantee. Government assistance no doubt in case of these institutions is most necessary particularly at the early stages. It is gratifying to note that this assistance had been given liberally in India as we shall see later when discussing specifically the development and the present position of our land mortgage banks in different parts of India.

Statutory obligations of Reserve Bank.—In this connection it is interesting to note that under Sections 54 and 55 of the Reserve Bank of India Act of 1934, there are express provisions under which the duty has been cast on the Reserve Bank to create and maintain a special Agricultural Credit Department. This department is expected to maintain an expert staff to study all questions of agricultural credit and to be available for consultation by the Governor-General in Council, Local Governments, Provincial Co-operative Banks and other banking organizations. This department shall also co-ordinate the operations of banking in connection with agricultural credit and any other banks or organizations engaged in the business of agricultural banks. It is further laid down that the bank shall at the earliest practicable date and in any case within three years from the date from which Chapter 4 of the Act comes into force, make to the Governor-General in Council a report, with proposals, among others if it thinks fit for legislation on the improvement of the machinery for dealing with agricultural finance and methods for effecting a closer connection between agricultural enterprise and the operations of the bank. This enactment was incorporated in the Act with the dominant idea of seeing what assistance the Government of India could effectively give either directly or through the agency of the Reserve Bank of India itself, to the agriculturist or agricultural and land mortgage banks, with a view to accelerate the improvement and prosperity of the agricultural industry.

Statutory Report and Bulletins.—We are glad to notice that the authorities of the Reserve Bank of India, viz. the Agricultural Credit Department, have not been idle in this direction, they have issued during the year, 1937, two bulletins in addition to the statutory report. These documents give very important data and ideas in connection with agricultural credit, co-operative credit societies and banks as well as the land mortgage banks besides giving valuable suggestions, hints and advice to all concerned in this branch of work. According to these documents, while considering or dealing with the problem of agricultural finance and the question of assistance to the agriculturist, the varied factors which tend to make for the stagnation of village life in India must be taken into account. It is pointed out that to an Indian farmer, agriculture is not a business but it is his whole life. " Every phase of his life influences

and is influenced by others and it is only improvement at all points that can conduce to his ultimate well-being. His economic welfare is closely bound up with social and religious practices and an organization meant primarily for the improvement of his credit must therefore take cognizance and must be based on a clear conception of all factors governing his life." (*Bulletin*, No. 2, p. 3, 1937).

The bulletin proceeds and states that these factors may be grouped under two main headings, viz. (1) Economic, and (2) Social and Religious.

With reference to the economic side, naturally the primitive method of cultivation which produces a poor crop, the ruinous rate of interest paid by him to money-lenders, exaction and frauds committed at every stage to deprive him of even the small return for his labour which he might otherwise obtain, illiteracy, burden of replacement of stock necessitated by high cattle mortality, absence of sanitation and medical relief are emphasised. No doubt all these facts could be got rid of through a rapid spread of primary and secondary education among this class of population, though, of course, the universal and compulsory spread of primary education is a problem of high finance for the Provincial Governments concerned, which factor is not an easy problem for them to tackle due to the proverbial poverty of this country. The poverty of the agriculturist has been considerably augmented through the loss of the one time side-occupations open to them such as milling of flour by the females, spinning of yarn and weaving of cloth which used to be done during spare times by various members of his family with march of mechanised industries. This industrial advance of the country has not sufficiently expanded in order to amplify avenues for earning to the large surplus population of agriculturists who are thus thrown out of employment or means of earning. In addition, the agricultural population, i.e. persons engaged in agriculture in India, has increased by over 18 millions within the thirty years, i.e. between 1901-31; whereas the rural population as a whole has increased during the 10 years, viz. 1921-31 by 30 millions, i.e. from 285 millions to 315 millions.

On the top of this economic drawback, according to this bulletin, there are social and religious aspects of the life of the farmer which influence his economic well-being. The most obstructive of all these is of course the caste system, which according to the report breeds a superiority complex in the higher caste and inferiority complex in the lower, both of which factors are detrimental to efficient farming. Generally the field of Brahmin cultivator is not so productive as that of the *Kunbi*.

To add to that, we have the low caste and the aborigines, whose ignorance of proper method of cultivation and slovenli-

ness, as well as addiction to drinks and drugs, hamper them considerably in their agricultural production.

The bulletin of Reserve Bank of 1941 on Co-operative Movement in India records that there were in India at the end of 1939-40 1,18,744 agricultural societies of which 1,01,401 or 85 per cent were credit societies. The total members of these agricultural societies were 41 lakhs and their aggregate working capital Rs. 80.5 crores. Of this spare capital amounted to Rs. 4.08 crores and the reserve and other funds amounted to Rs. 8.27 crores. The deposits of members were Rs. 1.24 crores and those of non-members Rs. 1.19 crores. Loans from provincial and central banks amounted to Rs. 15.55 crores. With all this, according to the bulletin, at the end of 1939-40 these societies had outstanding loans of Rs. 28.14 crores, i.e. nearly one-half, viz. 10.71 crores were overdue. These figures do not include interest due which appear to be considerable in amount. This is said to be due partly to debt legislation and partly to the indifferent observance of co-operative principles in the preceding years of comparative prosperity.

The Village Co-operative Bank.—In view of these two factors, the bulletins stress the point that the village co-operative bank is of the greatest importance as distinguished from the co-operative credit society as operating at present. However, the report points out that this village co-operative bank in order to fulfil its purpose must be made to work on much broader basis, rather than serve merely as an agency for the supply of cheap credit. The co-operative societies, according to this authority, must become village banks in the wide sense in which Sir Frederick Nicholson's report of 1895 used the term. In the language of the *Bulletin*, No. 2, page 29 :—

"To achieve this the present mode of work must be modified in five directions:—(1) the bank must take up the whole of the village life within its ambit; (2) it should aim at including every one in the village; (3) there must be a greater adherence to essential co-operative principles; (4) there must be constant dealings and continuous touch with the members; and (5) concentration on a few selected areas should be aimed at rather than wide multiplicity and diffusion."

In connection with the first it is emphasised that the village bank must not be merely a source of obtaining credit, but must also help in the business of marketing of crops and purchasing of necessities and take an active part in agricultural and industrial development besides influencing the improvement of social and religious customs. In short it should also help the development of co-operative life as a whole. Secondly it points out that it should also embrace almost everyone who makes up a factor in village economy, such as " the grower of food, the blacksmith, the carpenter, the weaver, the curer of hides and skins, the scavenger, etc." The adherence to co-

operative principle as required, as a third principle can be achieved, according to this bulletin through the encouragement of thrift and prudence. Thus these banks would be able to find its capital through the collection of the idle hoards and the savings of the villagers themselves before the central banks are approached for loans. This is unfortunately not done at present as it should be in most places. An attempt should also be made to control the expenditure for which credit and money is advanced by the village bank acting on the same principle as a commercial bank. The other principle enunciated is that in the management also, as far as possible, the members of the co-operative village bank should be given as large a share as possible with a view to inculcate and impress on them the education and training in co-operation.

With regard to inadequate return of the farmer from his crop it is suggested that this village bank should help the farmer in purchasing better manure, better seed, better implements and better cattle. The co-operative bank should help to improve the breed of drought cattle for its own co-operative societies by keeping its own stud bulls of recognized strain. The insurance of cattle may also be taken up as a side issue. The villagers should also be helped for better feeding and better veterinary services of their cattle. It is also suggested that joint cultivation through pooling together of their lands by several members as a big farm may also be encouraged by these banks by assisting them with finance on their doing so and thus making use of costly machinery as well as the growing of expensive crops on a large scale possible. This experiment should of course be tried at such locations where facilities and possibilities as at present are the greatest and the necessary material is available. Of course irrigation is another problem which the State should boldly tackle, but where this facility is not available, the village bank can help the construction or repair of village tanks, as well as help its members to sink wells, etc. Where irrigation facilities exist the growing of garden crops and fruit trees can be encouraged by such banks. In case of marketing also in society which may be formed to deal with the crop on a joint basis may also be efficiently helped by the village co-operative bank.

In short the summary as given of the general lines of the working of the co-operative village bank is as follows :—

(*a*) The objects of the bank should be comprehensive and should be clearly defined in the bye-laws.

(*b*) Management of the bank, account keeping, etc., should be done on the spot by local people locally trained. No group secretary should be appointed for keeping primary accounts.

(*c*) Local deposits must be encouraged To meet withdrawal of deposits cash credits might be arranged with the banking union but care must be taken to see that defaults by members are not habitually

tolerated with the result that the banking union gradually pays out all deposits and becomes the sole source of finance.

(*d*) The business of the bank must be carried out in a systematic way with due publicity.

(*e*) Particular care must be taken in the first two or three years to see that the society works on proper lines and that back-sliding is avoided. Members must receive a thorough training in practical work.

(*f*) Rules should be properly observed. Respect for rules should be created. At the same time they should not be made a fetish. Properly considered modifications of rules on unessential matters to improve the working should be freely permitted. Such amendments need not require departmental sanction with consequent delay and damping of the enthusiasm of the workers.

(*g*) If deposits are taken reserves should be built up and invested outside the business of the bank.

(*h*) Property statements of members should be carefully prepared and kept up to date. Transfer of land without knowledge and permission of the society should be stopped or controlled or even penalised.

(*i*) The bank should have its own building at the earliest opportunity This should be the centre of all social activities Till a bank possesses its own building, the village school might be used for the purpose. The keeping of the books of the bank with the president or secretary should not be permitted.

(*j*) The bank must never lose touch with the member. He must come to the bank for something or other throughout the year. Absence of such touch leads to indifference, default and disloyalty. The bank should never be allowed to degenerate into a mere loan office.

(*k*) There should be a taluka conference every year held under the auspices of the union. There the work of all societies and the union should be reviewed and a general programme of work for the societies and union laid down. This should be combined with the annual meeting of the union. Questions relating to social and economic problems can be discussed informally at such conferences. Set speeches should be avoided and the village people should be encouraged to take a part in the discussion.

(*l*) In the beginning all the eligible men from the village may not join the bank as members but they must be encouraged, if they care to take advantage of the bank to join in other activities apart from credit wherein the bank does not undertake a liability, in the same way as the bank takes deposits from non-members. It must have a place for everybody in the village according to his needs and capacity. Rich and poor alike must get service from it.

(*m*) Members should be encouraged to conduct their business through the bank, getting their requirements and selling their produce Sale proceeds must be deposited with the bank and paid out only as required. This will result in controlled expenditure and avoidance of waste.

(*n*) The bank must stand for certain ideals and have a certain amount of prestige associated with it. It must stimulate essential qualities like truth, honesty, mutual trust, self-help and thrift.

Liquidation of Old Debts.—The statutory report issued by the Reserve Bank in the year 1937 reiterates that though a land mortgage bank is meant to give long term credits, what it should guard against is the advancement of funds for the liquidation of old debts. In support of this they assert in Para. 27 of the report that ;—

"Our investigations into the working of the land mortgage banks in India reveal that in the liquidation of old debts to which they are at present devoting their almost exclusive attention they are running the risk of falling into the same error which was committed by co-operative credit societies in the past and which is to a large extent responsible for the present plight of the movement, and that there is a danger of the land mortgage banks finding themselves ultimately in the same position as some of the co-operative banks with their assets frozen. A cultivator who is habitually running into debt cannot be saved merely by the grant of longer instalments with lower rates of interest. He must be trained and disciplined in the use of money and if he is living on a deficit economy attempts must be made to increase his margin of profit. The old co-operative ideal was to make a man undergo a period of probation in a co-operative society and to liquidate his old debt only after his fitness for this purpose had been tested. The present system in vogue in many places of taking up debtors without any previous knowledge and looking only to the security offered by them can hardly be said to have any real co-operative element in it. The security of land, as has been demonstrated more than once, proves more an embarrassment than an asset when it has to be realized on a large-scale so that even a land mortgage bank must look more to the paying capacity of the debtor than to the mere value of his assets. We consider it highly desirable that arrangements should be made for the person whose debt is to be paid by the land mortgage bank to serve a period of probation with a good primary credit society and that even after the land mortgage bank has advanced him a loan he should continue to be a member of a multiple purpose society so that the regular repayment of his instalments may be ensured by proper supervision of his activities."

Co-ordination of Credit Societies and Mortgage Banks

"Such an arrangement will also help the primary societies, which in the past have sometimes felt the necessity of liquidating and paying off previous debts of members before any dealings could be started with them, with the result that the volume of credit required by these societies has been greatly increased. After a debtor has served his period of probation with a village society, if it is found this his existing burden of indebtedness is obviously beyond his capacity to bear and such as to disqualify him for help from a land mortgage bank, Government might appoint conciliation boards which would reduce the capital and interest to a level at which he will be eligible for a loan from the mortgage bank. If this is done, the credit requirements of the primary society would be very materially reduced and could be mostly confined to advances for meeting the current expenses of cultivation. A member who did not show the co-operative desire to improve his position and who could not therefore be assisted by a land mortgage bank could be ejected from the society. In this way the society would not be burdened with the liability for the indebtedness of bad members. (Para 28.)"

Improvement of Land

"Though as we have already said the pre-occupation of land mortgage banks with the liquidation of old debts was inevitable in the beginning and was probably a necessary step to clear the ground before any work of a constructive nature could be undertaken we deprecate too exclusive concentration on that object to the neglect of the far more important work of supplying finance for the improvement of land which would be productive of permanent benefit to the agriculturist. After all, the main purpose of a long term loan raised

on the security of land should be the improvement of the land itself. It is true that the demand for this kind of loan is small at present. Even the provision which Government has made for the grant of loans for this purpose has not been availed of to any great extent. The decreasing returns from agriculture owing to the slump and the increasing fragmentation of holdings have given a further set-back to any desire for effecting improvements which cost money. There can be no doubt, however, that there is need for improvement in many directions. For works of permanent improvement such as the erection of bunds, the installation of power units, levelling, fencing, etc., on a large scale, the digging of wells, reclamations, etc., the expenses of which can only be met out of the return from the increased production over a series of years, long term loans are necessary and land mortgage banks will be failing in their true purpose if they do not undertake this kind of finance. If people will not come to the banks of their own accord for such assistance it will be necessary for the banks to carry on propaganda for the purpose. They should make known the special facilities which they would be in a position to give for works of improvement, the amounts which can be advanced and the instalments with which they can be repaid. Special efforts might be made in selected areas and help might, in the beginning, be confined to people approved and recommended by co-operative societies. As the lack of compactness of the holdings often makes land improvement works unprofitable or impossible, land mortgage banks should also directly or indirectly encourage schemes for the consolidation of holdings. There are no doubt other difficulties in the grant of loans for improvements. It is for instance not free from doubt whether such loans on the mortgage of ancestral land could be binding on the co-parceners of a Hindu joint family including minors, but this difficulty could be got over by legislation. There are other minor legal hindrances of this nature to the working of land mortgage banks and wherever they are being established special legislation on the lines of the Madras Land Mortgage Banks Act seems essential if they are to function properly. (Para 29.)"

Co-ordination with Agricultural Department

"The need for the greatest caution in making advances for land improvement is obvious. One important reason for the reluctance of land mortgage banks to take up land improvement finance is their inability to get technical advice and to supervise the use of their loans, and it is here that the co-operation of the Agricultural Department of Government could be of considerable assistance. The Agricultural Department is primarily concerned with the improvement of agriculture and it is on its advice that loans under the Land Improvement Loans Act are at present granted by Government in most of the provinces. In areas selected by land mortgage banks for advancing land improvement loans Government might discontinue granting *taccavi* loans, and where the Agricultural Department approved of a land improvement loan being given to any landowner it might forward the case to the land mortgage bank. The local officers of the Agricultural Department could then help the banks in (*a*) propaganda and education of the cultivators in the facilities offered for the financing of land improvement, (*b*) assistance to cultivators in the preparation of suitable schemes for financing, and (*c*) examination of the technical aspects of schemes submitted and inspection of subsequent progress after they had been put into effect. Before the volume of applications increases it will be necessary for the bank to maintain its own technical department but in the beginning such help should be rendered by the Agricultural Department. Mr. Jenkins, Director of Agriculture in the Bombay Presidency, to whom we are indebted for some of the views expressed

above, considers that the financing of such land improvement schemes by the land mortgage banks would materially facilitate and implement the work of the Agricultural Department in the introduction and extension of agricultural improvements, many of which involve expenditure, which under existing circumstances is difficult to obtain. (Para 30.)"

Co-ordination with the Reserve Bank.—As to co-ordination with the Reserve Bank it is pointed out that the Reserve Bank being a bankers' bank, its main function is to regulate the issue of bank notes and keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage. It is also pointed out that the nature of the deposits held by the Reserve Bank from the scheduled banks is such that considering the origin of its resources the Reserve Bank has to assist the banks in emergency and not in their ordinary financing agency, because otherwise the funds which the scheduled banks are forced to keep with the Reserve Bank to be available in times of emergency would be so locked up as to defeat the objects of emergency help owing to their lack of liquidity. It is pointed out that this is the reason why the Reserve Bank keeps such a large portion of its funds in hard cash and invests the remainder in readily realizable Government securities and treasury bills. Thus it is argued that it is obviously impossible therefore for the Reserve Bank to lend to agriculturists direct or to advance large sums to co-operative banks or indigenous bankers for being lent out to cultivators as a matter of course. Nor can the Reserve Bank take the place of the Government. The high expectations which appear to have been entertained in some quarters regarding the part the Reserve Bank could take in agricultural finance seem to a large degree due to impression that since it was assuming some of the functions of the Government it could play the same or even a larger part in the matter of agricultural credit. It must be clearly understood that what can be done by a Government with its own revenues is not open to the Reserve Bank in view of the limitations inherent in its constitution.

However, the report states that it is prepared to help the co-operative bank on the terms on which it is authorized to do so by sub-sections (2b), (4a), and (4d) of Section 17 of the Act. Their implications are as follows :—

(a) Loans or advances against Government paper for ninety days to provincial co-operative banks and central land mortgage banks declared to be provincial co-operative banks and through them to co-operative central banks and primary land mortgage banks. (Sec. 17(4) (a)).

(b) Similar loans and advances to provincial co-operative banks and central land mortgage banks declared to be provincial co-operative banks and through them to co-operative central banks and primary land mortgage banks against approved debentures or recognized land

mortgage banks, which are declared trustee securities and which are readily marketable.

(c) Advances to provincial co-operative banks for ninety days against promissory notes of central co-operative banks and drawn for financing seasonal agricultural operations (Sec. 17(4)(c)) ; or rediscount of such promissory notes maturing within nine months. (Sec. 17(2)(b)).

(d) Loans and advances not exceeding ninety days to provincial co-operative banks against promissory notes of approved co-operative marketing or warehousing societies endorsed by provincial co-operative banks and drawn for the marketing of crops (Sec. 17(4)(c)) ; or rediscount of such promissory notes maturing within nine months (Sec. 17(2)(b)) ; or loans and advances on the promissory notes of provincial co-operative banks supported by warehouse receipts or pledge of goods against which a cash credit or overdraft has been granted by the provincial co-operative bank to marketing or warehousing societies (Sec. 17(4)(d)).

The Reserve Bank thus according to this report will be prepared to deal with provincial co-operative bank on the above lines but must retain the discretion to judge for itself the advisability and expediency of granting accommodation according to the circumstances of the time and cannot make large permanent promises in advance. It will also have to insist on Provincial banks which are approved for financial assistance maintaining financial statements in certain forms and submitting them periodically. It must also have the right to inspect such banks. The report further proceeds to state that any accommodation granted will be on the credit of the provincial co-operative bank and it will be necessary for such provincial banks to maintain with us some minimum balance which will have to be prescribed by us from time to time to ensure that they are maintaining sufficient fluid resources. Above all it must be clearly understood that all that the Reserve Bank can do is to help the provincial co-operative bank to tide over a temporary shortage of funds and as the funds advances must be repaid within the time-limit allowed by the Act the co-operative banks cannot make use of them for the purpose of continuing finance. These conditions may seem stringent but as we have already pointed out the Reserve Bank has to work within the limitations imposed on it by the essential conditions of sound central banking and expressed in its constitution.

A BRIEF REVIEW OF LAND MORTGAGE BANKS IN INDIA

We shall now proceed to survey briefly the position of land mortgage banks in the different provinces as portrayed by latest official and other publications on the subject.

MADRAS

In Madras the number of land mortgage banks or societies according to the statement placed on the Table of the Council of State in 1937 was 81 with a working capital amounting to

Rs. 1,08,28,181. In the initial stage these land mortgage banks were assisted by the Government in the floatation of their debentures by the Government undertaking to purchase same up to the amount equal to that for which the same were issued to the public, subject to a maximum of Rs. 50,000 for any one bank and to a further maximum of 2½ lacs for the whole presidency. The Central Land Mortgage Bank was also to give a subsidy of Rs. 20,000 towards its maintenance expenses during the first two years. Besides that, the Government maintained supervision for the first three years by providing two deputy registrars and ten sub-deputy registrars who acted as inspectors and enquired into all the loan applications as well as appraised lands which were offered for mortgage. This special staff has been continuously increased to meet the increasing demands of the province. Further assistance was given as the banks progressed through the Government undertaking to meet that part of the cost of the staff employed for the benefit of the Central Land Mortgage Bank which the bank was not able to pay for after setting apart 25% of these profits to the Reserve fund and paying a dividend of 6% to the shareholders. The Government also undertook to meet till 31st March 1937 the entire cost of the staff employed for the benefit of both the Central Land Mortgage Bank and the primary land mortgage banks on condition that after paying a dividend not exceeding 5% to the shareholders the primary land mortgage banks would carry the entire balance of their profit to a Reserve fund. In addition to this the interest not exceeding 6% on all debentures by the Central Land Mortgage Bank was guaranteed by the Government to the extent of Rs. 50,00,000 during the first five years of their existence, until they were redeemed by the Bank. Subsequently they also guaranteed a maximum interest of 6½% on the debentures issued by the bank to the extent of Rs. 30,00,000 out of the above-mentioned total of Rs. 50,00,000 guaranteed by the Government. Thereafter on passing of the Land Mortgage Banks Act, the Government fully and unconditionally guaranteed both the interest on and the principal of the debentures issued prior to the commencement of the Act, as well as the principal of and interest on debentures issued thereafter, which were redeemable within a period not exceeding 25 years from date of issue carrying a rate of interest not exceeding 5%. This last-named guarantee extends to debentures up to a maximum of Rs. 10,00,000 exclusive of the value of debentures as may have been redeemed by the bank from time to time. These debentures have been now placed on the list of trustee securities through an amendment of Indian Trusts Act of 1882. The Madras Provincial Co-operative Bank and the district central banks are permitted by the Government to grant loans to non-members on the security of these debentures upto 80% of the face value of same. The period of

the loan, however, is restricted to a maximum of one year. The local bodies are permitted to invest in these debentures upto one-fourth of the Provident Funds and one-sixth of their Railway Cess Funds. The Central Banks are further permitted to treat the debentures of the Central Land Mortgage Banks, which they may be holding, as fluid resources, upto a limit of one-third of the standard required to be maintained by them. For this purpose these debentures are to be valued at 80% of their market value. Besides that the Central Land Mortgage Banks can invest in these debentures their reserve funds upto a limit not exceeding half of the amount to the credit of the funds. In addition other privileges are granted by the Government such as exemption of all co-operative mortgage banks for payment of audit fees in connection with their accounts during the first three co-operative years from the date of commencement of business. The Central Land Mortgage Banks and the primary land mortgage banks are also exempted from payment of fees for registration of documents and obtaining of encumbrance certificates up to the end of April 1937. The copies of District Gazette sheets, village maps and information regarding the property of the members of the bank are being supplied free. The Land Mortgage Banks Act in addition to that affords facilities for speedy recovery of arrears from defaulters and execution of documents.

According to a review in the Madras Journal of Co-operation of January 1938, the report of the Central Land Mortgage Banks for the co-operative year 1936-37 shows that these banks in the presidency of Madras were functioning most satisfactorily in all directions. The debentures were sold without difficulty whenever they were floated and that too at a premium. The primary banks were also functioning satisfactorily, inasmuch as there were no arrears either of principal or interest, though the demand was large enough. Various figures are quoted in this review which show that the position of the banks concerned was extremely sound and satisfactory. It may be added that the credit no doubt of founding such a sound and perfect structure in the Presidency of Madras goes to the early efforts and ability of the late Sir N. Ramchandra Rao.

BOMBAY

In the Bombay Presidency also the number of banks or societies according to the statement of the Government placed on the Table of the Council of the State was 14 with a total capital of Rs. 6,47,174. All these Land Mortgage Banks in this Presidency are registered under the Bombay Co-operative Societies Act of 1925. Besides the various privileges that these banks receive as co-operative societies, ten primary banks have been granted between them Rs. 5,000 a year in cash subsidy for three years towards their cost of land valuation officers who

are permanent Government officers and the Government have exempted these banks from the payment of leave and pension contributions in respect of these officers.

Bombay Provincial Co-operative Land Mortgage Bank, Ltd. —The Bombay Provincial Co-operative Land Mortgage Bank Limited was registered in the year 1935 with an authorized capital of Rs. 10,00,000 divided into 10,000 shares of Rs. 100 each of which Rs. 20 were payable with application, Rs. 20 on allotment and the balance in three equal instalments payable as and when called by the bank at intervals of not less than one month each. Any shares subscribed by a primary bank, however, had to be fully paid at the time of application. Besides this the Government have guaranteed the principal and interest of the debentures of this Provincial Land Mortgage Bank to the extent of Rs. 10,00,000 and in addition have undertaken to make good any deficit in the working of the bank upto a total of Rs. 10,000 for the first year, Rs. 7,500 for the second year and Rs. 5,000 for the third year. To this Provincial Co-operative Land Mortgage Bank are affiliated 13 primary banks within the presidency, of which 10 were newly started. To each of these ten newly started primary banks the Government have promised an annual subsidy of Rs. 500. The authorized share capital of each of these primary banks has been fixed at Rs. 1,00,000 made up of shares of class A and class B, the face value of the former being Rs. 5 and that of the latter Re. 1. The Board of Directors of these primary banks are to have two representatives of the borrowing members, two of non-borrowing members, one representative of each of the Provincial Land Mortgage Bank, the Registrar and the District Central Co-operative Bank or financing institution working in the area of the operation of the bank. The maximum limit of an individual loan has been fixed at Rs. 10,000, but in exceptional cases with the special permission of the Registrar this limit may be extended to Rs. 25,000. All loans have to be secured on the mortgage of immovable property with 50% margin on its valuation and the loans should not be for more than 20 years, though in case of distress or failure of crops extension in the period is allowable not exceeding 25 years in all. Borrowers of primary banks are allowed to pay the loan by equated instalments including both principal and interest. These primary banks must transfer to reserve fund at least 50% of their net profits annually and the maximum dividend they can pay is 6¼% on their shares. This reserve fund must be invested by these primary banks either in deposits with or in shares of the Bombay Provincial Co-operative Land Mortgage Bank or in any security specified in Section 20 of the Indian Trust Act of 1882. The primary banks have been located at different centres such as Surat, Nadiad, Dhulia, Jalgaon, Nasik, Poona, Belgaum, Hubli, Karwar, etc. Special officers appointed by the Registrar estimate the property valua-

tion of lands offered as securities to these banks as well as assess the repaying capacity of the applicants concerned. The title of the lands are also examined by the legal advisers appointed by the primary banks for the purpose.

The Bombay Provincial Co-operative Land Mortgage Bank was brought into existence largely through the efforts of the late Sir Lallubhai Samaldas. It was registered, as we stated above, on 7th December 1935, and formally opened on 15th January 1936 by the Governor of Bombay. The Board of Directors is made up of 15, six being representatives of the shareholders of the bank, five representatives of primary banks, two nominated by the Registrar, one being the nominee of the Bombay Provincial Co-operative Bank and the Registrar in addition is an *ex-officio* member of the Board. This Bombay Provincial Co-operative Land Mortgage Bank advances loans to primary banks on security of mortgages obtained by these primary banks from their customers. The loans to the primary banks are granted at 4½% interest; whereas the primary banks are required to advance their loans to their borrowers at 6%, thereby keeping a margin of 1½%. The repayment of loans by primary banks is allowed by equal instalments of principal and interest and the period of loans may be 5, 10, 15 or 20 years subject to extension in case of distress or failure of crops to a period not exceeding 25 years.

The Bank is allowed to issue debentures, the principal and interest on which is guaranteed by the Government of Bombay. The authority has been given by the Bombay Legislative Council by a resolution to the Government of Bombay to guarantee the debentures issued by this bank up to Rs. 50,00,000 in consequence of which the Government of Bombay have agreed to guarantee debentures issued by this bank up to Rs. 10,00,000 as the first step.

It may be added that besides these efforts of the Government of Bombay, Bhavnagar and Baroda States have also started Land Mortgage Banks within their States.

BENGAL

In Bengal there are five banks or societies with the working capital of Rs. 2,02,113. The Government of Bengal undertook to meet the entire cost of management of these banks in the first year of their existence and in the second and third years they agreed to make good the differences between gross profits and the management charges in the event of latter being greater than the former. The assistance of Government officers was also given in the form of sub-deputy collectors with settlement experience to be managers of these banks for the first three years, whose salaries were entirely borne by the Government during the first year and during the second and third year

Rs. 200 per month was payable to the Government by each bank for these officers. A deputy registrar for a period of 5 years was also appointed to assist the Registrar in the control and supervision of these banks. The banks were also permitted to issue debentures of the total face value of Rs. 12,50,000 in order to provide adequate capital on the following conditions :—

(*a*) The issue shall be at par and shall be current for a period not exceeding 30 years from the date of issue ;

(*b*) the Government will guarantee the interest for the entire period of currency of the debentures ;

(*c*) the rate of interest will be fixed annually by Government ;

(*d*) the rate of interest on the debentures to be issued during the first 12 months shall be not more than 4¾ per cent ;

(*e*) the rate of interest to be charged by the Land Mortgage Banks on loans to individuals shall not, until further orders, exceed 9¾ per cent.

A start was given to the banks by the Bengal Provincial Co-operative Bank whose directors accommodated the land mortgage banks for short term cash credit advances on condition of repayment of the said loan on successful floatation of the debentures. The Bengal Co-operative Bank has decided to charge 1¼% interest over and above the rate of interest payable on the debentures for meeting the working expenses of the bank and the land mortgage banks have arranged to charge an extra 3 ⅛ % over their borrowing rates from individual borrowers in order to meet their establishment charges. On the Board of Directors of these banks the District Magistrate is appointed an *ex-officio* Chairman and the Board itself is recruited according to the bye-laws of each of these banks.

THE UNITED PROVINCES

In the United Provinces there are five land mortgage banks or societies with a working capital of Rs. 98,230. They are registered as co-operative societies under the supervision of Co-operative Department. The managing committees of these societies mostly consist of nominated officials with Collector as the Chairman, *ex-officio*.

THE PUNJAB

There are 12 banks in the Punjab with a working capital of Rs. 18,80,609. These are also co-operative societies which are financed by the Punjab Provincial Co-operative Bank. The last-named bank received loans from the Government for this purpose and also issued Rs. 5,00,000 debentures, the interest on which was guaranteed by the Government.

THE CENTRAL PROVINCES

In the Central Provinces there are 10 banks with a working capital of Rs. 1,75,543. The Government of Central Provinces

has guaranteed both the principal and interest on debentures floated by these banks for the purpose of raising its capital up to Rs. 10,00,000; the *ex-officio* trustee of such debentures being the Registrar. Besides this the Registrar and the Finance Secretary to the Local Government are *ex-officio* members of the Board of Directors and the managing committee of the provincial bank. The primary banks must obtain sanction for each of its loans from the Registrar. The banks are governed by the Central Provinces Land Mortgage Banks Act.

ASSAM

There are five banks in Assam with a working capital of Rs. 5,57,162. There are also registered under Co-operative Societies Act. These banks are also inspected and audited by the Registrar and his subordinate staff. Four of these banks have been assisted by the Government by loans amounting to Rs. 51,000, 33,000, 10,000 and Rs. 2,000 respectively.

AJMER-MERWARA

Here there are 22 banks with a total working capital of Rs. 1,04,031. They are co-operative societies under the supervision of inspectors of co-operative societies who are Government servants with *ex-officio* presidents. These banks are also under the supervision of Co-operative Department.

Constitution of Land Mortgage Banks.—It will thus be observed from the above that all the land mortgage banks are founded under the Co-operative Societies Act. No effort has up to now been successfully made to found a bank under the Indian Companies Act except one very recent attempt made under the Presidency of the Hon'ble Mr. V. Ramdas Pantulu of the Madras Provincial Bank Limited. This new bank under the Companies Act starts with an authorized capital of Rs. 10,00,000 divided into 10,000 shares of Rs. 100 each. It was incorporated as late as 28th September 1937 and among the objects as mentioned in its Memorandum of Association happens to be that of carrying on business of banking in all its branches and departments, particularly, agricultural banking including the borrowing, raising or taking of money, etc. This bank of course is started as an independent joint-stock company without any assistance from the State in form of guarantee, etc. and it is to be seen how far this enterprise will function successfully. It seems, no doubt, to have been floated under excellent auspices and we wish it all success.

British Agricultural Credits Act.—Great Britain has taken the matter in hand by a proper legislation in the direction of agricultural credits by a special Act of Parliament known as the Agricultural Credits Act, 1928. The object of the Act, according to the preamble, is to secure by means of the forma-

tion of a company and the assistance thereof out of public funds, the making of loans, for agricultural purposes on favourable terms, and to facilitate the borrowing of money on the security of farming stock and other agricultural assets and for purposes connected therewith. The Act aims at providing loans on mortgages of agricultural lands for long term credits and also for short term seasonable credits through a charge on farming stock and other agricultural assets. The Act is divided into two parts, the Part I deals with long term credits and the Part II with short term credits in agriculture. The long term credits are being made by the Agricultural Mortgage Corporation Limited, whereas the short term by the various banks.

Agricultural Mortgage Corporation Limited.—This is the Mortgage Company formed under Part I of this Act. This bank now acts as the principal land mortgage bank of the country which finances the farmers by giving them long term loans on terms most favourable to them which are secured by first mortgage on their lands or farms. These loans are made repayable in instalments payable yearly for specific number of years. The Government of England has been authorized to advance under the Act, through its Minister of Agriculture and Fisheries, with the approval of the Treasury £750,000 and not at any time exceeding in aggregate the amount of the paid up share capital of this Corporation at the time of making such an advance or loan. The Corporation is also authorized to raise money on issue of debentures and the Government Treasury is authorized to agree to procure the underwriting of these debentures to such aggregate amount as may be necessary to raise a sum not exceeding fifty million pounds. The Treasury may subscribe to these debentures also issued by this Corporation from time to time to an amount not exceeding one-fourth of each issue of debentures and not exceeding in the aggregate one million and two hundred fifty thousand pounds and any such subscription shall be deemed to be the legal loan within the meaning of the National Debt and Local Loans Act of 1887 of the United Kingdom. The Company is a limited company by shares under the Companies Act of England. The Minister of Agriculture is further authorized to make payments of pounds ten thousand per annum for ten years as contributions towards the cost of the administration of the company. The Act provides for the following provisions to be made in the Memorandum and Articles of Association of this Corporation :—

(*a*) for securing that, of the directors, one shall be a person nominated by the Treasury, so long as any part of the advances made by the Minister remains outstanding;

(*b*) for restricting the dividends on the share capital of the company to five per cent per annum;

(*c*) for regulating the loans to be made by the company on mortgage, so that a loan shall in no case exceed two-thirds of the

estimated value of the mortgaged property at the time of the loan, and that the loans shall be repayable by equal yearly or half-yearly instalment of capital and interest spread over a period not exceeding sixty years, or repayable on such other terms as may be authorized by the said Memorandum or Articles;

(*d*) for empowering the company for the purpose of making loans to raise money by means of the issue of debentures;

(*e*) for the creation of suitable reserve funds, and as to the investment and application of the sums standing to the credit of those funds;

(*f*) for regulating the use of the guarantee fund to which the advances made by the Minister are to be carried;

(*g*) for requiring the company to supply to the Minister copies of balance-sheets and profits and loss accounts;

(*h*) for the repayment of the advances made by the Minister; so, however, that provision shall be made—

(*i*) that, if at the expiration of fifteen years from the incorporation of the company, the advances made by the Minister to the guarantee fund exceed seven and a half per cent of the aggregate amount of the loans made by the company on mortgages and land charges up to that date, the excess shall, if the Minister so requires, be repaid;

(*ii*) that, in any year, after thirty years from the incorporation of the company, in which the total reserves including the guarantee fund (but excluding the share capital) exceed seven and a half per cent of the liabilities (other than share capital and guarantee fund), there shall be allocated to the repayment of the guarantee fund one-half of the profits remaining after paying the maximum dividend on the share capital;

(*i*) for providing that in the event of the company being wound up, the liability of the company to the Minister for the amount of the advances outstanding shall rank after other liabilities of the company to creditors, and that if after the discharge of such other liabilities the sum available is insufficient to pay the sums so outstanding and the paid up share capital in full, the sum so available shall be divided between the Minister and shareholders in the proportion which the amount of the outstanding advances of the Minister bears to the amount of the paid up share capital of the company.

The Act has taken sufficient care to make the debenture issued by the Corporation as secure as possible with the result that through the investment of trust moneys in these debentures, a fruitful source of finance could be procured by this Corporation in connection with its work of such national importance. It is said that this Corporation since its commencement of business in January 1929 has done considerable business and has been granting long term loans to periods covering about 60 years payable by half-yearly instalments with interest and principal. The loans are granted with the approval of the Ministry of Agriculture in connection with improvements of the land and the improvements have to be of such a character as is likely to increase the value of the land. The rent charges form the first charge on the land improved in connection with

these loans. They also rank in priority to any existing mortgage and are known as " Improvement loans ". In case of a farmer who has borrowed on long term loan and is able to repay the loan earlier than the agreed period he is allowed to do so, the payments being made by him in form of the Corporation's own debentures taken at par. Even part payment of long term loans are taken by the Corporation at such terms as may be found reasonable and convenient.

Short Term Credits.—In case of short term credits, the Act provides that it shall be lawful for a farmer to create a charge in favour of a bank an instrument in writing on all or any of the farm stock and other agricultural assets belonging to him as security for sums advanced or to be advanced under any guarantee by the bank and interest, commission and charges thereon. This agricultural charge may be either a fixed charge or a floating charge or both. This agricultural security may be live-stock or any progeny which may be born after the date of the charge, any plant or plants subsisting or which may be substituted for the plants specified in the charge.

The advantage of this Act is that formerly banks in England could not advance money on the mortgage of movable property such as crops, live-stock, etc. except through a bill of sale, which requires a registration under the Bill of Sales Act. Besides this Bill of Sale was not looked upon as a correct or desirable medium for advancing money by commercial banks. The introduction of this new form of lending money on the security of agricultural movable assets has now removed this impediment in the way of British banks lending money to British farmers in England. In absence of this the British farmer was much inconvenienced in connection with his short term borrowing as his banker was naturally not anxious to advance any considerable sum without security, however generous he was inclined to be. The agricultural charge also requires to be registered within seven clear days after its execution, otherwise it would be void as against any person other than the farmer. In order to protect the credit of the farmer the Act prohibits the printing for publication or publication in any form of a list of agricultural charges or of the names as to the farmers who have created agricultural charges on the penalty of a fine.

CHAPTER XVI

INSOLVENCY

General Observations.—Indian Insolvency Law is covered by two Acts, viz. (1) the Presidency Towns Insolvency Act of 1909, and (2) the Provincial Insolvency Act of 1907. We have dealt in this chapter mainly with the law on the basis of the first named Act, and the sections cited refer to that Act. Prior to these Acts the Bankruptcy Law of India was covered by a statute of Imperial Legislation (Act II and 12, Vic. C. 21). That Act is superseded by these two Acts of the Governor-General of India in Council. The effect of the enactment by the Governor-General in Council in place of the old Imperial Act is that the new Act cannot operate outside the limits of India, and therefore, the proceedings against an insolvent possessed of estates both in England and India must be concurrent in both these countries. The Indian Act cannot vest in the Official Assignee the real and personal estates of the insolvent, situate outside the limits of India, although they happen to lie within His Majesty's dominions. It is, however, hoped by some authorities that an Imperial Act will be passed in the future, incorporating the present Act so as to obviate this difficulty.

Who Can be Made an Insolvent ?—Before answering this question, it may be noted that the word " bankrupt " means in England a person who has committed an act of bankruptcy and who has been adjudicated a bankrupt, whereas an insolvent in English law means a person who is unable to pay his debts, i.e. whose liabilities exceed his assets. In our Indian Act, the word " insolvent " is used throughout, as if it was synonymous with the word " bankrupt ". It is so used because the word " insolvent " has become quite familiar in Indian law and practice.

Any person of full age and sound mind may be declared an insolvent under the circumstances dealt with later. An *infant* cannot be made a bankrupt unless the debt on which the bankruptcy is founded was incurred for necessaries or is a judgment-debt, but considerable doubt is expressed on this point and different authors have expressed different views on the subject.

A married woman may be made a bankrupt in connection with her contract binding her separate estates, because marriage does not disqualify either a Hindu, Mahomedan, Parsi or European wife from entering into a contract independently of her husband.

It is also decided that a lunatic may be adjudicated a bankrupt with the consent of the Court of Lunacy under the direction of the committee.

With regard to a foreigner, if he is trading within the jurisdiction of this Act and has been domiciled here, he can be made a bankrupt like a British subject trading within the jurisdiction of the Act. Section 11 (*b*) of the Act lays down clearly to the effect that whether a person carries on business in person, or through an agent, within the limits of the Civil Jurisdiction of the Court, he can be made a bankrupt; and under this section it appears that a foreigner carrying on business through an agent also can be made bankrupt.

A partnership may also be made bankrupt. A joint-stock company registered under the Companies Act cannot be made bankrupt, but it may be wound up under the Indian Companies Act, 1913.

THE PETITION

Jurisdiction.—Proceedings in bankruptcy commence with the presentation of a petition. The petition may be presented either by (1) the bankrupt himself, or (2) by a creditor or creditors, and the Court may on such a petition make an order of adjudication by which the debtor is adjudicated an insolvent. The Court has jurisdiction to make this order only where the debtor is, at the time of the presentation of the insolvency petition, either imprisoned in execution of the decree of a Court for non-payment of money, in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction, or where within a year before the date of the presentation of the insolvency petition, the debtor has ordinarily resided, or had a dwelling house, or has carried on business in person, or through his agent, within the limits of the ordinary original civil jurisdiction of the Court; or where the debtor personally works for gain within those limits. In the case of petitions by or against a firm of debtors, the firm should have carried on business within a year prior to the date of presentation of the insolvency petition within those limits.

Creditor's Qualification.—With regard to the creditor's or creditors' petition, it is further provided that the debt owing to the creditor or creditors, singly or jointly, must amount to at least Rs. 500 in the aggregate, which should be a *liquidated sum* payable immediately or at some future time and the act of insolvency on which the petition is based should have occurred within three months immediately prior to the presentation of the petition.

Debtor's Qualification.—With regard to a petition by the debtor himself Section 14 lays down that a debtor shall not be entitled to present an insolvency petition, unless—

(*a*) his debts amount to five hundred rupees, or

(*b*) he has been arrested and imprisoned in execution of the decree of any Court for the non-payment of money, or

(*c*) an order of attachment in execution of such a decree has been made and is subsisting against his property.

Acts of Insolvency.—We have noticed that a petition in insolvency can only be presented if the debtor has committed an act of insolvency. The acts of insolvency, as per Section 9, are the following :—

(1) If, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally.

(2) If, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors.

(3) If, in British India or elsewhere, he makes a transfer of his property or of any part thereof which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent.

(4) If, with intent to defeat or delay his creditors,

(*i*) he departs or remains out of British India ;

(*ii*) he departs from his dwelling house or usual place of business or otherwise absents himself ;

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him.

(5) If any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the repayment of money.

(6) If he petitions to be adjudged an insolvent.

(7) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(8) If he is imprisoned in execution of the decree of any Court for the payment of money.

With regard to No. 7 the notice required by the Act must be a written notice to suspend payment given by the debtor to his creditors. (*Vassanji Mulji* v. *Mulji Ranchoddas*, 28 Bom. L.R. 677). An agent has not in the regular course of agency authority to commit an act of insolvency on behalf of principal and such a notice by the agent would not be notice of insolvency. (*Muthu K. R. Algeppa Chettiar* v. *N. F. Chinoy*, 28 Bom. L.R. 680).

Order of Adjudication.—On the presentation of the petition either by the debtor or by the creditor, the Courts, in India,

may proceed immediately to pass an order of adjudication. In England, however, the first step taken is to pass a Receiving Order, by which the Official Receiver is appointed receiver of the property of the debtor, and after this order a general meeting of creditors is called to consider whether a scheme for composition can be entertained or whether the debtor should be adjudged a bankrupt. Here, as we have seen, the Adjudication Order is passed on the petition from the very beginning. The Court may also reject the petition, if it is not satisfied with the proofs furnished by the creditors as to the acts of insolvency, or as to the debt due to the petitioning creditors. The petition will also be rejected if the debtor appears and satisfies the Court that he is able to pay his debts. If the debtor does not appear after the petition is served on him, the Order of Adjudication will be made as a matter of course. If, however, it happens that the debtor appears and disputes the claim of his petitioning creditor, or that the claim is less than the amount which would justify the petitioner in petitioning against him, the Court may on the deposit of security, stay all proceedings on the petition for such time as may be required for trial on the question relating to the debt. A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court (Sec. 13). It is, however, open to the Court to appoint an *interim* receiver of the property of the debtor to take possession of same pending the petition and before an Order of Adjudication, on being satisfied that such an order was necessary for the protection of his claim. (Sec. 16).

Effect of Adjudication Order.—The effect of the Order of Adjudication is that all property of the insolvent, wherever situated, vests in the Official Assignee, for the benefit of the creditors of the debtor. After such an order, no creditor of the insolvent can bring any suit without the leave of the Court or can have any remedy against the property of the insolvent during the pendency of the insolvency, as long as the creditor's debt is provable in insolvency. This rule, however, does not prevent a subsequent creditor from realizing or otherwise dealing with his security. (Sec. 17).

After passing the Adjudication Order, the Court may stay any suit or other proceedings that may be pending against the insolvent before any Judge or Judges of the Court, or in some other Court subject to the superintendence of the Court.

The Protection Order.—A Protection Order is an order of the Court by which the insolvent is protected, from being arrested or detained in prison for any debt to which the order shall apply and in case the insolvent is already under arrest or detention, he may be entitled to be released. The idea of this order is that the insolvent debtor should not be harassed by the execution creditors during the time that his affairs in

insolvency are under investigation, provided that the insolvent performs his duties as prescribed by the Act. The Court may, at its discretion, make the Protection Order even before the insolvent has submitted his schedule if it thinks necessary to do so in the interests of the creditors. (Sec. 25, P. T. I. Act, 1909).

Protected Transactions.—According to Section 57 of the Indian Presidency Towns Insolvency Act of 1909, and the corresponding Section 45 of the English Bankruptcy Act of 1914, if any of the following transactions take place before the date of the Order of Adjudication (in England the Receiving Order), and if the person, before such transactions take place, has not, at the time, notice of the presentation of any insolvency petition by or against the debtor, they will be protected. These transactions are :—(1) Any payment by an insolvent to any of his creditors, (2) any payment or delivery to the insolvent, (3) any transfers by the insolvent for valuable consideration, and (4) any contract or dealing by or with the insolvent for valuable consideration. Of course, in all these cases the payment, or delivery, must be *bona fide*, in the ordinary course of business.

Doctrine of Relation Back.—In this connection it is important to note the material difference between the position at English law and that under our Presidency Towns Insolvency Act, Section 57. In English law, all transactions entered into with a bankrupt between the commencement of bankruptcy and the date of Receiving Order are protected, if the person receives no notice at the time of any available act of bankruptcy and if the transactions are *bona fide*, but those who have such a notice are prevented from entering into transactions with the bankrupt, because if a petition is presented and the debtor adjudicated a bankrupt, within three months, the doctrine of Relation Back will make the dealings void against the trustee in bankruptcy. The doctrine of Relation Back lays down that in case a person is adjudicated a bankrupt, all property belonging to him vests in the trustee in bankruptcy from the date of the commission of the first act of bankruptcy, within three months of adjudication; because the date of bankruptcy is the date of commission of such an act. In Indian law, however, all transactions between the commencement of the insolvency and the date of the Order of Adjudication are protected, if a person has no notice of the presentation of the insolvency petition, and acts *bona fide*. In other words, the notice of an act of insolvency in India does not deprive the person dealing with the insolvent of the protection he enjoys, as it is in the case of English law. [*Bhagwandas and Co.* v. *Chuttan Lal*, (1921) 43 All. 427; *Mercantile Bank of India, Ltd.* v. *Official Assignee, Madras*, (1916) 39 Mad. 250].

Dealings after Petition.—In case of transactions entered into after the presentation of the petition, the protection would depend on whether the party so dealing with the insolvent had notice of this presentation of the petition. In English Bankruptcy Act of 1914, there is a further Section 46, which allows certain payments of money, or delivery of property to the debtor, or to his assignee before the date of the Receiving Order, provided the person making the payment was unaware that a bankruptcy petition has been presented against the debtor. This section is of importance to English bankers inasmuch as it does not state anything about notice of an act of bankruptcy with the result that it indicates that even if the payment is made to the debtor himself in person, with notice of bankruptcy by the banker, that payment will be protected. The importance here lies in the fact that this Section 46 only relates to payment made to the bankrupt himself or his assignee and not to a third party. Sir John Paget considers this Section 46 of the English Act to be quite inconsistent with Section 45 of the same Act and thinks that it was introduced to meet some exceptional case " say that of bankers who are notoriously agitating on the subject." Thus, a person who has committed an act of bankruptcy can draw out his money from his bank, before the petition is presented against him and the payment would be good even though made by a banker who knows of this act of bankruptcy, because he is protected under Section 46 of the English Act. However, this section is not of much importance to us in India, because the notice of an act of bankruptcy does not prevent a banker in India from paying the cheque. He is prevented from doing so only after he has a notice of the presentation of the actual petition in insolvency.

Thus, as soon as a banker in India, or in England, hears of the adjudication of his customer in insolvency or bankruptcy, it is his duty to inform the Official Assignee in India, and the trustee in bankruptcy in England, as to the balance to the credit of a customer's current account, and as to any other money or property belonging to the insolvent debtor that may be lying in his own possession, except of course, the money held by the banker in connection with a trust of which the insolvent is a trustee.

Fraudulent Preference.—Fraudulent preference in insolvency is defined by Section 57 as follows :—

(1) Every transfer of property, every payment made, every obligation incurred, every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Official Assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

The essential conditions to a fraudulent preference therefore are :—

(1) that the payment is made by a person who is an insolvent;

(2) that it is made to a creditor or to some one on his behalf;

(3) that it is made without any pressure; and

(4) that it is made with the main and dominant intention of preferring that creditor to others.

Schemes of Composition or Arrangement.—After an Adjudication Order is made, an insolvent may propose a scheme of composition, or submit a proposal for a scheme of arrangement which scheme shall be submitted by the Official Assignee to a meeting of creditors. A copy of the scheme or proposal is to be sent to each creditor mentioned in the schedule, or who has tendered a proof of his debt before the meeting, and if on consideration of such a proposal the majority in number and three-fourths in value of all the creditors resolve to accept the proposal, the scheme shall be taken to have been duly accepted by the creditors. Any creditor can accept or refuse to accept the scheme by a letter addressed to the Official Assignee to reach him before the day of the meeting, which would be construed to be as good as his having attended and voted at the meeting. The Official Assignee should then apply to the Court to approve the scheme notifying all the creditors of the time and day on which such an application is to be made (Sec. 29). Any creditor who has proved his debt may oppose the scheme of composition, even though he may have voted in favour of the proposition at the meeting. The Court would hear the report of the Official Assignee as to the terms of the composition and conduct of the insolvent and then accept or approve the scheme in case it appears to the Court reasonable and calculated to benefit the general body of the creditors, otherwise it would reject it. Where the Court finds that certain circumstances have transpired which compel the Court to refuse the insolvent's discharge, or to suspend or attach conditions to same, the Court will refuse to approve the proposal unless at least four annas in the rupee on all the unsecured debts against the debtor's estate are provided for by securities. On approving the scheme, the Court would make an order annulling adjudication. On such an approval the composition scheme shall be binding on all creditors, so far as it relates to debts due to them from the insolvent which are provable in insolvency. (Sec. 29 and 30).

Annulment of the Scheme.—The composition or scheme may be annulled by the Court under any of the following circumstances :—

(1) where any instalment due on the scheme is not paid, or

(2) where the Court is of opinion that the scheme cannot proceed without injustice or undue delay, or

(3) if the Court finds that its approval was obtained by fraud.

The effect of such an order is that the debtor is re-adjudged insolvent and his property once again vests in the Official Assignee, but, of course without prejudice to the validity of any transfer or payment duly made in pursuance of the composition scheme. All debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in insolvency. (Sec. 31).

It may be added here that the approval of the composition scheme will not be binding on any creditor whose debt is of such a nature as would not be discharged by an order of discharge.

Debts not Wiped Off by Discharge or Composition.—The following are the debts which do not discharge an insolvent either by an order of discharge or by the approval of the composition scheme by the Court :—

(*a*) any debt due to the Crown ;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which the debtor was a party ; or

(*c*) any debt or liability in respect of which the debtor has obtained forbearance by any fraud to which he was a party ; or

(*d*) any liability under an order for maintenance made under Section 488 of the Code of Criminal Procedure, 1898. (Sec. 45).

The scheme of compensation must be accepted by the statutory majority, as without that the Court cannot approve of same. (*Behari Lal Sikdar* v. *Harsookdas Chakmal*, (1920) 25 C.W.N. 137.)

DEBTOR'S PROPERTY

Vesting of Property.—As soon as an Order of Adjudication is made in India, the property of the insolvent, wherever situate, vests in the Official Assignee and becomes divisible amongst his creditors, with the result that except as directed by the Act, no creditor to whom the insolvent is indebted in respect of any debt which is provable in insolvency can, during the pendency of insolvency proceedings have any remedy against the property of

the insolvent nor can he commence any suit, or legal proceedings except with the leave of the Court, and that too, on such terms as the Court may impose. This section, of course, does not restrain the creditor in his power to realize, or otherwise deal with the security. (Sec. 17.) The Court has power to stop any suit, or other proceedings pending against the insolvent before any Judge or Judges of the Court, or any other Court which is subject to the superintendence of the Court. (Sec. 18.) It will thus be seen that here the Official Assignee comes in immediately after adjudication of the debtor. In the case of bankruptcy in England, the Official Receiver comes in as soon as the Receiving Officer is made and the property gets vested in him in the first instance, and thereafter when the adjudication order is passed, it vests in the trustee in bankruptcy of the bankrupt. The moment the adjudication is made, the proceedings come under the control of the Insolvency or Bankruptcy Court. In India the Official Assignee and in England the Trustee in Bankruptcy, is the guardian not only of the interests of the particular creditors and the particular debtors but also of public morality. This guardianship is exercised under the control of the Court and of the Government. [*Re Moghraj Gangabux*, (1909) 35 Bom. 47.]

Divisible Amongst Creditors.—The property of the insolvent which is divisible amongst his creditors comprises of (1) all such property as may belong to or be vested in the insolvent at the commencement of insolvency or may be acquired by and devolved on him before his discharge, (2) all goods being at the commencement of insolvency in the possession, order and disposition of the insolvent, in his trade or business, by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof, and (3) the capacity to exercise and to take proceedings for exercising all such powers in, or over, or in respect of property, as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge. (Sec. 42.)

Reputed Ownership.—In this connection it should be noted that the doctrine of reputed ownership applies only in case of traders. It aims at the protection of general creditors of a trader against their having given false credit through relying on the goods which are in possession of the debtor and under his power and disposition, which do not belong to him in fact, but which ostensibly appear to be his property. [*Ryall* v. *Rawles*, (1750) 1 Ves. Sen. 348.] Thus, not only the goods actually belonging to the insolvent trader, but also those which happen to be under his " order and disposition ", vest in the Official Assignee or trustee in bankruptcy. The requisites in case of reputed ownership happen to be that the property must be goods, that they must be in possession, order or disposition of the insolvent, in his trade or business, and under such circumstances that he is

a reputed owner. It is further necessary that the owner should have consented to such possession of the goods by the insolvent in his trade or business and that the possession should be such that he is the reputed owner thereof.

After-Acquired Property.—We have already seen above that the property acquired by the insolvent after adjudication also vests in the Official Assignee, but not unless and until this officer intervenes on behalf of the insolvent's estate. If he does not intervene, and meanwhile the insolvent transfers his property to another who takes it in good faith and for value, the transferee acquires a good title to it. The same rule applies to the Trustee in Bankruptcy in England, under their Bankruptcy Act. Wages earned by the bankrupt after adjudication, by his own personal exertion or labour, also do not pass to the Official Assignee or Trustee, i.e. at least such part of them, as is deemed necessary for the support of himself and his family. This rule is laid down in the English case of *Cohen* v. *Mitchell*, (1890) Q.B.D. 262, on page 267. This case has been followed in India in *Chhote Lal* v. *Kedar Nath*, (1924) 46 All. 565. This rule applies to all after-acquired " choses in action " such as legacy, interest acquired after bankruptcy, in trust funds settled before bankruptcy as well as to after-acquired lease-holders. There is some conflict of opinion as to whether this rule in *Cohen* v. *Mitchell* applies to immoveables in India. The exact wording of the rule is as follows :—" Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bona fide* and for value in respect of his after-acquired property, whether with or without knowledge of his bankruptcy, are valid against the trustee ". This rule applies to all transactions entered into with the bankrupt and not only to assignments or subsequent negotiations in trade made in favour of trade creditors. [*Ali Muhammad* v. *Vadilal*, (1919) 43 Bom. 890.]

Cheque from After-Acquired Property.—In India, the payment of the bankrupt's cheque by a banker out of after-acquired property is a protected transaction for value being with bankrupt himself, but in England their Section 47 (2) of the English Act of 1914, alters the position there, because the sub-section enacts as follows :—" When the banker has ascertained that a person having an account is an undischarged bankrupt, unless satisfied that the account is on behalf of some other person it shall be his duty to inform the trustee or the Board of Trade, and thereafter he shall not make any payment out of the account except under order of the Court or instructions from the trustee, unless by the expiration of one month from such notice he has received no instructions from the trustee." According to Sir John Paget, the actual protection to the banker is :—

(1) When he does not know the customer to be an undischarged bankrupt and his only dealings with him or at his discretion or order are in respect of after-acquired property.

(2) Where, having discovered the customer to be an undischarged bankrupt, he has given the requisite notice, suspended operations for a month, and he had no communication from the trustee. He can then begin again to deal with after-acquired property.

Debtor's Property in a Foreign State.—Debtor's property in a Foreign State (which includes a Native State) is not included in the property which vests in the Official Assignee. Although the Presidency Towns Insolvency Act, 1909, talks of property of the insolvent " wherever situated ", it does not include property situate outside British India. In other words, only property situated within British India will vest in the Official Assignee. In a Bombay case an insolvent had obtained discharge in Bombay. One of his creditors in Bombay filed a suit against the insolvent in a foreign state where he had property in respect of a debt for which the insolvent was discharged in Bombay. The insolvent applied to the Bombay Court to restrain the creditor from doing so as he was discharged by the Bombay Court with respect to all debts including the debt due to this particular creditor. The Court refused on the ground that it had no jurisdiction to do so. (*Lakhmiram Kevalram Bhatt* v. *Punamchand Pitamber*, 22 Bom. L.R. 1173.)

Onerous Property.—Under this heading are placed shares and stocks in companies which are burdened with onerous conditions, unprofitable contracts, or any other property which is unsaleable or not readily saleable because of its binding the possessor to the performance of any onerous action, or to the payment of any sum of money. In case of such property of the insolvent, the Official Assignee is given the option to disclaim and return same within twelve months after the adjudication of the insolvent. This power of disclaimer may be exercised by the Official Assignee notwithstanding the fact that he may have endeavoured to sell, or may have exercised any act of ownership in relation thereto. [Sec. 62 (1).] If, however, an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the Official Assignee has declined, or neglected to give notice that he disclaims within twenty-eight days after the receipt of application, or such extended period as may be allowed by the Court, the Official Assignee shall not be entitled to disclaim the property thereafter and he shall be taken to have adopted it. (Sec. 64.) It is, however, laid down that in case of leasehold property, the Official Assignee is not entitled to disclaim without the leave of

the Court. Before granting such leave the Court may require such notices to be given to persons interested as it may think just. (Secs. 62, 63 and 64.) Any person injured by the operation of a disclaimer will be deemed to be a creditor of the insolvent to the extent of the amount of the injury, and may prove same as a debt under the insolvency. (Sec. 67.)

PROOF IN INSOLVENCY

On this question our Section 46 and Section 30 of the English Act of 1914 lays down that a creditor may prove all debts and liabilities, present or future, certain or contingent, to which the debtor is subject, when he is adjudged an insolvent, or to which he may become subject before his discharge, by reason of any obligation incurred before the date of such adjudication. The only exceptions being (1) demands in the nature of unliquidated damages arising otherwise than by reason of a contract, or breach of trust, and (2) debt contracted with a person who had notice of the presentation of insolvency petition by or against the debtor. The debt shall be estimated by the Official Assignee, as to its provable value and in case of these debts the value of which is incapable of being fairly estimated in the opinion of the Official Assignee, he shall issue a certificate to that effect and thereupon the debt or liability shall be deemed to be a debt, not provable in insolvency. A creditor who fails to prove a debt or liability which is provable in insolvency cannot sue the insolvent after his discharge. Where a creditor had submitted his claim to the Official Assignee, but owing to an error in his office final dividend was paid out without this creditor being paid, the Court held that as this was a payment in mistake of fact the Official Receiver was entitled to a refund of the proportion belonging to this creditor from other creditors. (*J. Bala Devi* v. *The Official Assignee of Calcutta*, 54 Cal. 251.) The unliquidated damages which cannot be proved in insolvency are those arising from tort, such as libel, or trespass, or misrepresentation in the prospectus. Of course, debts arising out of illegal or immoral consideration, gambling debts, etc., cannot be proved. Damages arising out of contract are provable in bankruptcy. [*Jack* v. *Kippling*, (1882) 9 Q.B.D. 113.]

Proof by Different Types of Creditors.—Where the payment of a debt is guaranteed and the principal debtor becomes insolvent, the creditor can prove for the full amount of the debt and then recover from the surety the amount of deficiency. The surety who has guaranteed a debt can also prove to the extent of his liability to indemnify for his contingent liability in the insolvency of the principal debtor, although he has not paid anything to the creditor. [*Roderiques* v. *Ramaswamy Chettiar*, (1917) 40 Mad. 788.] The liability in respect of the

winding up of a joint-stock company can also be proved in insolvency of the contributory. An executor who is also creditor of the deceased has a right of retainer in English law by which he can retain the money due to him from the estate of the deceased insolvent of which he is the executor, but in Indian law he has no such right, and therefore he can prove in the insolvency of the deceased for the debt due to him. (Indian Succession Act, 1925, Sec. 323). The holder of a bill of exchange has a similar right to prove in the insolvency of each of the prior parties to the bill and receive a dividend from each estate upon the whole debt, provided he does not get a larger amount than the one which is covered by the bill. [*Ex parte Rushforth*, (1805) 10 Ves. 409, p. 416.] The person who has endorsed a bill of exchange for the accommodation of another person is in the position of a surety and can prove in the insolvency of the person accommodated by him. [*Haigh* v. *Jackson*, (1838) 3 M. and W. 598.]

The Secured Creditor.—In case of a secured creditor the question is whether he is fully secured, or partly secured. If fully secured, he has to recover from the security the amount due to him and hand over the balance to the trustee in bankruptcy or Official Assignee. Here, this fully secured creditor is said to stand outside the bankruptcy, because he has a right to sit upon, his security and even need not prove. [*White* v. *Simons*, (1871) L.R. 6, Ch. App. 555, p. 557; *Hansraj* v. *Official Liquidators*, (1929) 51 All. 695.] When, however, the security is insufficient, the creditor comes in under the insolvency, and in connection with his proof, the creditor, who may be a banker who has the securities on pledge or on which he claims a lien, may either (1) realise the security and prove for the balance, (2) surrender the security and prove for the whole debt, (3) state in his proof the value at which he assesses the security and prove for the balance, or (4) ignore the insolvency proceedings and rely on his security. (*The Union Bank of Bijapur* v. *Bhimrao S. Jorapur*, 31 Bom. L.R. 163.) In the second case the position of the creditor on surrendering, or relinquishing the security, will be that of a secured creditor. In the third case, where he assesses a security, the Official Assignee or trustee in bankruptcy may redeem the security on payment of the assessed value to the creditor or the banker, whoever he may be. Of course, the banker who happens to be in the position of a secured creditor, may, at any time, give a notice in writing and require the trustee in bankruptcy or the Official Assignee, to elect whether he wants to exercise or not his power of redeeming the security, and in case of failure to do so, within six months, the latter loses his right to exercise this power. In case the creditor has *bona fide* valued security wrongly, he may be allowed to alter the valuation. If the security which

was once valued by the creditor were to be subsequently sold, the net amount realised must be substituted by the creditor, or the banker, for the amount of the valuation previously made by the creditor. (Sch. II, r. 15.) Of course, it is always wise to consult the Official Assignee before the banker realises his security. It may be added here that in an English case, viz. *Ponsford* v. *Union and Smith's Bank*, (1906) 2 Ch. 444, where the banker, after notice of the act of bankruptcy, realised the security and handed over the balance to the debtor, it was held that he was not entitled to do so. The same rule will apply in India if the banker realised the security and handed over the balance, after he has notice of the presentation of the insolvency petition by or against the debtor. This decision was given on the footing that though there was no creditor's right which was limited, the act, on the part of the banker, was wrong in handing over the balance to the insolvent debtor who had incapacitated himself from tendering the money. In case of a policy of assurance being deposited with the banker either as a mortgagc or by way of security for money advanced, it was held in *Deering* v. *Bank of Ireland*, (1887) 12 App. Cas. 20, that the banker concerned, as a mortgagee, cannot prove for the value of future premiums, even though the bankrupt covenanted to pay the said premiums.

Interest in the Proof.—The next point to be considered is how far interest could be included in the proof by the banker, by presenting his claim in insolvency. According to Rules 23 and 24 of Schedule II, the question of interest is primarily divided into two divisions. The first is where interest has not been stipulated to be paid for and the second where the same is stipulated for.

In the first case, i.e., where interest is not reserved or agreed for and which is overdue, the same is allowed if (1) the debt or sum is payable in virtue of a written instrument at a certain time, from the time when the debt or sum was payable to the date of such adjudication, or (2) if the debt or sum is payable otherwise, then from the date a demand in writing has been made, giving the debtor notice that interest will be claimed from the date of demand, until the time of payment to the date of such adjudication. Here, it will be seen that the interest will be allowed from the date of such a notice to the date of the order of adjudication. The rate of interest allowed in such cases in India where it is not agreed upon is six per cent per annum, whereas in England the rate is four per cent per annum. Where the interest was agreed upon, the maximum rate allowed in England is five per cent. In India, where a debt upon which interest has been stipulated, the interest or any pecuniary consideration in lieu of interest for the purpose of dividend will be calculated at a rate

not exceeding six per cent per annum, but this will be without prejudice to the right of the creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

As to the debt which is payable at a future date, i.e. not payable when the debtor is adjudged an insolvent, the same will be allowed to be proved as if the same was payable presently and the creditor may receive dividends equally with other creditors, deducting therefrom only a rebate of interest at the rate of six per cent per annum, computed from the declaration of dividend to the time when the debt will have become payable according to the terms on which it was contracted.

Execution Creditor.—Where a creditor has obtained a decree of execution against the property of a debtor, he would not be entitled to retain this against the Official Assignee, unless he has realised the assets in course of the execution by sale, or otherwise, before the date of the order of adjudication, and before he had notice of the presentation of the insolvency petition by or against the debtor. Otherwise any creditor, or any one interested, may give notice of adjudication to the Court which is executing the decree and on receipt of such a notice, the Court must direct that the property may be delivered to the Official Assignee if it still be in the possession of the Court and the costs of the execution shall be a first charge on the property so delivered and the Official Assignee shall have to satisfy the charge either by selling the property or an adequate part of it. If, however, the property has been sold under execution of the execution creditor before these steps are taken, any person who buys the same in good faith would acquire a good title against the Official Assignee. (Secs. 53 and 54.)

Preferential Debts.—In distribution of the property of the insolvent the following debts shall be paid in priority to all other debts and shall rank equally between themselves, and must be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves :—

(1) All debts due to the Crown or to any local authority;

(2) All salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each clerk, and one hundred rupees for each such servant or labourer; and

(3) Rent due to a landlord from the insolvent : provided the amount payable under the clause shall not exceed one month's rent. (Sec. 49.)

Set-off.—Where there have been mutual dealings between an insolvent and a creditor, an account is to be taken of what is due from one party to the other in respect of such mutual dealings and the sum due from one party must be set-off against any sum due from the other party and the balance of the account shall be claimed or paid on either side. The person claiming the set-off against the insolvent's property should not have had notice of the presentation of the insolvency petition against the debtor at the time of giving credit, otherwise he would not be entitled to claim such a set-off. (Sec. 47.)

CHAPTER XVII

BANK BALANCE SHEET AND ACCOUNTS

GENERAL OBSERVATIONS

In this chapter it is not the purpose of the author to go into any details as to account keeping, because that forms part of an independent subject. What is, however, intended is to deal with the most important factors in connection with the balance-sheet of joint-stock banks and some of the important books which they maintain. For this purpose it is well to remember (we have already gone over this ground in great detail in previous chapters) that the modern banker's business consists of the following transactions, viz. (1) Granting of loans and overdrafts on approved securities, (2) Receipt of deposits on current account or for fixed periods, (3) Discounting of bills of exchange and promissory notes, (4) Collecting cheques, bills of exchange and cash articles (postal orders, etc.) on behalf of customers, (5) Acting as agents on behalf of their customers, for buying or selling stocks, shares, etc., collecting interest and dividends either local or foreign, (6) Receiving in safe custody customers' valuables, securities, jewelleries, etc., (7) Granting facilities in foreign lands to its customers, in shape of letters of credit, circular notes, or remittances, (8) Receipt of articles for safe custody with or without a special charge.

The banker's profit is generally derived from interest on loans granted, discount (or interest) on bills and notes discounted, commission charged for conducting current accounts, for accepting and endorsing bills payable abroad and for other services rendered to his customers. Out of the amounts paid daily in customers' current accounts, a portion sufficient to meet daily cash demands, is detained by him and the balance is lent out at interest or invested in gilt-edged or other securities.

A banker's daily transactions may be summarized into cash receipts and payments on account of current and fixed deposits, loans, overdrafts, remittances, etc. Naturally all these require a scientific system of book-keeping, giving maximum of results with the least labour. The books here must be kept written up continuously to enable the banker to know his position from day to day. We shall now discuss a few of the most important books generally maintained by a banker in order to record his daily transactions.

CASH DEPARTMENT

Counter Cash Books.—The cash department keeps special day books. The " Receiving Cashier's Day Book " records the

actual cash receipts distinguishing between receipts in coins, notes, cheques, etc. A separate book for actual payments, i.e. cash paid out, is also kept known as the " Paying Cashier's Day Book ". This " Paying Cashier's Day Book " records all cash paid out, distinguishing between actual cash and notes. The totals of these books are then transferred to the General Cash Book and at the end of the day, the general cashier checks the cash book balance with the actual cash in hand.

Receiving Cashier's Counter Cash Book

Customer	Total	Cheques, etc	Notes	Coin

Paying Cashier's Counter Cash Book

Customer	Total	Coin	Notes	
			Amount	Numbers

Cheques.—Cheques received from customers to be cleared are entered in a special book known as the " Clearing Cheques Book " and they are dealt with in the regular books of account after they are cleared. The practice with London bankers happens to be to credit a customer immediately on receipt of cheques for collection and then to send them to be cleared. The practice in India, however, is to credit the current account only after the cheques are cleared.

The receiving cashier, after entering the amount paid in as indicated by the paying-in-slip, retains the coins and notes, but the cheques are passed on to the waste-book clerk, after the paying-in-slips are pinned on to them. The latter enters them in waste-book which has columns for analysis according to the manner in which these cheques are to be collected. The cheques are thereafter passed on to the " Clearing Department " for presentation at the clearing house and the paying-in-slips are in their turn handed over to the ledger keeper for posting the entry into the respective customer's accounts.

Received Day Book (Waste Book)

Name	Total amount	Details					
		Town clearing	Metro clearing	Walks	Bank of England	House (own) and country cheques	Money

Note.—The above form indicates various circles for convenience of clearing of a very large number of cheques. In case in any district where the clearing bank is situated, the clearing is not divided into circles, separate money columns will not be necessary.

General Cash Book.—This is a classified summary of the day's transactions grouped together under usual " receipts " and " payments " side. This book is closed daily and cash balance is carried to the succeeding day with which the next day's cash is opened.

BILLS

Bills of exchange received from customers for collection are entered in a special register kept for the purpose known as the " Deposit Bills Register ", which is ruled with columns, stating the dates of their receipt, name of the sender, together with the name of the drawer and the drawee, the date on which they are drawn, the due date and the amount. When these bills are collected on due dates, the customer's current accounts concerned are credited. Bills are also received from a customer for being discounted. In fact, the latter, i.e. " discounting of bills " forms a very important branch of a modern banker's business. A special book known as the " Discounted Bills Register " is maintained for this purpose, which has columns showing the date on which the bills were discounted, the name of the discounter or seller, the acceptor, the drawer, the date of the bill, when due, the amount, rate of discount charged and its final disposal. The customer is then credited for the amount in his current account and debited for the discount charged by the bank,

Bills Received for Collection Register

No.	Date received	From whom received	Drawer	Acceptor	Date of Bill	Due date	Where payable	Amount of Bill	Date paid

Bills Received for Discounter Register

No. of bills	Seller	Acceptor	Drawer	Where payable	Amount of bill	Due date	Date discounted	Days to run	Rate of discount	Amount of discount	Remarks

LOANS AND ADVANCES

The loans to Bill and Stock Brokers and others at call and short notice, for which separate *Loan Registers* are maintained to record the date on which the loan was given, the name of the party to whom it was given, the amount, the rate of interest charged, and the date on which it must be paid. If the person to whom the loan is advanced, as is generally the case, happens to be a customer of the bank, the current account of the customer is credited and the amount of the loan is debited to a separate loan account. If, on the other hand, cash is paid, cash will be credited and the loan account debited. In case of securities deposited against loans, a separate register of securities is maintained, with the date of the deposit, the particulars of the security, the face value, and the date on which they were returned.

In case of advances on consignments, a separate " Register for Loans on Consignments " is maintained, giving particulars as to the consignment, the name of the consignor and the consignee, amount of the bills drawn, the amount of advance, the rate of interest and the date on which the advance was repaid.

DEPOSITS

The banker receives money on deposit for various periods and for which he incurs liability of repayment with interest. Fixed deposits are entered in a special register known as " Deposit Register " giving particulars as to the date of receipt of the deposit, the name of the depositor, the rate of interest, amount deposited, the due date and the date of repayment. Besides this, the depositor's account is opened in the " Depositor's Ledger " in which he is credited for the amount.

JOURNAL OR THE DAILY SUMMARY BOOK

Owing to the magnitude and volume of the transactions, a large number of record books have to be maintained by a bank, in which various items of daily transactions are entered and the Head Accountant has to collect all these items from various books, which he does through the medium of " debit and credit slips " sent up by the responsible officer concerned. These " debits and credits " are regularly entered in the Journal, the agreement of the totals of which proves the accuracy of the work. The daily work of each of the departments is thus condensed and summarised and then recorded in the " General Ledger " of the bank, through the medium of the " Daily Summary Book " or the " Journal ".

GENERAL AND SUBSIDIARY LEDGERS

Besides the books of accounts detailed above, a large number of subsidiary books in form of registers are maintained, such as Deposit Register, Registers for Loans, Bills Received for Discount Bills Received for Collection, Securities Register, Securities Purchased for Customers Register, etc. On the same footing a large number of subsidiary ledgers embracing detailed record are also maintained side by side with the General Ledger in which totals are posted from these subsidiary Ledgers. To take an illustration, the Current Account Ledger is maintained as a subsidiary ledger which contains separate current accounts with all minute details as to debits and credits of all the customers, whereas the General Ledger only holds one account called the " Current Accounts Account " into which the totals are posted after collecting all the accounts of current account customers in one lump sum, viz. for total debits and total credits, respectively. These subsidiary Ledgers are mostly posted through the medium of what is known as " slip posting ".

SLIP SYSTEM OF LEDGER POSTING

As we have already stated, a banker must know at a moment's notice the exact amount to the creditor or otherwise of customer's account, and therefore, the transactions must be posted immediately, i.e. the transaction and its posting must be

almost simultaneous. The current accounts of customers, therefore, are posted continuously by means of " slips ", the double entry principle being kept in view all throughout and carefully given effect to, the slips being filled up either by the customers themselves or the bank staff.

When cheques and cash articles are paid in to his credit by the customer, they are accompanied by the pay-in-slip in his Cash Book, thus debiting cash account. He then passes the same on to the waste-book-keeper for analysis. This clerk, having completed his work, passes it on to the ledger keeper, who credits the customer's account with the amount paid in, and finally it is handed over to those responsible for writing up the pass book. It would thus be seen that the transaction gets posted up as soon as it takes place, both to the debit of cash account and to the credit of customers' account, which would not have been possible if the ledger keeper were to post the entries from the usual cash books, as he can handle only one book at a time, and that too, when the cashier can spare it, which would mean considerable delay.

On the same footing, the original cheques drawn by customers are also used as vouchers for posting. The paying cashier to whom the cheques are presented, credits cash and passes them on to the ledger keeper who debits the customers, thus completing the double entry with the least delay. Finally, the cheques are handed over to the pass book clerks.

Those transactions which are not covered by original slips prepared by customers are posted by means of dockets, or slips, specially prepared by the members of the bank staff to whom the work is allotted. These transactions include bills discounted, interest coupons collected, loans advanced, interests charged or allowed, etc. Two different slips are prepared, one for the " debit " and the other for the " credit ", or sometimes only one docket may be prepared detailing the journal entry with instructions for posting debit, as well as credit, for the transaction concerned.

Forms of Slips

THE POPULAR BANK, LIMITED

15th July 1943.

DEBIT A. C. BANERJI'S CURRENT ACCOUNT, TRANSFER TO DEPOSIT A/C.

Rs. 250.

A. B. C.
Accountant.

THE POPULAR BANK, LIMITED

15th July 1943.

CREDIT A. C. BANERJI'S DEPOSIT ACCOUNT, TRANSFER FROM CURRENT ACCOUNT Deposit Receipt No. 74168.

Rs. 250.

A. B. C.
Accountant.

Form of Docket.—Or a docket may be prepared instead in the following form :—

THE POPULAR BANK, LIMITED

15th July 1943.

A. C. BANERJI.

DEBIT CURRENT ACCOUNT.....

CREDIT DEPOSIT ACCOUNT.....

Rs. 250.

A. B. C.
Accountant.

BANK BALANCE SHEET

A Balance Sheet is defined as a statement of assets and liabilities of a business at a given date (either annual or periodical) prepared with a view to display its financial position at that date.

In many countries where the banks are regulated by special Government legislation, as in India under the Indian Companies Act of 1913, the form in which the banks should publish their balance sheet is prescribed by law. In England, the joint-stock banks are under no such legal obligation and are therefore allowed to publish their balance sheets in any form which their accountant or auditor approves of.

In India, the Form F, under the Indian Companies Act as above-stated, lays down a form and prescribes certain special rules framed under it, applying to banks, the details of which

are discussed a little later in this Chapter. That form has to be followed by all Indian joint-stock banks, or as " near thereto as circumstances permit ".

It may be added that now the Amended Companies Act according to Indian Companies Amendment Act, 1936 makes specific reference as to the Profit and Loss Account, and lays down that the Profit and Loss Account, along with the Balance Sheet, must be placed before the general meeting of the company as well as circulated among its members by being addressed to every member of the company at least 14 days before the meeting at which it is to be laid. The Act further provides that the provisions of Table A—clause 107 must be adopted by all companies in their articles of association, and in any event the articles of every company shall be deemed to contain regulations indentical with or to the same effect as the clause 107 of Table A (Sec. 17). The clause 107 runs as follows :—

The profit and loss account shall, in addition to the matters referred to in sub-section (3) of Section 132 of the Indian Companies Act, 1913, show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting, and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

Specimen forms of balance sheet and profit and loss account of one of our important joint-stock banks are given on the following pages and the principal items such balance sheet covers are discussed thereafter.

THE INDIAN POPULAR BANK, LIMITED

Balance Sheet as at 31st December 1942

LIABILITIES	Rs.	a.	p.	Rs.	a.	p.
CAPITAL:—						
Authorised—7,00,000 shares of Rs. 50 each	3,50,00,000	0	0			
Issued—6,72,528 shares of Rs. 50 each	3,36,26,400	0	0			
(1) 4,72,528 shares of Rs. 50 each, issued as paid up to the extent of Rs. 25 without payment in cash in exchange for 9,45,056 shares of the A. B. Industrial Bank, Ltd. Rs. 2,36,26,400-0-0						
(2) 2,00,000 shares of Rs. 50 each issued for payment in cash Rs. 1,00,00,000-0-0						
	3,36,26,400-0-0					
Subscribed—6,72,528 shares of Rs. 50 each						
Amount called up at Rs. 25 per share				1,68,13,200	0	0
Note.—The above number includes 1,009 shares of the Indian Popular Bank, Ltd., which remain to be given against 2,018 Coupons issued by the Indian Popular Bank, Ltd., for a like number of shares of the A. B. Industrial Bank, Ltd., which have not yet been submitted for conversion.						

ASSETS	Rs.	a.	p.	Rs.	a.	p.
CASH AND INVESTMENTS:—						
Cash in hand	1,71,21,353	11	2			
Cash with Bankers in Current A/c.	2,57,14,776	14	1			
Balance with the Popular Exchange Bank of India, Ltd. ...	18,31,819	7	6			
Moneys at Call	25,75,000	0	0			
Bullion on hand Market Value Rs. 51,23,126-14-9 ...	51,06,099	8	2			
Deposit with other Banks ...	1,12,94,186	0	5			
Deposit with the Popular Exchange Bank of India, Ltd. ...	19,84,496	1	10			
Govt. of India Treasury Bills ...	1,19,75,000	0	0			
				7,76,02,731	11	2
Terminable British and Indian Government Sterling Loans and Sterling Port Trust and Corporation Loans of the Face Value of £1,29,000 as under:—				1,63,18,896	11	9
Falling due between 1943-46 ... £ 129,300						
Falling due between 1947 and later ... £ 999,700						
£ 1,129,000						
£1,129,000 @ 1/6 9/64 Rs. 1,49,36,640	13	2				
Market Value £1,237,340 at 1/6 9/64 Rs. 1,63,69,971	4	2				
Non-terminable Government of India and other Rupee and Sterling Loans				95,75,553	15	5
Market Value Rs. 97,38,040	6	0				

THE INDIAN POPULAR BANK, LIMITED—*contd.*

Balance Sheet as at 31st December 1942—*contd.*

LIABILITIES	Rs.	a.	p.	Rs.	a.	p.
Reserve Liability of Shareholders:—						
Rs. 25 per share on 6,72,528 shares issued	1,68,13,200	0	0			
Amount received on 31 shares forfeited				530	0	0
Reserve and Contingency Fund				70,00,000	0	0
Sinking Fund in respect of Lands and Buildings:—						
For Leasehold Premises at Calcutta and Lahore ...	2,54,366	14	0			
For other Lands and Buildings	13,25,428	14	6			
				15,79,795	12	6
Current, Call, Savings Bank Deposits, Contingency and other Accounts				18,73,20,846	3	0
Fixed Deposits and Cash Certificates				12,75,30,565	10	11
Bills Payable and other sums due by the Bank				6,37,254	1	2
Amounts owing to Subsidiary Companies				5,78,743	13	11
Debts due to Banks, Agents and Correspondents secured by part of Investments per Contra				2,19,673	15	9
Unclaimed Dividends ...				1,91,883	9	0

ASSETS	Rs.	a.	p.	Rs.	a.	p.
Government of India and other Gilt-edged Terminable Rupee Securities of the Face Value of Rs. 8,14,61,225 as under:—				8,27,02,170	4	8
Falling due between 1937-1940 Rs. 1,88,28,850	0	0				
Falling due between 1941 and later Rs. 6,26,32,375	0	0				
Rs. 8,14,61,225	0	0				
Market Value Rs. 8,94,47,387	9	7				
Rupee and Sterling Debentures of Joint-Stock Companies ...				64,91,062	2	0
Market Value Rs. 66,82,610	0	1				
Cumulative Preference and Ordinary Shares of Joint-Stock Companies as under:—				1,62,74,171	15	1
Fully paid up Rs. 1,36,89,562	10	5				
Partly paid up Rs. 25,84,609	4	8				
Market Value Rs. 1,88,00,560	3	10				
Shares of the Popular Bank Executor and Trustee Co., Ltd. At Cost				9,99,000	0	0

Rebate on Bills Discounted and on Government of India Treasury Bills				34,154	9	9
Branch Adjustments				32,33,203	9	4
Acceptances for Customers :— As per Contra				50,76,789	4	0
Bills for collection :—Bills Receivable as per Contra ...				82,00,907	12	11
PROFIT AND LOSS ACCOUNT :—						
Balance as per Balance Sheet as at 31st December, 1941 ...	12,46,247	9	3			
Less—Final Dividend at the rate of 6% per annum paid for the half-year ended 31st December 1941 ... ... Rs. 5,04,396-0-0						
Special Jubilee Bonus @ 2% per annum ... Rs. 3,36,264-0-0						
	8,40,660	0	0			
	4,05,587	9	3			
Profit for the year 1942 ...	22,36,661	11	10			
	26,42,249	5	1			
Less—Ad-interim Dividend paid for the half-year ended 30th June, 1942 at the rate of 6 per cent per annum Rs. 5,04,396-0-0						
Amount provided for doubtful debts Rs. 3,50,000-0-0						
Amount transferred to Sinking Fund in respect of Lands and Buildings Rs. 2,00,000-0-0						
Amount provided for Income-Tax and Super-Tax ... Rs. 50,000-0-0						

Shares of the Depositors' Benefit Insurance Co., Ltd. At Cost ...				2,48,750	0	0
Shares of the Popular Exchange Bank of India, Ltd. At Cost ...				13,17,328	11	7
Interest accrued on Investments				9,90,407	2	5
LOANS AND OTHER ADVANCES:—						
Cash Credits, Demand Advances and Loans	10,38,07,816	9	2			
Bills Discounted and Purchased	1,60,27,261	12	5			
				11,98,35,078	5	7
PARTICULARS REQUIRED BY ACT VII OF 1913 :—						
(1) Debts considered good and in respect of which the Bank is fully secured Rs. 9,35,89,629	9	1				
(2) Debts considered good secured by the personal liability of one or more parties as under :—						
(*a*) Debts due on Bills Discounted Rs. 1,60,27,261	12	5				
(*b*) Debts due on Joint and several Pro. Notes Rs. 72,29,580	13	2				
(*c*) Debts due on Temporary Overdrafts, Demand Cash Credits and Personal Security, etc. ... Rs. 2,78,46,006	2	11				
(3) Debts considered doubtful—Madras debts pending legal decision Rs. 2,04,000	0	0				

THE INDIAN POPULAR BANK, LIMITED—*contd.*

Balance Sheet as at 31st December 1942—*contd.*

LIABILITIES	Rs.	a.	p.	Rs.	a	p.
Amount provided for Silver Jubilee Bonus to Staff Rs. 3,12,800-0-0	14,17,196	0	0			
				12,25,053	5	1
CONTINGENT LIABILITIES:—						
Rs. 28,63,180-15-10 is on Investments in shares of Joint-Stock Companies and Banks; and Rs. 9,85,388-3-9 being Instalment due on Sterling Debentures and Cochin Government Loan.						
And on Bills re-discounted £77,585-18-7 of which upto 15th March 1943 £50,988-3-10 have run off. Claims against the Company not acknowledged as debts Rs. 16,888-15-0						
			Rs.	35,96,42,601	11	4

ASSETS	Rs.	a.	p.	Rs.	a	p.
(4) Debts due by Directors or other Officers of the Bank and considered good Rs. 40,070 6-6						
(5) Debts due by Directors of the Bank jointly with other persons or on securities and considered good including debts due by Joint-Stock Companies guaranteed by their Agents, a Director of the Bank being a member of the firm of Agents Rs 25,37,772-9-3						
Lands & Buildings:—Total Cost to date	1,57,15,779	2	11			
Less—Amount written off ...	27,08 624	15	8	1,30,07,154	3	3
(Further Provision in Sinking Fund as per Contra)						
Customers for Acceptances per Contra				50,76,789	4	0
Bills Receivable				82,00,907	12	11
Other Assets:—Office Furniture & Fittings:—Total Cost to date	17,79,941	8	11			
Less—Amount written off to date for Depreciation ...	10,82,266	7	9	6,97,675	1	2
Stamps, Stationery, Stock of Home Savings Safes and Safe Deposit Boxes ...				3,04,924	6	4
			Rs. ...	35,96,42,601	11	4

Statement of Profit & Loss Account for the year ended 31st December 1942.

DR.	Rs.	a.	p.	CR.	Rs.	a.	p.
To Interest on Fixed Deposits, Cash Certificates and Call Deposits	33,03,312	14	4	By Interest and Discount (after allowing for Rebate and after appropriation to contingency accounts as provision for bad or doubtful debts)	84,56,832	5	10
„ Interest on Current Accounts and Savings Bank Deposits	17,49,773	1	0	„ Exchange	3,76,725	0	10
„ Salaries and Allowances at Head Office and Local Branches	10,03,064	9	9	„ Commission, Brokerage and Miscellaneous Receipts	4,64,841	6	7
„ Salaries and Allowances at Up-country Branches	11,73,677	3	8	„ Difference on Sale of Investments ...	11,58,565	0	7
„ Contributions to Provident Fund	1,12,233	8	10	„ Rent on Land and Buildings (excluding rent on Premises used by the Bank) ...	5,31,054	10	11
„ Directors' Fees	21,723	0	0	„ Transfer Fees	9,258	10	0
„ Committee Members' and Auditors' Fees ...	50,272	8	9				
„ Postage, Telegrams and Stamps	1,13,155	1	11				
„ Stationery, Printing and Advertising ...	2,68,185	13	11				
„ Amount transferred to Sinking Fund ...	78,615	0	0				
„ Depreciation of Furniture, etc.	74,192	0	7				
„ Rent, Taxes, Insurance, Law and other Charges	8,02,388	8	2				
„ Balance (Net Profit)	22,36,661	11	10				
Rs. ...	1,09,97,277	2	9	Rs. ...	1,09,97,277	2	9

Note:—Remuneration received by Directors for their own use from other Companies by virtue of nomination by the Bank on the Board of other Companies amounted to Rs. 2,350 during the year.

AUDITORS' REPORT TO THE SHAREHOLDERS

We have audited the above Balance Sheet of the Indian Popular Bank, Ltd, as at the 31st day of December 1912, and also the above Profit and Loss Account of the Company for the year ended on that date, in which are incorporated the audited Returns of 47 Branches and the Certified Returns of the Pay Offices and other Branches, we have verified the Cash and Securities at Head Office on the 31st day of December 1942, and report that:—

(*a*) We have obtained all the information and explanations we have required; (*b*) in our opinion, the above Balance Sheet and Profit and Loss Account are drawn up in conformity with the Law; (*c*) such Balance Sheet exhibits a true and correct view of the state of the Company's affairs according to the best of our information and the explanation given to us as shown by the books of the Company; and (*d*) in our opinion books of account have been kept by the Company as required by Section 130 of the Indian Companies Act, 1913.

Bombay, 25th March, 1943.

X. & Co., *Registered Accountants.*
Y. & Co., *Registered Accountants.* } *Auditors.*

A. *Chairman.*

B. F. *Chief Accountant.*

C. *Directors.* J. *Secretary.*

D. G. H. *Accountants.*

E. *Managing Director.*

In addition to the above requirements the Companies Act requires that every limited Banking Company or Insurance Company or Deposit, Provident or Benefit Society, shall before the commencement of the business and also on the first Monday in February, and the first Monday in August during every year, in which business is carried on make a statement in the form marked " G " in the third schedule, or as near thereto as circumstances will admit. A copy of this statement together with a copy of the last audited balance sheet laid before the members of the company, has to be displayed in the registered office of the company in a conspicuous place, as well as in branch offices, or places where the business of the company is carried on, until the display of the next statement. Every creditor or member of the company shall be entitled to get a copy of this statement on payment of a small fee not exceeding eight annas. Non-compliance entails a fine of fifty rupees for every day on the company and every officer of the company, knowingly and wilfully permitting same.

FORM G

(See Section 136)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES

The share capital of the company is Rs.....divided into..... ...shares of Rs.....each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth of June) were :—

Debts owing to sundry persons by the company;
Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or *hundis*, Rs.
On other contracts, Rs.
On estimated liabilities, Rs.

The assets of the company on that day were :—
Government securities (stating them), Rs.
Bills of exchange, *hundis* and promissory notes, Rs.
Cash at the Bankers, Rs.
Other securities, Rs.

ASSETS

In preparing the joint-stock bank balance sheets the assets are arranged on what is known among accountants and book-keepers as the cash or realisability order, the liquid assets appearing first, then the floating assets and next the assets of

more permanent nature. This is a small departure from the form of joint-stock companies other than banks, where the order of arrangement of assets is quite the reverse.

Cash.—The first item generally on the assets side is "Cash". This shows cash in hand, coins, notes, etc. with the bank, cash with other bankers in current account, cash with the Bank of England (or with the Imperial Bank of India or Reserve Bank of India), and demand loans at call and short notice is generally given as a day-to-day loan to stock-brokers and others, against which there is always a deposit of gilt-edged securities and the item is treated as cash. Some banks place this first item under the heading of "Cash in hand and at call and short notice".

Investments.—Here our Act wants the nature of investments to be stated with their mode of valuation, e.g. cost or market value. These consist mostly of Government of India Loans, War Bonds, Shares, Debentures of Public Companies, etc. It is the practice of all good banking institutions to show these investments at cost, or at market value, whichever is lower.

Loans and other Advances.—These are loans to customers either in form of a fixed loan, or an overdraft. They are, of course, advanced on proper security, in form of Government loans, shares, bills of lading, bills of exchange, life policies, mortgages, etc. When a fixed loan is given, a special loan account is opened in the customer's name, which is debited for the full amount of the loan and customer's current account is credited for the amount. In case of overdrafts allowed up to a certain amount only, a note is placed on the customer's current account to that effect. Interest as it falls due on this loan is debited to the customer's account and "Interest on Loan Account" credited.

These loans appear under the heading of "Book Debts" in the Balance Sheet and according to the special Form applicable to banking companies have to be shown as "Book Debts" distinguishing between those considered good and in respect of which the bank is fully secured and those considered good for which the bank holds no security other than the debtor's personal security, and also distinguishing between debts considered good and debts considered doubtful or bad. Debts due by directors or other officers of the bank or any of them either severally or jointly with any other person are also required to be separately stated.

With regard to advances separate amounts should be shown (1) for loans given to subsidiary companies, and (2) loans including temporary advances made at any time during the year to directors or managers of the bank.

Land and Building.—This item generally consists, for the most part, of Land and Banking Premises. The Form requires that original cost, less total depreciation written off, should be shown. In case of many first class banks the premises are written off, or shown depreciated, much below their intrinsic value and thus a secret reserve is created.

Acceptances on Behalf of Customers.—There are bills payable which have been accepted by the banks on behalf of its customers mostly under the arrangement that the latter would provide funds, wherewith the bills would be met at their due dates. The bank, as a rule, will only accept bills in this way against approved security, which generally takes the form of shipping documents, covering the goods represented by the bills. To take an illustration, supposing that a merchant arranges shipment in England from, say, one of the colonies, the colonial merchant is given a letter by the English banker, by which the colonial merchant is authorized to draw a bill up to a certain limit, within a certain period, which the English banker undertakes to accept and pay. This arrangement enables the colonial merchant to draw the bill and discount same in his own country, thus securing cash against his shipments. Here the bank incurs a liability for which the customer is the guarantor, hence this item appears both among the liabilities as well as the assets.

Bills Discounted.—This forms a very lucrative branch of local banking. As the bills cover the signature of more than one firm, they form a very safe type of security to deal in, provided the banker keeps himself in close touch with the fluctuating financial position of various businessmen within his sphere of operations.

Other Assets.—Under this heading items such as furniture, stationery, etc. are displayed.

LIABILITIES

Capital.—This item has to be shown on lines similar to those of other joint-stock companies. Under Section 136 of the Indian Companies Act, 1913 (corresponding to Section 108 of the English Act) a statement in accordance with Form G has to be prepared and hung up in a conspicuous place in the registered office of the Company, every first Monday in February and first Monday in August, showing the nominal capital, its division in shares, the number of shares issued, calls made, cash received as against them, showing details as to forfeited shares, if any, calls received in advance, etc. The uncalled capital forms a permanent guarantee fund which enhance a bank's stability. In many cases, under the banks articles of association, the whole or a large part of the uncalled capital can only be called up in the event of liquidation and when such is the case,

that much portion of uncalled capital is known as " reserve liability ".

Reserve Fund.– This is a fund created in the usual manner out of undistributed profits. In case of banks the same is invested in the first class securities.

Deposits.—These will be either current account deposits, or fixed deposits, and should be shown separately. The total of these two types of deposits will give the total liability of the bank to its customers, which usually runs into figures many times the amount represented by the capital of the bank.

Other Items.—Provident funds, pension funds, etc. for employees follow here, as also the item of unclaimed dividends. The next item is the " Acceptances for Customers " which has been already dealt with, as appearing both on " assets " as well as " liabilities " side.

Profit and Loss Account.– This represents the balance of profit available for dividend less actual dividends paid during the accounting period.

Contingent Liabilities. –This item is shown on the balance sheet of banking companies in order to comply with the requirement of Form F. They may include unpaid balance on shares bought as investments, claims against bank not acknowledged, arrears of cumulative preference dividends, etc. the item is shown only by way of a note in the body of the balance sheet and is not brought out in the amount column, as it does not represent any accrued liability.

CHAPTER XVIII

INDIGENOUS BANKING

THE BANKING STRUCTURE IN GENERAL

Indigenous banking, as distinguished from pure money-lending, is mostly confined to members of certain well-known castes of Hindus, such as the Marwadis, the Jains, the Multanis, the Nattukkottai Chetty, etc. These are mostly family concerns, and in some cases have become a hereditary calling. These indigenous bankers are located at different centres in villages and towns. In villages we have the village banker who lends money to the people as well as sells corn and seed to the cultivators. They do not generally deal in instruments like *hundis* and cheques, though they receive deposits from their clients in small amounts. The rate of interest charged by these village bankers is very heavy, and some times exacting, but the advent of the co-operative credit society has in a very large way kept this tendency within bounds. The high rate of interest is, no doubt, made compulsory through the unsatisfactory nature of the security which an average Indian villager is in a position to offer, not only due to poverty, but also to the peculiar nature of the country which is mostly dependent on its agricultural output and where crops entirely depend on the vagaries of the monsoon. In certain villages these bankers have to keep their money idle for nearly half the year, which is one more reason why they are driven to the necessity of charging higher interest with a view to make up for the loss so entailed. These indigenous money-lenders have also, in certain number of cases, to keep their money locked up on fixed loans for a long period against security of land, jewellery, etc.

The Deposits and Cheques.—The deposits with these bankers are not generally very large, for the simple reason that banking has not spread in modern India on anything like the footing on which it has in Western countries. These bankers frequently honour cheques, or *hundis* payable on demand, to those of their clients who keep a current account with them. Western banking, no doubt, depends largely on additional money received by it in deposits, but the indigenous banker has mostly to rely on his own capital and accommodation, or loans, received by him from his brother bankers. Some indigenous banks issue cheque books and pass books. The cheques are in vernaculars, but having no inter-relation with joint-stock banks, these cheques are cashed more on the footing of *hundis* payable on demand than as cheques dealt with in course of clearing. There is much room for the expansion of indigenous banking, if efforts are made in a proper manner to induce

people to cultivate banking habits, thereby facilitating commerce and industry as well as bringing about the most desired expansion of indigenous banking. There are no class of people better qualified than indigenous bankers to take up this work of great national importance in connection with villages and outlying stations, as they demand the advantage of being in close personal touch with the clients, the advantage which no branch manager of a joint-stock bank can ever aspire to. In case of deposits the depositors give sufficient notice before withdrawing. There are some *shroffs*, or indigenous bankers, who do not receive deposits from all and sundry, but restrict these operations among their personal friends.

Combination of Banking and Trading. A good proportion of these indigenous bankers particularly in the interior of India, are also traders. They carry on a variety of businesses side by side, their banking business ranging from that of grain dealers to jewellers, industrialists, etc. A number of business firms also do banking business as a side line. This peculiarity seems to prevail among bankers of almost all the Indian provinces, a tendency which seems to be on the increase due to the growing competition of joint-stock banks in the mofussil. In centres around Bombay and Central India, they deal largely in cotton and seed, or act as commission agents and flourish both as bankers and traders. If one were to search among them for those who confine themselves strictly to banking business, he would find them among the Natukkottai Chettis and Multanians. The former are exclusively bankers, whereas the latter restrict their operations to dealings in *hundis*.

Financing of Internal Trade.—A large number of these bankers remit money from place to place through the medium of *hundis* which are strictly speaking inland trade bills. Some of them act as *shroffs* and discount *hundis* either directly with the merchants, or through *hundi* brokers, thereby advancing money on them. These *hundis* are freely rediscounted by *shroffs* at the bazar rate, particularly when the bazar rate is high. Thus internal trade is very largely financed through the medium of *hundis*. These *hundis* communicated by the *shroffs*, are very rarely dishonoured with the result that they circulate freely. Besides this, there are well-known *shroffs* and bankers who purchase *hundis* at a high rate of discount for ready money, and rediscount same with the Imperial Bank, who are prepared to advance money on those endorsements. Virtually speaking, these operations of important *shroffs* are more or less similar to those of the large bill-brokering or discount houses of London, who borrow the surplus day to day fund of the London Money Market and use same along with their own capital for the purpose of their business. In Bombay, the most prominent indigenous bankers doing this type of business are

the Multani *shroffs*, who command considerable credit and reputation for astute banking knowledge, so much so, that when the Multani refuses to discount a *hundi* the same is treated as a danger signal by all market operators. These Multani bankers are banded into an association with a view to regulate their rate of discount in accordance with the fluctuation of the Bank rate. These *shroffs* and indigenous bankers seldom deal in foreign trade bills. They make a speciality of the *hundi* or the indigenous bill.

The Financing of Crops.—The indigenous bankers play a very important part in the financing of crops all over the country. The village trader, in case of less enlightened villages, lends money on the growing crop and ultimately purchases same himself. He then sends out the surplus, after keeping a portion of the produce for sale locally, to the town to a trader who is also a banker. From here the produce is sent out to outlying centres and *hundis* are brought into play. In case of more enlightened villagers, who have not borrowed from the village trader, the produce is sent to the town to the exchange marts, otherwise known as *Mandis*. Here the produce is purchased by a variety of persons such as merchants from towns, their buying agents, and indigenous bankers who are either buying for their clients or themselves. Purchases are generally made here for cash, as the villagers prefer that form of payment.

The Large Type of Banker. The large type of indigenous bankers such as the Marwadis, the Jains and Chetties have offices and branches all over the country, particularly in important centres like Bombay, Calcutta, Madras and Delhi. Some of them even keep correspondents outside India in places like Africa, Aden, Abyssinia, and even in Europe, Japan and China. The Chetties are said to be the cleverest of all the indigenous bankers in India in spite of the fact that they generally are not educated on modern lines. They possess considerable banking acumen, for the simple reason that they are associated from early childhood with the business of banking which their family members have been carrying on for generations. The whole family generally works as one unit in connection with the business of the firm, and the incentive to increase the family fortune is a great element in bringing about efficient results. They are most reliable as bankers and are frequently trusted with large sums of money, without security, by other bankers of their own caste. The other caste mostly resembling this type is that of the Marwadis of Western India who are equally competent and whose banking acumen is also hereditary.

These bankers are mostly associated together in *Mahajans* or similar institutions. In Bombay they have the Bombay Shroffs' Association, the Marwari Chamber of Commerce, the

Multani Bankers' Association, etc. Joint meetings of these bodies are frequently held to discuss and deal with the problems of their business. In Ahmedabad they have the Ahmedabad Shroffs' Association and there is also the Shikarpuri Shroffs' Association whose membership is made up of the Multani bankers.

Financing of Goods and Industries.—In connection with goods also the local shopkeeper either borrows from the village banker in order to buy the goods, or by depositing certain amount with bankers, orders out the goods through them. The bankers here finance the shopkeeper through honouring *hundis* drawn upon him, or by credits in account for a period. Here the banker makes additional income by charging commission or brokerage on each deal.

In this connection it may be noted that in case of goods imported from foreign countries, the exchange banks play a very small part. These imported goods are simply handed over to the dealers on payment in cash and the indigenous bankers provide the finance. Generally, these bankers or *shroffs* take up these goods on account of merchants in the mofussil by paying for them in towns like Bombay or Karachi and recover same after delivery.

Besides advancing money to the local cottage industries and small factories, the large types of indigenous bankers are also lending money on deposit to the mill industry, particularly cotton textile. Here they frequently arrange with the managing agents to secure a share in their commission in addition to interest as a condition precedent to deposting a fairly large amount.

INDIGENOUS BANKERS IN THE PRESIDENCY OF BOMBAY

How to Link Indigenous with Modern Banking.—This question has been of late agitating the public mind and various Banking Committees have been inquiring on same. The idea is to arrive at some formula by which the indigenous bankers' status may be authoritatively recognised and his knowledge, experience and resources effectively taken full advantage of to the best interests of the country. The Bombay Provincial Banking Inquiry Committee in its Report (Para. 265, Vol. I) admits the

"desirability of recognising and adapting it to present day conditions so as to make it a part of a national credit system."

It further adds that :—

"It seems, therefore, desirable to take advantage of the agency of indigenous bankers by linking them up with the Central Banking Institution (i.e. the Imperial Bank of India) in some suitable manner."

The principles which they lay down may be quoted in their own language as follows :—

"We are of opinion that the agency scheme should be introduced tentatively at selected places where there is no organised bank, either joint stock or co-operative, that the *shroff* nominated as agent of the central banking institution should receive funds from it to be employed by him at his own risk in making advances within sanctioned limits and subject to such general conditions as may be prescribed by the bank, at a rate of interest not exceeding 2 per cent over the rate charged by the bank. The agent should do no business other than banking and so long as he undertakes to bear losses, if any, he should not be prevented from doing his own private banking business, but he should not make use of the bank's advances for his private business. He should lodge with the bank gilt-edged or other acceptable securities of amounts that might be mutually agreed upon, keep separate accounts of the business done on behalf of the bank and maintain regular account books which should be available to the bank for inspection and audit. The arrangement may be made in the first instance for a fixed period and may be renewed from time to time. We are further of opinion that in the selection of agents a syndicate of *shroffs* should be given preference to a single *shroff* or a firm of *shroffs*. Such combinations would have the prestige of regular banks, would inspire confidence in their strength and stability and would receive better facilities than single firms."

POSITION AND FUNCTIONS

"If the indigenous bankers are encouraged to increase their activities under the proposed scheme, the central banking institution would be able to discharge its obligations to supply banking facilities in such areas through the instrumentality of an agency which would be more economical and effective than a branch in reaching the people in the mofussil and providing the link necessarily to connect the central banking institution with the indigenous agencies now financing towns and villages."

In Bombay Presidency, according to the report of the Bombay Provincial Banking Enquiry Committee, 1929-30, Para. 254, Vol. I, there were as ascertained by the census of 1921, 26,303 people engaged in banking business, i.e. including bankers, money-lenders, exchange and insurance agents, money changers, brokers and other employees. These included 2,847 women. The indigenous bankers of this Presidency perform all the functions of the other banks, such as receiving of call money, fixed deposits, keeping of current accounts, making payments on the accounts of the holder personally and honour written orders conveyed by letter, Loans are advanced on security or on personal credit by them, either on overdraft on current account, or as call money, for their short or long periods. They discount *hundis* and carry on a large amount of inland exchange business through a net work of offices and agencies. Their special characteristic is that they come in close personal touch with the customers, whose family history and financial position is very well known to them. This was exactly the case with private bankers in England, which enables as it did the English private banks, to build up deposit banking in

large way by encouraging banking habit among the rank and file of other customers. On this foundation the structure of English joint-stock banking was raised, which is now flourishing, in spite of the fact that the branch manager who has replaced the private banker has deprived the banking business of the advantage peculiar to this personal touch. The indigenous and modern banking happens to differ in this presidency, as well as in others, inasmuch as they combine trading with banking. The other drawback is that they carry on business and keep their accounts on the orthodox system, which, though simple and economical cannot permit of the expansion of business on large lines, even where possibilities are present. At one time these bankers went to the length of obliging their clients by doing business at any time of the day, and even after sunset or till midnight, but nowadays in centres like Bombay, Ahmedabad and Karachi, business is restricted up to sunset only. The loans advanced by these indigenous bankers in this presidency generally carry interest at the rate of six to eight per cent.

Methods of Advancing Loans in Bombay Presidency.— Loans are advanced on *Chalu Khatas*, i.e. on current accounts. These *Khatas* are generally open for inter-*shroff* transactions and are liable to be repaid on demand. The *Chalu Khatas* are also maintained for private customers. When the loan is to be delayed, and not repayable immediately on demand, the account opened is said to be *Khatapeta*.

If, however, the money is borrowed for a period which varies from a fortnight to a year, and interest is paid, the account is known as *Byajbadala* or *Miyadi Khata*. Temporary loans given free of interest for a day or two and without taking promissory notes or receipts, generally an inter-*shroff* transaction, is known as *Hathudhar*. Besides this money is lent on *hundis*, promissory notes, railway receipts, etc. The *shroffs* do not generally deal in mortgage of immoveable property.

Besides dealing with the brother *shroffs* and town and village money-lenders and traders, the *shroff* also finances cottage industries and other small industrial concerns such as rice factories, flour mills, silk and cotton industries, gold thread industries, etc. The financing of the agricultural produce is done by the *shroffs* through the medium of *Sowcars* and money-lenders. These *Sowcars* borrow money from the *shroffs* and lend out this borrowed money, plus their own capital, to the village trader who happens to be also a money-lender. This trader advances money to the cultivator on the crop for seeds or other purposes of agriculture. When the crop is ready the agriculturist sells the surplus to the trader in the town, after retaining a portion of the produce for consumption of the

village. This is done through the help of finance provided by the *shroffs* through the circulation of *hundis*. There are also villagers who are not so dependent upon the money-lender who bring the crop to *Mandis* or Exchange Marts, for sale, where buyers from towns and other places are present to purchase same with the help of indigenous finance or other arrangements, the dealings with the agriculturists being of necessity in hard cash.

Procedure of Finance by Shroffs.—According to the Bombay Provincial Banking Inquiry Committee's Report, 1929-30 (Para. 161, Vol. I), the procedure followed by the *shroffs* in connection with their finance is as follows :—

"The advance by the *shroff* is made either in the form of a loan or *Khata* account, or by discounting *darshani hundi* accompanied by railway receipts. In most cases the *shroff* acts as a commission agent also. He pays in advance to his constituent from 75 to 90 per cent of the value of the goods against railway receipts, the balance being adjusted on sale of the goods. The value of the purchase of one consignment is set off against the sale of another through the same *shroff*. The advance by banks, whenever given, is against a promissory note or pledge of goods. Advances are not given freely by the banks against railway receipts. It is necessary that respectable merchants should receive accommodation against railway receipts for goods.

"The negotiable instrument commonly used for the settlement of accounts is the trade bill or *hundi*—mostly *darshani hundi*, which is payable on demand, but for the payment of which a few days' grace is often allowed at some places. The purchaser makes payment by purchasing in his own town *hundis* payable at the place of the sender, but if such *hundis* are not available, he secures and sends the seller *hundis* on Bombay where every merchant has business connections. While in some cases, the *hundis* represent real movement of crops, in several cases they represent loans given to the merchant or trader by the indigenous banker. Similarly, the *shroff* finances the seller by advancing certain percentage of the value of the goods. Godown facilities are sometimes available in gins and presses. Trade bills drawn by sellers on buyers are in use. Acceptance credit for the purposes of internal trade is not developed in the Province. It would help the individual trader considerably if his bills in respect of good outstanding accounts were really discounted and converted into cash as is done in other countries.

"As regards movement of articles of export, other than agricultural produce, there are few industries in the Province producing manufacturers' goods for export. What little export there is, such as that of gold thread, mill piecegoods, hides and skins, and oil-cakes, is generally financed by the shippers. Where consignments are sent on the manufacturer's or trader's account, finance is provided mostly by the indigenous bankers, also in a few cases by the Imperial Bank of India, or other joint banks up to the port."

The Shroffs and the Accommodation they Receive.—The *shroffs* in their turn, as we have already seen, borrow their additional capital from the joint stock bank, as well as from the Imperial Bank, by discounting the *hundis* or promissory notes with their endorsements. The Multani *shroffs* get the largest accommodation from the Imperial Bank in connection

with the rediscounting of *hundis* in this Presidency. Those *shroffs* who are on the approved list of these banks receive accommodation up to certain limits at the ruling rates of interest. They generally get their advances on demand promissory notes, signed at least by two of them, or one *shroff* and one merchant. Accommodation is also given on *hundis* drawn on merchants with the *shroffs* endorsement. The period for which this accommodation is given is usually sixty days. In the city of Bombay itself, the *shroffs* also rediscount bazaar bills, which they have either received as security on advances, or have otherwise acquired.

Warehouse Facilities.—It is further added by the Bombay Provincial Banking Inquiry Committee in their report that warehouse accommodation is badly needed, as the mercantile community was averse to pledging its stocks with banks. The Committee recommends licensed warehouses in the interior of the country, the warrants of which can be freely transferred to banks and *shroffs* as security. In this connection it may be added that the same difficulty is experienced in Bombay and Ahmedabad, with reference to financing of the stock, both manufactured and in form of raw commodity, in case of the cotton textile mills. The managing agents here have to purchase the whole of their requirements for the year during the season which locks up a large proportion of their floating capital. They are much pressed for want of capital, particularly when the manufactured stock gets accumulating during periods of market depression. They cannot pledge same with banks and *shroffs* by mortgaging their godowns for fear of losing their credit with their depositors. It may be mentioned here that under the managing agency system the cotton mills of the Bombay Presidency are largely formed with much less capital than the normal requirements even of the fixed assets. This deficiency is being filled up by calling on the public to deposit moneys on loan for fixed periods at attractive rates of interest for this class of investments. It can be easily noticed that under the circumstances a run on part of the depositors would mean a serious situation. It is therefore urged by many authoritative writers, and numerous experts, that licensed warehouses on the footing of those existing in America and Japan, should be opened preferably with State guarantees, and under State supervision, where this stock could be kept and warrants issued as negotiable documents on the deposit of which advances can be readily granted by the banks.

Indigenous Bankers' Grievances.—The principal grievances of the indigenous bankers, according to the Report of the Bombay Provincial Banking Inquiry Committee, 1929-30 (Para. 264, p. 208, Vol. I), are that :—

"The Imperial Bank and even the Indian joint-stock banks do not accord to them the recognition due to them as bankers who finance and control the bulk of the trade and industry of the country. They think they are entitled to the same facilities and concessions as are given to banks by the Imperial Bank for inter-banks business and remittance. They resent the manner in which inquiries are made in the Bazaars by the Intelligence Department of the Imperial Bank and the other banks concerning their credit and position and they see no reason why they should be asked to give joint signatures of sureties for accommodation given to them, when other banks are financed without any such humiliating limitations. There is no question that these traditional bankers have cause to be dissatisfied with the position in which they find themselves placed in the modern banking organization of the country. From the bank's point of view, it may be urged that if the indigenous bankers are not treated with the same consideration that is due to them as bankers, it is because it is difficult to distinguish a genuine banker from a trader or a commission agent or a broker, and to ascertain definitely his financial position."

It will thus be seen that the only difficulty that happens to lie in the way is that some of these indigenous bankers are combining trading with their banking business. There are, however, a large number of *shroffs* who do not combine trading with banking. In their case there should be no difficulty in arriving at a formula for recognition, and it is hoped that some solution will be evolved by a conference of both the parties interested to the advantage of all concerned.

INDIGENOUS BANKERS IN BENGAL

A Special Form of Evolution.—According to the Report of the Bengal Provincial Banking Inquiry Committee 1929-30 (Vol. I), there are few indigenous bankers in Bengal who carry on banking exclusively and almost all combine trading wholesale or retail, with their business of banking. In the opinion of the Committee, this combination of banking with trade has ever existed from the days of early banking in India and that such combination is not unsound, but it is in their opinion a special form of banking evolution suitable to the conditions of the country. This mixed business is mostly done in the mofussil in absence of other banking institutions in competition. The only objectionable feature happens to be that these bankers do not keep separate account for these two branches of their business, but mix them up. Most of these indigenous bankers in Bengal are Marwadis and other castes of the Hindus. They also take deposits, but the largest proportion of the bulk of the capital used, as in case of indigenous bankers of the provinces, is furnished by themselves. Here also, for reasons which we have already stated elsewhere, surplus cash remains idle during certain period of the year in the hands of the indigenous bankers which they generally invest in treasury bills or other forms of Government securities.

The method of lending money to the agriculturists in the villages and the negotiating of *hundis* is, more or less, similar to the mode of dealing in the Bombay Presidency. The same is the case in connection with small industries in the mofussil. We shall however deal with this a little later.

Deposits.—At one time, receiving deposits was a very important part of the business of Bengal indigenous bankers, but this branch of business seems to have considerably suffered for various reasons. The competition of joint stock banks with their modern methods is no doubt one of them, particularly in centres where these banks and their branches are located. The other competitor in outside locations is the co-operative bank and lending corporations in Bengal Presidency known as "loan offices". These loan offices are a peculiarity of Bengal. They are joint stock companies registered under the Indian Companies Act of 1913, and are mostly managed by Bengalees. They attract deposits, though their working capital is not very large in each case. They carry on side businesses, besides that of banking and money-lending, such as motor transport. The present high rate of interest paid on Government borrowing is also said to be one of the causes which have tended to reduce deposits with these indigenous bankers. These Bengal indigenous bankers do not issue pass books like bankers in the other provinces who receive deposits, etc. do. The Banking Inquiry Committee of this province strongly recommends them to issue pass books and grant receipts in proper form, acknowledging payments either in full or part of the loans, with a view to inspire public confidence and secure stability. They also recommend standardisation of credit instruments in use in order to help the increase of discount facilities.

Internal Trade and Finance.—The most important branch of business of these indigenous bankers is the financing of internal trade through the medium of *Hundis* or *Purjas*, or entries in account books called *Hatchitas*, *Khatapetas* and *Khatamitics*. These are mostly commercial loans given on personal credit. The method of finance by these indigenous bankers in Bengal, particularly in Calcutta, happens to be lending of money to the merchants who go into the interior for purchasing the produce, as well as to local warehousemen, with a view to assist the movement of commodities which are imported from outside by means of bills of lading and railway receipt. In other words they help by making these advances, generally on personal credit to the merchants, for purchasing either the imported goods for distribution in the interior, or for gathering local products for export. As the loans are generally granted on personal security, dealings are confined mostly with the most trustworthy of the men and recovery is made by the

borrower remitting the whole of his daily sale proceeds to the banker to be credited to the running account; this system of accounting is called " Khatamiti ".

A small business is also done on advance of money on pledge, on jewellery and mortgage of land. Loans are also given to the approved customers on promissory notes without security, or on guarantee of a third party.

Credit for Internal Trade.—In case of imported goods, the financing is done by large merchants who either buy them at centres like Calcutta, or import on their own. The mofussil buyers buy either from Calcutta or from branches of some of these large merchants on credit paying interest. These large merchants possess their own capital and resources and when extra facilities are required borrow from the indigenous bankers on a *hundi* or *purja*. The same system of credit prevails in case of agricultural commodities such as that brought from the provinces to centres like Calcutta, Chittagong and Narayanganj, and distributed all over the interior. The method of finance in the act of bringing these commodities to the central places and ports is similar to that dealt with in case of Bombay Presidency.

The Hundi in Bengal.—The *hundi* or the interal bill of exchange is the chief instrument of credit. Here also, as in other provinces, they are either *Darsana Hundis* or Usance Bill called *Mudati hundis*. These *hundis* pass freely from hand to hand and are freely rediscounted when presented by approved customers. The *Sahjog hundi*, *Dhanijog hundi* and *Jokhami hundi* are also used. The rate of discount in connection with this *hundi* known as *hudiana* varies from 4 to 18 per cent according to the pressure on the money market. The *hundis* are used for (1) raising of loans, (2) purposes of financing trade, and (3) for remittance of money from one place to another.

One other instrument used is *Pujra*, which means a written request addressed to the lender and signed by the borrower to pay the amount mentioned in the instrument. This *pujra* is stamped with a one anna stamp and it acts the part of an acknowledgment of debt. It also contains a rate of interest which is payable and is issued for temporary loans, i.e. for periods not exceeding three months.

Just on the same footing as in Bombay, the indigenous bankers of Calcutta rediscount with the Imperial Bank, and even have relations with the exchange banks, as well as the joint-stock banks in that city. According to the Provincial Banking Inquiry Committee's report, the total value of *hundis* discounted by the Imperial Bank of Calcutta during the year ending 31st March 1929, was approximately Rs. 14,10,00,000 as against the total amount of the whole of Bengal of Rs. 15,20,00,000.

MADRAS INDIGENOUS BANKERS

The Nattukkottai Chetty.—In the Presidency of Madras, the most prominent community which controls the indigenous banking business is one known at Nattukkottai Chetty. There are, of course, the Multanis, the Marwadis and some Brahmans, who also do this business. The peculiarity of indigenous banking in Madras is particularly interesting in connection with the organization of indigenous banking as controlled by the Nattukkottai Chetties. These Chetty bankers do a large business in receiving deposits, on which cheques are allowed to be drawn. The rates of interest they allow on these deposits are rather attractive while compared with those of the joint-stock banks. Their peculiar advantage is that they are most intimately in touch with their own clients, their banking experience and knowledge is hereditary and they are respected for their high integrity. The capital, which is reported to be invested by these Chetty bankers in the province of Madras, is estimated, according to the Madras Provincial Banking Inquiry Committee, at about fifty crores of rupees, the deposits are estimated at about twenty-five crores of rupees. This estimate is not in any way exaggerated because a much higher figure is put forward by others say, to about eighty to ninety crores of rupees in cash, fifteen to twenty crores in house and other property and about five crores in jewels.

The Chetties have a peculiar system of training their branch managers, or agents, through the medium of apprenticeship coupled with an agreement to serve their masters after they complete their education. They are then sent out in charge of the branches and agencies in different centres.

The business to a certain extent consists of discounting trade *hundis*, giving loans either on a single signature, or on joint security of more than one. They also lend, though on a small scale, on mortgage of produce, goods and immoveable property. Hundis such as *Darsan hundi*, *Nadappu Vaddi hundis* and usance *hundi* payable at fixed periods are used by them. They do not now lend largely on produce, but advance money to a small extent to agriculturists on land and promissory notes.

Multanis in Madras.—A small number of Multanis from Shikarpur do business in Madras as intermediaries between merchants and joint-stock banks. They also advance money to the agricultural and other producers in busy season, and borrow on short terms from joint-stock banks, principally from the Imperial Bank, but generally rely on their own personal resources. They take small deposits on current account to be repaid on occasional demands according to arrangements.

The Marwadis also are carrying on a flourishing business in towns in Madras, and that too on a large scale. They advance money on produce, ornaments, pro-notes, *hundis*, mortgage, etc. but do very little financing in connection with the small industries in this presidency. The rates of interest charged by them is from nine to twelve per cent on mortgages, twelve to fifteen per cent on produce, and twelve to eighteen per cent on promissory notes. On drafts and accommodation *hundis* they charge a commission of eight annas per cent. They do not finance the large industries in the province of Madras to any extent. They help the finance of produce by lending to merchants who in their turn deal with ryots and lend on *hundis* drawn for financing of produce.

Kallidaikurichi Brahmins.—This community's headquarters is Kallidaikurichi in Tinnevelly District and they operate in southern districts, chiefly Madura, Ramnad and Tinnevelly. Current accounts are used by them for borrowing, which is said to be as large as their capital. They do most of their business in advancing on *hundis* which they discount at nine to twelve per cent. They also give loans at from nine to fifteen per cent. They also buy and issue drafts on their private indigenous bankers in the Presidency of Madras.

PART PLAYED BY THE INDIGENOUS BANKERS

Internal Finance.—In connection with the internal finance, it must be admitted that, were it not for the presence and activity of indigenous bankers, considerable difficulty and impediment would ensue, as there are no banks worthy of the name which are prepared to give financial accommodation to a large number of the population outside the towns, and particularly in the mofussil villages and outlying centres. Not only the outside exchange banks but also the Indian joint-stock banks do not take a direct hand in the financing of agriculture, which is unfortunately at present the principal source of wealth of this large continent. The Indian joint-stock banks at present happen to be in a hopelessly inadequate number, due to the powerful competition of outside exchange banks in large towns. There is however a large field for operation open to them in the mofussil where they can with adequate organization render considerable service. The idea of making the Imperial Bank open out two hundred branches originated through want of facility for finance in outlying centres through medium of our Indian joint-stock banks. This factor has now become an impediment in the progress of Indian joint-stock banking because it is now argued that competition with the local branches of the Imperial Bank in mofussil centres is unequal for them. These Indian joint-stock banks have also failed so far in building up proper relationship with the indi-

genous bankers as one should like to see. It is estimated that the agricultural indebtedness itself of India, seventy-three per cent of whose population is engaged in agriculture, is about six hundred crores. Considering this large figure, it will be seen with a great part the indigenous banking, which largely deals in agriculture credits, must be paying in this direction, making fair allowance for co-operative societies, which are also taking a large hand in this branch of business.

Assistance to Mill Industry.—A large number of these indigenous bankers, particularly in Indore, Bombay, Ahmedabad, Calcutta and other industrial centres make deposits for fixed terms with mill industry and thus play a very important part in the financing of this industry. As we have already seen, the Indian mill industry in cotton textiles is largely financed by deposits, because the share capitals of these mills are generally grossly inadequate for the purpose not only to answer the requirements of floating assets, but also for that of block capital. Only very recently we had the case of a large mill in the mofussil, whose share capital is about eight lacs of rupees, whereas the whole concern was worth about two crores. The bulk of this extra capital is made up of deposit money received from private individuals and indigenous bankers or *shroffs*. Many of these indigenous bankers of *shroffs*, in consideration of lending money to the mill agents, receive a share in the agency commission, over and above the usual rate of interest allowed to other depositors. This tendency is prominent in connection with the mofussil mills. The rate of interest here earned is between seven to nine and a half per cent, according to the condition of the money market. It is unfortunate that these bankers do not arrive at an understanding by which they could lend money to these mills on the security of their raw materials, like cotton, as well as their finished goods, because that would help this industry considerably to provide the floating capital, at the same time the loans would be for a shorter duration instead of being locked up in fixed deposits of long terms. Of course, there is a prejudice among mill agents in centres like Bombay, for borrowing on goods by mortgaging their godowns, as we have already remarked elsewhere, but in the mofussil centres this is being done freely, with the result that banks like the Imperial Bank of India lend money to the mill industry on cotton as well as finished goods.

THE BRITISH PRIVATE BANKS AND INDIGENOUS BANKING

Possibility of Indigenous Banking.—Indigenous banking should expand and even be able to compete in certain branches with joint-stock banks if its organization is sufficiently modernised. The economy in method of working as well as

their integrity and hereditary talents are no doubt very valuable assets. Added to this, a little training on modern lines among the children of these bankers and there is no doubt that they would be able to improve and expand our Indian private banking. The growth and development of banking in England as well as in other European centres, are examples in point. As we have already stated, the English private bankers of the 17th century were in a position similar to that of our indigenous bankers. Their business went down from father to son in the family for generations. Even the office staff of these private bankers was more or less hereditary, and closely attached to the business of their masters, with the result that the early English joint-stock banks found it very difficult to obtain a footing, in competition with these private English banks. They could not even get experienced directors or managers in their early days, because experienced men had family traditions and sentimental attachments with some particular private banking house which was not so easy for them to break. These private bankers flourished as stubborn rivals of joint-stock banks until a very recent date. They were not eliminated by these joint-stock banks, but were gradually absorbed by amalagmations, through lucrative business treaties, whereby the heads and the staff of these private banks were transferred to their joint-stock sisters as directors, branch managers and clerks. One distinct service they rendered was to bring about the expansion of banking habit among the people of England, particularly those in the country side and the villages, which the joint-stock banks could never have succeeded in doing. The private banker, owing to his intimacy with his customer, formed through a long-established personal touch for generations, was in a peculiar position which helped him to bring about that happy result. India has a great opportunity in this direction, if the indigenous private banker is protected and encouraged by proper legislation and other assistance. Of course spread of education among the younger generation of the communities principally engaged in indigenous banking is most essential. There is no need for them to go in for University degrees, or even to be trained through the medium of European languages. Practical banking education in their own language vernaculars would produce much better result.

Cultivation of Deposit Banking.—The impediment in the ways of deposit banking, as far as indigenous banks are concerned is that a large number of transactions in which the indigenous banker has to deal are made up of long term credits, whereas the current account deposit imposes on them the burden of repaying the money on demand. A little education in connection with organization on modern banking methods, would no doubt enable them to get over this difficulty in the management of their finance. The encouragement of

current account deposits is a very necessary ingredient in the development of a perfect banking system in any country. We believe that the strengthening of the position of the indigenous banking in India would, in course of evolution, held the strengthening as well as the multiplication of our Indian joint-stock banking in spite of good many disadvantages under which they at present labour.

Standardisation of the Hundi.—The other direction to which attention should be focussed is that of unifying the *hundis* by standardising them into a very limited number of types or classes. We should do away as early as possible with the confusing variety of the *hundi*, each with a series of conflicting customs and practices attached. Associations like the Shroffs' Association can no doubt effectively help the country's finance by bringing about some sort of workable standardisation here through a treaty between the different organizations concerned. The education of the borrowing fraternity and the village community in the art of dealing in current account deposits can effectively be spread and improved upon through the efforts of our indigenous bankers, due to their close relationship with the local rural population.

APPENDIX I

BANKING FORMS AND PRECEDENTS

SIX-MONTHLY STATEMENT

*** Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident, or Benefit Societies**

The share capital of the company is Rs. divided into shares of Rs. each.

The number of the shares issued is Calls to the amount of Rs. per share have been made, under which the sum of Rs has been received.

The liabilities of the company on the thirty-first day of December or (thirtieth of June) were —

Debts owing to sundry persons by the company —

Under decree, Rs.
On mortgage or bonds, Rs.
On notes, bills or *hundis*, Rs.
On other contracts, Rs
On estimated liabilities, Rs.

The assets of the company on that day were :—

Government securities (stating them), Rs
Bills of exchange, *hundis* and promissory notes, Rs
Cash at the Bankers, Rs.
Other securities, Rs.

Note.—If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

AGREEMENT TO HYPOTHECATE GOODS TO SECURE FIXED LOAN

No.

.....194 .

To The Manager,
POPULAR BANK OF INDIA,

Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs. I/we hereby agree to hypothecate and hold under lien to the Bank as security for the repayment†
of the said loan with interest thereon at %.

The goods so to be held by me/us under lien to the Bank I/we declare to be my/our absolute property, and to be stored in my/our godown at

I/We hereby agree to furnish you at the close of business on the last day of each so long as any money remains due in respect of the said Loan a full and correct statement of particulars of all goods so held under lien to the Bank, with the market values thereof respectively on that day.

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* Form G., Indian Companies Act, 1913, under Section 136. To be published before commencing business and also on the first Monday in February and the first Monday in August in every year and a copy displayed in a conspicuous place in the registered office as well as every branch office or place where the business of the company is carried on.

† Insert "on demand" or "on the 19 ."

All goods from time to time held by me/us under lien to the Bank in terms of this Agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any Company, firm or person on the security of such goods or of any other goods stored in the same godowns in such a way that such other goods may be mixed with the goods held under lien to the Bank, nor shall I/we do any other act by means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/we am/are at liberty from time to time in the ordinary course of business to sell all or any of the goods from time to time held under lien to the Bank under this Agreement, PROVIDED THAT no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank *plus* the margin of per cent. In case of any sale of any goods held under lien to the Bank reducing the value of the goods held under lien to less than the amount of my/our said debt to the Bank *plus* such margin the proceeds of such sale, as soon as the same are received, shall be paid to the Bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/us on this security.

I/We empower you or anyone from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the Bank under this Agreement shall be from time to time stored for the purpose of inspecting and taking an account of the said goods

I/We further empower you or anyone authorised by you as aforesaid, so long as any money advanced by the Bank under this Agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this Agreement, and of any Promissory Notes or Bazaar Chits held by me/us in respect of any of the said goods which may have been sold on such manner as you may think fit, and on so taking possession to exercise on behalf of the Bank all the rights of a Pawnee under the Indian Contract Act, and failing payment of the amount due under this Loan*
to sell and realise the said goods and Promissory Notes or Bazaar Chits. No notice to me/us of such sale shall be necessary, and I/we hereby agree to waive any such notice I/we agree to accept the Bank's account of such sale signed by the Manager, Accountant, or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by and the charges and expenses in connection with such realisation, and I/we hereby further agree to sign all documents, furnish all information, and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any Promissory Notes or Bazaar Chits of which you shall so take possession.

I/We undertake to keep all goods held under lien to the Bank under this Agreement insured against fire to their full value, and to produce to and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan It shall be optional for, but not obligatory on the Bank to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods so held under this Agreement shall extend to any other sum or sums of money for which I/we or any or either of us either separately or jointly with

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* Insert " when called or " or " on ."

any other person or persons may be or become indebted or liable to the Bank on any account.

DETAILS OF SECURITY ABOVE REFERRED TO.

PLEDGE OF GOODS TO SECURE A DEMAND CASH CREDIT

No.

Amount

Name

THE POPULAR BANK OF INDIA (hereinafter called " the Bank ") having at the request of (hereinafter called " the Borrowers ") opened or agreed to open in the Books of the Bank at a Cash Credit Account to the extent of Rupees with the Borrowers to remain in force until closed by the Bank and to be secured by goods to be pledged with the Bank IT IS HEREBY AGREED between the Bank and the Borrowers (the Borrowers agreeing jointly and severally) as follows :—

1st—That the goods described in general terms in the Schedule hereto which have been already delivered to and the goods which shall be hereafter delivered to the Bank under this Agreement whether for the purpose of forming additional security for any sum already drawn or as security for any sum or sums to be drawn against the said Cash Credit Account or by way of substitution for and in lieu of any goods which may from time to time have been delivered or may be delivered the Bank under this agreement or otherwise howsoever (hereinafter called " the Securities ") are hereby pledged to the Bank or are deemed to have been so pledged as security to the Bank for the payment by the Borrowers of the balance due to the Bank at any time or ultimately on the closing of the said Cash Credit Account and for the payment of all debts and liabilities mentioned in the 11th Clause hereof. The expression " the balance due to the Bank " in this and the subsequent clauses of this Agreement shall be taken to include the principal moneys from time to time due on the said Cash Credit Account and also all interest thereon calculated from day to day at the rate hereinafter mentioned and the amount of all charges and expenses which the Bank may have paid or incurred in any way in connection with the Securities or the sale or disposal thereof.

2nd—That the Borrowers shall not during the continuance of this Agreement pledge or otherwise charge or encumber any of the goods for the time being the subject or intended to be the subject of this security nor do or permit any act whereby the security hereinbefore expressed to be given to the Bank shall be in anywise prejudicially affected.

3rd—That the Borrowers shall with the previous consent of the Bank be at liberty from time to time to withdraw from the Bank of the goods for the time being pledged to the Bank and forming part of the Securities the subject of the Agreement provided the advance value of the said goods is paid into the said account or goods of a similar nature to those mentioned in the Schedule hereto, or any of the same, and of at least equal value, are substituted for the goods so withdrawn: Provided always that with the previous consent of the Bank the Borrowers shall be at liberty to withdraw from the Bank any of the goods for the time being pledged to the Bank without paying into the said Account such advance value as aforesaid or substituting any goods as aforesaid provided the necessary margin required by the 6th Clause hereof is fully maintained.

4th—That all securities already and hereafter delivered as aforesaid shall be insured against Fire risk by the Borrowers in some Insurance

Office or Offices approved by the Bank and in the name of the Bank for the full market value of such securities and that all policies for and receipts for premia paid on such Insurances shall be delivered to the Bank. Should the Borrowers fail to so insure or fail to deliver the Policies or Receipts for Premia as aforesaid the Bank shall be at liberty to effect such Insurances at the expense of the Borrowers.

5th—That all sums received, under any such Insurances as aforesaid shall be applied in or towards the liquidation of the balance due to the Bank for the time being and in the event of there being a surplus the same shall be applied as provided by the 11th Clause hereof.

6th—That the Borrowers shall make and furnish to the Bank such statements and returns of the cost and market value of the Securities and a full description thereof and produce such evidence in support thereof as the Bank may from time to time require and shall maintain in favour of the Bank a margin of per cent between the market value from time to time of the Securities and the balance due to the Bank for the time being. Such margin shall be calculated on the open market value of the Securities as fixed by the Bank from time to time and shall be maintained by the Borrowers either by the delivery of further security to be approved by the Bank or by Cash payment by the Borrowers immediately on the market value for the time being of the Securities becoming less than the aggregate of the balance due to the Bank *plus* the amount of the margin as calculated above.

7th—That interest at the rate of per cent per annum shall be calculated and charged on the daily balance in the Bank's favour due upon the said Cash Credit Account until the same is fully liquidated and shall be paid by the Borrowers as and when demanded by the Bank.

8th—That on demand by the Bank the Borrowers shall pay to the Bank the balance then due to the Bank on the said Cash Credit Account together with all further interest at the rate abovementioned and the amount of all further charges and expenses (if any) to the date of payment provided that nothing herein in this Clause contained shall be deemed to prevent the Bank from demanding payment of the interest for the time being due at the abovementioned rate without at the same time demanding payment of the balance due to the Bank exclusive of such interest.

9th—That if the Borrowers shall fail to maintain such margin as aforesaid or if the Borrowers fail or neglect to repay to the Bank on demand the balance then due to the Bank or in the event of the Borrowers becoming or being adjudicated Bankrupt or Insolvent or executing any Deed of Arrangement, Composition or Inspectorship or in the event of any distress or execution being levied or enforced upon or against any of the property of the Borrowers whether the said property shall or shall not be the subject of this security or (whether the Borrowers are or are not a Joint Stock Company) in the event of any person, firm or company taking any step towards applying for or obtaining an order for the appointment of a Receiver of the Borrowers' property or any part thereof or (in the event of the Borrowers being a Joint Stock Company) if any person, firm or company shall apply for or obtain an order for the winding up of the Borrowers or if any such order is made or any step be taken by any person, firm or company towards passing any resolution to wind up the Borrowers or if any such resolution be passed whichever may first happen it shall be lawful for the Bank forthwith or at any time thereafter or/and without any notice to the Borrowers (without prejudice to the Bank's right of suit against the Borrowers) either by public auction or private contract absolutely to sell or otherwise dispose of all or any of the securities either together or in lots or separately and to apply the net

proceeds of such sale in or towards the liquidation of the balance then due to the Bank.

10th—That if the net sum realised by such sale be insufficient to cover the balance then due to the Bank, the Bank shall be at liberty to apply any other money or moneys in the hands of the Bank standing to the credit of or belonging to the Borrowers or any one or more of them in or towards payment of the balance for the time being due to the Bank and in the event of there not being any such money or moneys as aforesaid in the hands of the Bank or in the event of such money or moneys being still insufficient for the discharge in full of such balance the Borrowers promise and agree forthwith on production to them of an account to be prepared and signed as in the 12th Clause hereinafter provided to pay any further balance which may appear to be due by the Borrowers thereon ; PROVIDED ALWAYS that nothing herein contained shall be deemed to negative qualify or otherwise prejudicially affect the right of the Bank (which it is hereby expressly agreed the Bank shall have) to recover from the Borrowers the balance for the time being remaining due from the Borrowers to the Bank upon the said Cash Credit Account notwithstanding that all or any of the said Securities may not have been realised.

11th—That in the event of there being a surplus available of the net proceeds of such sale after payment in full of the balance due to the Bank it shall be lawful for the Bank to retain and apply the said surplus together with any other money or moneys belonging to the Borrowers or any one or more of them for the time being in the hands of the Bank in or under whatever account as far as the same shall extend against in or towards payment or liquidation of any and all other moneys which shall be or may become due from the Borrowers or any one or more of them whether solely or jointly with any other person or persons, firm or company to the Bank by way of Loans, Discounted Bills, Letters of Credit, Guarantee Charges or of any other debt or liability including Bills, Notes, Credits and other obligations current though not then due or payable or other demands legal or equitable which the Bank may have against the Borrowers or any one or more of them or which the law of set-off or mutual credit would in any case admit and whether the Borrowers or any one or more of them shall become or be adjudicated Bankrupt or Insolvent or be in liquidation or otherwise and interest hereon from the date on which any and all advance or advances in respect thereof shall have been made at the rate or respective rates at which the same shall have been so advanced.

12th—That the Borrowers agree to accept as conclusive proof of the correctness of account made out from the books of the Bank and signed by the Accountant or other duly authorised officer of the Bank without the production of any other voucher, document or paper.

13th—That this Agreement is to operate as security for the balance from time to time due to the Bank and also for the ultimate balance to become due on the said Cash Credit Account and the said account is not to be considered to be closed for the purpose of this security and the security is not to be considered exhausted by reason of the said Cash Credit Account being brought to credit at any time or from time to time or of its being drawn upon to the full extent of the said sum of Rs. if afterwards re-opened by a payment to credit.

14th—Provided always that this Agreement is not to prejudice the rights or remedies of the Bank against the Borrowers irrespective and independent of this Agreement in respect of any other advances made or to be made by the Bank to the Borrowers.

15th—In case the Borrowers shall be a firm or members of a firm no change whatsoever in the constitution of such firm during the continuance of this Agreement shall impair or discharge the liability of the Borrowers or any one or more of them thereunder.

IN WITNESS whereof the Borrowers have hereunto set their hands this day of in the Christian Year One Thousand Nine Hundred and

SCHEDULE of SECURITIES referred to in the foreign instrument :—

HYPOTHECATION OF GOODS, DOCUMENTS OF TITLE AND SECURITIES

Bombay,.....194 .

TO

The Popular Bank of India, Bombay.

Sirs,

I|We the undersigned do hereby agree that all goods, documents of title to goods and securities for property of whatever description, other than immovable property, which I|We may from time to time place with the Popular Bank of India, hereinafter called "the Bank" and all the property, moneys and advantages, comprised in, covered or represented by and derivable under or by virtue of such documents or securities, shall be a security for the payment to the Bank on demand of all moneys which now are, or which at any time or times hereafter may become due from me|us to the Bank, whether alone or in co-partnership with any person, firm or Company by way of overdraft in current account with the Bank (including money owing upon any cheques, promissory notes, or bills of exchange drawn, accepted, or endorsed by me|us or which shall have been paid for my|our credit either solely or jointly with another or others, and including also interest at the rate of . . . with half-yearly rests, commission, and other customary charges and all costs and expenses. And I|we hereby agree to repay to the Bank all such moneys as aforesaid as and when required by the Bank, or the Manager or any officer thereof. And I|we, hereby agree and declare that the Bank may, at any time or times after default by me|us in such payment and without any previous notice to me|us sell the said property, moneys and advantages, and the securities for the same or any of them, any part thereof, and may buy in or rescind contracts for sale, and re-sell without being accountable for any loss or diminution in price or being answerable for any deterioration of the said goods or any depreciation in the value of the said securities and that the account sales rendered to me|us by the Bank shall be conclusive evidence both in and out of Court of all matters therein stated, and that the Bank may out of the proceeds of sale of the said goods or the said securities as the case may be retain all moneys owing by me|us in my|our said account current with the Bank and also all costs and expenses incurred in relation to the said sale the surplus (if any) being paid to me|us and the deficiency (if any) being made good by me|us to the Bank on demand. And I|we hereby agree to execute on demand by the Bank such further documents as may be required by the Bank to vest all such goods, documents of title to goods and securities as aforesaid in the Bank and to render the same readily saleable or transferable by the Bank at any time. And I|we hereby also agree that notwithstanding anything hereinbefore contained the Bank shall not be bound to allow or continue my|our overdraft in current account to any extent or for any time further than the Bank shall in its absolute discretion see fit to do. And I|we hereby lastly agree that if at the time when the said

account shall be closed a balance shall be owing from me|us to the Bank I|we will, so long as such balance or any part thereof, shall remain owing, pay interest thereon to the Bank, at the rate stated above with half-yearly rests from the time when such balance shall be ascertained.

As witness our hand this day of '19 .

HYPOTHECATION

(Advances in Account Current on Imports)

Bombay,.....194 .

To

THE POPULAR BANK OF INDIA,
BOMBAY.

Dear Sirs,

In consideration of your allowing or having allowed us to overdraw our current account from time to time to the extent of Rs. we hereby hypothecate and charge to the Bank as collateral security for the due payment on demand of the amount of our overdraft, with agreed interest and expenses, Piece Goods stored in our godown for the time being, which we engage to hold as Trustees for and on behalf of the Bank and in the event of the said goods or any portion thereof being sold and delivered before full payment of the said advance or overdraft, with interest and expenses, the proceeds of such sales shall be received by us as Trustees for the Bank, and paid to the Bank when and as received by us.

The intention of this agreement is that you are to be entitled to such Piece Goods as security for our overdraft for the time being, we holding such Piece Goods as Agents and Trustees for you and in the event of our failing to repay to you the amount of our overdraft with interest thereon as hereinafter mentioned on demand, we hereby undertake to deliver to you at any time the said Piece Goods, without raising any question, to enable you to sell or at your discretion to ship the same for the purpose of realization under your directions.

I/We further agree that my/our said overdraft shall be made up with interest at the rate of per cent per annum with monthly rests and that the amount for the time being due to you in respect of such overdraft shall be repaid on demand and that you shall not be bound to allow or continue the said overdraft to any extent or for any time further than you shall in your absolute discretion see fit to do.

We will, whenever required, give you full particulars of the Piece Goods held by us on your behalf and we hereby guarantee that their value shall at all times exceed by per cent the amount of our overdraft for the time being, and we undertake that if at any time the goods so held shall be of less than such agreed value, we will forthwith hypothecate to the Bank other agreed security of sufficient value to make up the deficiency.

We likewise further agree and undertake to have no advance from any other Bank on the Piece Goods hypothecated to you and that they shall be stored separately and apart from all other goods in our Godowns.

And we further agree that the goods shall also be a security to you for the payment on demand of all other moneys which are now or shall at any time be due to you from us, either alone or jointly with any other person or persons, either on account current or for money advanced or paid or in respect of bills, drafts or notes accepted,

paid or discounted, interest, commission, or any other usual or lawful charges or on any other account whatsoever, together with all costs and expenses.

Yours faithfully,

LETTER OF HYPOTHECATION

(Against Overdrafts, Loans, etc.)

Specimen No. 1.

Re 1
Seal

To
The Manager,
POPULAR BANK OF INDIA,
BOMBAY.

Dear Sir,

In consideration of the advances already made and of those which you may at your discretion make to me from time to time I hereby give you a lien on all securities now pledged by me with you and all other securities that may now and from time to time hereafter be held by you on my account for the outstanding general balance of all and every my loan, current, cash credit or other accounts with you with power to you at your discretion to sell all such securities in the event of my not maintaining a margin of per cent on the market value of the securities, or on my failing to repay the amount on the due date of the advances and on such sale to pay out of the proceeds all such advances and all other debts due by me to the Bank either singly or jointly with another or others and I undertake to execute proper transfer deeds and other instruments when required to ensure to you the full benefit and advantage of the said securities. In case of any deficit in the amount recovered out of the proceeds of the securities and the total debt due to the Bank I am of course liable to make good the same. I further authorise you to attach to such securities whatsoever stamp may be required to render them valid security and I undertake to reimburse you the cost of such stamps. The Bank is at liberty to repledge my securities.

I remain, Dear Sir,

Date.....194 . *Yours faithfully,*

LETTER OF HYPOTHECATION

(Against Overdrafts, Loans, etc.)

.....194 .

Specimen No. 2.

To
THE POPULAR BANK OF INDIA,
BOMBAY.

Gentlemen,

In connection with my/our present overdrawn Current Account and/or loan from you, and also any future accommodation which you may have against me/us, either here or at your Head Office, or any of your Branches and/or Agencies, whether on Current Account or otherwise, I/we hereby hypothecate as security for the due repayment of the same all securities and property of any kind belonging to me/us, which, or the document of title to which, may be in your

possession at any time during the currency of such overdraft loan, or other accommodation, and/or while such claim is outstanding and I/we agree on your request to execute and sign such transfers, deeds, and documents as may be necessary for vesting the said securities and property in you or your nominees in such manner as you may require, and I/we further authorise you to do all such other acts and things as may be necessary or expedient to complete and perfect your charge thereon, and should I/we not pay such overdrafts, and/or loans, and/or advances, and/or claims, when called upon to do so, I/we also authorise you to sell the said securities and property, or a sufficient amount thereof to cover my/our indebtedness to you, and to apply the proceeds in discharge thereof.

Yours faithfully,

LETTER ENCLOSING P. N. AS SECURITY FOR AN OVERDRAFT

Bombay.....194 .

To

The Managing Director,
THE POPULAR BANK OF INDIA,
BOMBAY.

Dear Sir,

I/We beg to enclose an on demand Pro. Note for Rs (Rupees) signed by me/us which is given to you as security for the repayment of any overdraft which is at present outstanding in my/our name and also for the repayment of any overdraft to the extent of Rs. (Rupees), which I/we may avail of hereafter and the said Pro. Note is to be a security to you for the repayment of the ultimate balance or sum remaining unpaid on the overdraft and I/we are to remain liable on the Pro. Note notwithstanding the fact that by payments made into the account of the overdraft from time to time the overdraft may from time to time be reduced or extinguished or even that the balance of the said account may be at credit.

Yours faithfully,

TRUST RECEIPT

Hypothecated Shipping Documents

.....194 .

Specimen No. 1.

To

THE POPULAR BANK OF INDIA,
BOMBAY.

In consideration of your handing to me/us Shipping Documents for goods, as per particulars at foot, hypothecated to the Bank as collateral security for the due payment of the undermentioned draft drawn upon me/us by and accepted by me/us I/we hereby engage to land, store and hold the said goods as Trustee for and on behalf of the Bank, and in the event of the goods or any portion thereof being sold and delivered before full payment of the said draft, the proceeds of such sales shall be received by me/us as Trustee for the Bank, and paid to the Bank when and as received I/we at the same time specially advising the Bank of the account on which such payment is made.

I/We undertake not to sell any part of the goods on credit unless with your previous consent in writing.

I/We also undertake to keep the goods fully insured against fire as against marine risk, and to hand over to the Bank all amounts received from the Insurers, the Policies of Insurance being, in the meantime, held by me/us as Trustee for and on behalf of the Bank.

And I/we further agree that the goods shall also be a security to the Bank for the payment on demand of all other moneys which are now or shall at any time be due to the Bank from me/us either alone or jointly with any other person or persons, either on account current or for money advanced or paid or in respect of bills, draft or notes accepted, paid or discounted, interest, commission, or any other usual or lawful charges or on any other account whatsoever, together with all costs and expenses.

Yours faithfully,

PARTICULARS OF DRAFTS AND GOODS

Amount of Bill.			Date.	Description of Goods	Mark and Nos.	Vessel.

TRUST RECEIPT

Hypothecated Shipping Documents

Bombay,.....194 .

Specimen No. 2.

To

THE POPULAR BANK OF INDIA, BOMBAY.

RECEIVED this day of 194 ., from the Popular Bank of India, Bombay, the Shipping Documents for the undermentioned goods under lien to the Bank for the purpose of landing the said goods and storing them in the Warehouse of the Bombay Port Trust in the name of the Popular Bank of India, and handing the relative stores receipts to the said Bank.

Yours faithfully,

PARTICULARS OF GOODS

Value of Goods.			Description of Goods.	Vessel.	By Whom shipped.

TRUST RECEIPT

.....194

To

The Manager,

THE POPULAR BANK OF INDIA, BOMBAY.

Dear Sir,

In consideration of your handing over to me/us the shipping documents of the goods as per particulars at the foot of this receipt held by your Bank as security for the payment of the *Bill drawn by on me/us dated for *Sum of being the invoice value of the said goods payable to your Bank, I/we hereby undertake to land, store, and hold the said goods until sale, and to sell the said goods as the Agents and Trustees of your Bank and that until sale the said goods and after sale the proceeds thereof shall be held as and shall remain the property of your Bank and subject to the Bank's security thereon, and that the proceeds of sale of the said goods shall be forthwith handed to you I/we specially advising you in respect of which shipment each payment is made, so that you may apply each payment to its appropriate† and I/we undertake that the proceeds of the said goods shall in all things be treated by me/us in my/our books as belonging to your Bank and earmarked as the Bank's property until the abovementioned shall be fully paid and satisfied by me/us.

2. I/We further undertake that all sales by me/us of the said goods shall be either for cash to be received and paid over to you as above provided for or delivered against Bazaar Chits or Promissory Notes signed by the Buyers which shall be held as the property of and collected by me/us as Trustee/Trustees for your Bank, and shall be endorsed and handed over to you on demand for collection by you, and I/we also undertake at any time to hand over to you on demand all goods covered by this Trust Receipt for the time being unsold and authorise you or any one authorised by you in writing in that behalf to enter my/our godowns and take possession of the said goods at any time.

3. If the goods covered by this Trust Receipt shall not be sold for cash or if in the case of any goods delivered against Bazaar Chits or Promissory Notes and the said Bazaar Chits or Promissory Notes shall not be realised in sufficient time to permit of the said‡ being paid at the due date thereof, I/we undertake to hand you the

§ full amount of the said acceptance

§ full amount of the said invoice, with interest at % to the approximate date of arrival of remittance in London

§ full amount of the said invoice

such payment to be made in sterling or rupee currency according as the amount is payable in sterling or rupees.

4. I/We also undertake at all times to keep the goods covered by this Trust Receipt insured against fire to their full value and to hand over to you on receipt all monies received from the Insurers under the Policy or Policies effected by me/us, such Policy or Policies being in the meantime held by me/us as Trustee/Trustees for your Bank and to be transferred to you at any time on demand.

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* Delete one of these lines.
† Insert Acceptance or Invoice.
‡ Insert Acceptance or Invoice.
§ Delete what is not required.

5. I/We acknowledge and declare that the goods covered by this Trust Receipt and the monies from time to time outstanding in respect thereof represent a separate transaction distinct from all goods held under similar Trust Receipt or monies outstanding in respect thereof and that the aggregate of such goods and monies shall not be deemed or taken to constitute a general credit from your Bank to me/us.

6. On the payment by me/us of the full amount of the above* this Trust Receipt shall be delivered up to me/us cancelled and thereupon any goods covered thereby which may be unsold or any proceeds thereof which shall be outstanding or unrealised shall be my/our absolute property.

Yours faithfully,

PARTICULARS OF GOODS ABOVE REFERRED TO

Bill No.	Amount of Acceptance or Advance.	Due Date.	Steamer.	Date of Invoice.	Marks and Number.	Number of Packages.	Description.	Amount of Invoice.

Policy to Accompany

LETTER OF GUARANTEE

*Bombay,.....*194 .

To

THE POPULAR BANK OF INDIA.

In consideration of your at negotiating the Draft or Drafts, at a term not exceeding after sight, drawn or endorsed by on me/us, for any sum or sums not exceeding I/we hereby agree duly to accept the same on presentation and pay the amount thereof at maturity, provided such Draft or Drafts shall be negotiated within calendar months from this date.

At the time of negotiating the above Drafts will hand over to your Bank, under hypothecation as collateral security to you for the due acceptance and payment thereof, Bills of Lading for and policy of Marine Insurance, and I/we agree that, in case of need, you shall be at liberty to sell the said merchandise, and apply the net proceeds (after deducting Freight, and Insurance if effected by you, and all charges together with the usual Merchants' Commission which you are to be entitled to) towards payment of the said Drafts, without prejudice to your recourse thereon against me/us and all other parties for any deficit. The word "proceeds" is to be understood to include the amount recoverable under any Insurance Policy covering the said merchandise.

* Insert Acceptance or Invoice.

It is further agreed that you are not to be responsible for any loss or damage which may happen to said merchandise, either during its transit by sea or by land, or after its arrival or by reason of the non-insurance thereof, nor for any deficiency in the quality or value, nor for any incorrect representation of the quality or value thereof, nor for the stoppage or detention thereof by the shipper, or any other person whomsoever, and inasmuch as the above stipulation for handing you Bills of Lading is intended for your security, I/we agree to be liable as aforesaid on the negotiation of such Drafts with your Bank, whether the Bill or Bills of Lading handed be or be not of sufficient value to cover any advances made by you on negotiating such Drafts; and further, in case of my/our accepting such Drafts conditionally on your handing over the aforesaid documents to me/us, I/we undertake to pay the said Draft at maturity, on performance of such condition, and I/we authorise you to make such arrangements as you think proper with the aforesaid Drafts and/or Endorsers touching the disposition of such Bills of Lading, or the proceeds thereof or of any goods consigned thereby.

It is further agreed that the Draft or Drafts shall be drawn in payable at the Banks on demand selling rate for Drafts drawn on together with interest from the date of the Draft or Drafts until arrival of the remittance of the relative proceeds in at the current rate at which the Exchange Banks in are advancing on shipments of merchandise to Bombay.

It is further agreed that the negotiation of the Draft or Drafts above referred to shall be optional on the part of your Bank.

PARTICULARS OF BILLS NEGOTIATED

Date of Negotiation.	Agency No.	Amount of Bill.	Balance Unused.	Particulars of Documents Received.

CASH CREDIT FORM

DIRECTIONS.—**Agreement to be signed by the Guarantor, and to be stamped before execution with the highest agreement Stamp duty in force at the time of execution in the Province or Presidency where this agreement is executed or where it is likely to be sent.**

(Date)
(Place) *Bombay*,.....194 .

THE POPULAR BANK OF INDIA, BOMBAY.

In consideration of the Popular Bank of India having agreed at our/my request to grant to*
(who are/is hereinafter referred to as the Borrower) accommodation by way of Cash Credit to such an amount from time to time as the said Bank in its discretion shall think proper

* Guarantor.

on condition that such Cash Credit shall to the extent of Rs. and interest be secured by the Promissory Note hereinafter mentioned we/I the undersigned† have delivered to the said Bank a Promissory Note dated for Rs. and interest payable on demand made by the Borrower in favour of us/me to the said Bank or order (the said Promissory Note being intended as a guarantee to the extent of Rs. and interest of the balance from time to time payable to the said Bank by the Borrower and remaining unpaid on account of the said Cash Credit which for the purpose of such guarantee shall be considered continuing notwithstanding it may in the meantime at any time or from time to time be brought to credit until notice in writing that the same is closed is given by the said Bank to us/me) on the understanding that the said Bank shall be at liberty to take steps to enforce payment of the said Promissory Note at any time after notice in writing demanding payment thereof posted to us/me at our/my usual or last known address and default being made in payment for three days after the posting of such notice or otherwise granting time to the Borrower or any other obligant or Guarantor shall in no way release us/me from our/my liability under the said Promissory Note And we/I further agree that it shall not be necessary for the said Bank to present the said Promissory Note for payment to the Borrower or any other obligant or Guarantor before demanding payment from us/me or suing us/me thereon.

We/I further agree that the said Cash Credit Account shall be made up with interest on the daily balance thereof and otherwise in accordance with the practice of the said Bank and that the interest payable under the said Promissory Note shall be applicable to the payment and satisfaction of the interest accruing upon so much of the monies becoming payable to the said Bank in respect of the said Cash Credit as is secured by the said Promissory Note.

As the said Cash Credit Account is intended to be further secured by the hypothecation and/or pledge of goods and/or documents of title to goods under separate agreements to be taken from time to time and entered into by the Borrower with the said Bank which agreements contain stipulations as to insurance assignment and delivery of Insurance Policies to the said Bank the margin of value of goods under security to be maintained and the periodical furnishing of different statements to the said Bank and other matters we/I agree that no failure in requiring or enforcing the observance or performance of any of the said stipulations or terms shall have the effect of releasing us/me from our/my liability or of prejudicing the said Bank's rights or remedies against us/me under the said Promissory Note.

We/I further agree that the said Bank shall be at liberty to take other securities for the said account or any part thereof and to release or forbear to enforce all or any of its remedies upon or under such securities and any collateral security or securities now held by the said Bank and that no such release or forbearance as aforesaid shall have the effect of releasing us/me from our/my liability or of prejudicing the said Bank's rights and remedies against us/me under the said Promissory Note and that we/I shall have no right to the benefit of any other security that may be held by the said Bank until the claim of the said Bank against the Borrower in respect of the said Cash Credit and of all (if any) other claims of the said Bank against the Borrower on any other account whatsoever shall have been fully satisfied and then in so far only as such security shall not have been exhausted for the purpose of realising the amount of the said Bank's claims and rateably only with other Guarantors or other persons (if any) entitled to the benefit of such securities respectively.

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† Borrower and maker of P. Note.

We/I further agree that if the Borrower shall become insolvent bankrupt enter into liquidation (compulsory or voluntary) or make any arrangement or composition with creditors the said Bank may (notwithstanding payment to the said Bank by us/me or any other person of the whole or any part of the amount hereby secured) rank as creditor and prove against the estate of the Borrower for the full amount of all the said Bank's claims against the Borrower or agree to and accept any composition in respect thereof and the said Bank may receive and retain the whole of the dividends composition or other payments thereon to the exclusion of all our/my rights as Guarantor(s) for the Borrower in competition with the said Bank until all the said Bank's claims are fully satisfied and we/I will not be paying off the amount payable by us/me or any part thereof or otherwise prove or claim against the estate of the Borrower until the whole of the said Bank's claims against the Borrower have been satisfied and the said Bank may enforce and recover payment from us/me of the full amount payable by us/me notwithstanding any such proof or composition as aforesaid.

We/I further agree that any other Promissory Note or Notes that may hereafter be given by us/me in renewal of or substitution for the said Promissory Note or any renewal thereof shall be held by the said Bank upon and subject to the same terms and conditions as are herein expressed and contained with reference to the said Promissory Note.

We/I further agree that in the case of the Borrower being a Firm our/my Guarantee and obligations hereunder shall not be affected by any change in the constitution or style of such Firm whether consisting of or reduced to one individual at any time and in the case of our being a Firm our Firm and all members from time to time thereof shall be bound hereby notwithstanding any change in the constitution or style of our Firm whether consisting of or reduced to one individual at any time and being more than one individual all of us shall be bound thereby jointly and severally.

(Sd.)

Witnesses:—

(To be stamped as an Agreement)

LETTER OF UNDERTAKING BY COMPANY NOT TO CREATE ANY FURTHER CHARGE OVER THEIR PROPERTY AND ASSETS, INCLUDING UNCALLED CAPITAL

To

THE POPULAR BANK OF INDIA, BOMBAY.

As part of the consideration for your making or continuing advances to us (Name of Company) on Demand Cash Credit or otherwise we hereby declare that no mortgage, charge, lien or incumbrance of any kind other than (2) the existing hypothecation of Liquid Assets of the Company to and in favour of the Bank and charge of Rs. against Fixed Assets and immovable property in favour of has been made or allowed over or affecting our undertaking property (whether movable or immovable) and assets (including uncalled capital) or any part thereof and that we undertake that no such mortgage, charge, lien or incumbrance shall be made or allowed while we remain indebted or liable to you in any manner without your previous written consent.

INDEMNITY BOND

THE POPULAR BANK OF INDIA

KNOW ALL MEN by these presents that we of and of Inhabitants are held and firmly bound unto the Popular Bank of India, in the sum of Rupees to be paid to the said Popular Bank of India, its nominees, successors or assigns, for which payment to be well and truly made, we jointly and severally bind ourselves, our respective heirs, executors and administrators and our respective estates and effects firmly by these presents sealed with our seals dated this day of in the Christian year 19 .

WHEREAS had at the time of death of credit the sum of Rupees account in the said Bank that is entitled to have the said sum paid to and have accordingly requested the said Bank to pay the said sum to and whereas the said have agreed to indemnify the said Bank in respect of such payment NOW the condition of the above written Bond or Obligation is such that if the said Bank, its successors and assigns and its Directors, Agents, Officers and Servants, and its Shareholders and their respective estates and effects are and shall from time to time and at all times hereafter be kept safe and save harmless and indemnified for and in respect of such payment and again at all actions, losses, costs, charges, expenses and demands whatsoever in respect of the said payment. Then and in such case the above written Bond or Obligation shall be void otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered by the abovenamed.

1.

2.

in the presence of

1.
2. } Witnesses.

Approved.

Manager.

LIST OF SECURITIES HELD AS COVER

THE POPULAR BANK OF INDIA,

No.

Bombay,..... .....194 .

Dear Sir,

We beg to hand you a complete list of securities held as cover against your indebtedness to the Bank from time to time.

Please confirm on the subjoined slip, returning the slip to us at your early convenience.

Yours faithfully,

Manager.

I/We beg to inform you that the list of my/our securities supplied in your advice dated 19 , is correct.

Yours faithfully,

CURRENT A|C. OVERDRAFT BALANCE CONFIRMATION

Please sign and return.

THE POPULAR BANK OF INDIA,

Bombay,..... .....194 .

To

Dear Sir,

Re Your Current Account Overdraft.

We beg to inform you that the balance of the above account on the was Dr Rs

Kindly sign and return the *entire* form confirming this balance as soon as possible.

Yours faithfully,

Manager.

The Manager,

THE POPULAR BANK OF INDIA, BOMBAY.

I/We hereby confirm my/our indebtedness to the Bank as stated above.

Sign here

ADVICE OF DELIVERY OF SECURITIES

THE POPULAR BANK OF INDIA,

Bombay,.....194 .

No.

Dear Sir,

We beg to advise having this day delivered the undernoted securities from those held on your behalf.

Yours faithfully,

Manager.

SECURITIES DELIVERED

ACKNOWLEDGMENT OF SECURITIES AS COVER

THE POPULAR BANK OF INDIA,

Bombay,..... .....194 .

No.

Dear Sir,

We beg to acknowledge receipt of the undernoted securities to be held as cover against your indebtedness to the Bank from time to time.

Yours faithfully,

Manager.

LETTER OF UNDERTAKING IN CONNECTION WITH EQUITABLE MORTGAGE

Bombay,.....194 .

To

The Manager,

THE POPULAR BANK OF INDIA, BOMBAY.

Dear Sir,

With reference to the loan transaction entered into by me with your Bank today, I beg as arranged to declare as true the following facts, viz.—

1. That the property, the title deeds of which are deposited with you, is free from all incumbrances whatever.
2. That no adverse claim of any kind exists against the property.
3. That no notice of intended compulsory acquisition of the property has been received by me nor any notice from the Municipality of or the City of Improvement Trust requiring heavy structural alterations or demolition has been received.
4. That the property has been already insured to the extent of Rs.

Yours truly,

Credit No.

AUTHORITY TO DRAW

(Letter of Guarantee)

.....194 .

The Manager,

THE POPULAR BANK OF INDIA.

Dear Sir,

I/We beg to inform you that I/We have authorised to draw on me/us without / with recourse to the extent of at days' / months' sight for invoice cost against the following documents :—

Bill of Lading.....,Invoice.

Insurance Certificate.....Consular Invoice to cover shipment of.....from.....to.....

Bill of Lading to order an endorsed in Blank / of the Popular Bank of India

Freight to be prepaid / paid at destination Insurance by shipper / covered here.

I/We AGREE 1. To accept upon presentation all Bills drawn pursuant hereto.

2. To hold you harmless in the event of any damage to merchandise shipped or deficiency or defect therein or in the documents above described.

3. That the said documents and the merchandise covered thereby (duly insured) shall be held as collateral security for due acceptance and payment of drafts drawn hereunder, with power to you the pledgee to sell in case of non-acceptance or non-payment of the relative drafts, without notice at public or private sale and after deducting all expenses,

including commission connected therewith, the net proceeds to be applied towards payment of said drafts. The receipt by you of other collateral, merchandise or cash, whether now in your hands or hereafter deposited, shall not alter your power to sell the merchandise pledged and the proceeds may be applied to any indebtedness by me/us to you due or to become due.

4. That it is at your sole option to claim payment of any Bill drawn pursuant hereto either at the rate of exchange ruling at its due date or at the rate ruling at the date of payment or, in the event of any legal proceedings being taken in respect of such Bill, at the rate ruling at the date of the decree in such proceedings ; and I am/we are bound to make payment of the said Bill at whichever of the above rates you may name.

5 To pay your commission of % for negotiation of drafts hereunder. This engagement to commence from date hereof and to apply to all Bills drawn within months, provided that shipments under this credit are effected with the period stipulated herein the relative documents may be negotiated within ten days after the date of expiry of this Credit Please advise by $\frac{\text{mail}}{\text{cable.}}$

6. The credit opened under these instructions should be considered $\frac{\text{revocable}}{\text{irrevocable}}$

Yours faithfully,

LETTER OF LIEN

No.
Entd.

.....194 .

To the Manager,

THE POPULAR BANK OF INDIA.

Sir,

In consideration of your Bank allowing $\frac{\text{me*}}{\text{us}}$ up to Rs. to be operated on from time to time, I/we hereby deposit and pledge with the Bank the Shares and Securities, particulars of which are set out at foot hereof, as security for the repayment† of the amount for the time being due in respect of the said* with interest thereon at % or at such other rate as may be from time to time agreed upon, with half-yearly rests.

The present market value of the Shares and Securities so deposited and pledged by me/us is Rs. and so long as any money remains due to the said Bank in respect of the said* I/we hereby agree to deposit other approved Shares or Securities of sufficient market value to maintain the total value of the said Shares and Securities so deposited at a sum not being less than % in excess of the balance for the time being due for principal, interest and charges in respect of such* or to reduce such balance by a cash payment to such a sum as shall represent the same margin of security.

Any Shares or other like Securities deposited under this Agreement shall be accompanied by blank Transfers signed by me/us or in the case of Shares or Securities transferable by endorsement, shall be endorsed in blank. It is understood that I am/we are to be at liberty

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* Insert "Cash Credit" or "Overdraft."

† Insert "On Demand" "on the day of 19 " or "on days' notice."

at any time to exchange any of such Shares and Securities with relative Transfers for other approved Shares or Securities of at least equal value, such substituted Shares or Securities to be accompanied by similar Transfer Deeds or to be similarly endorsed as the case may require.

In case the amount of the said* with all interest and charges shall not be paid to the Bank† or in case I/we at any time fail to maintain the margin of security above stipulated between the sum for the time being due by me/us and the market value of the security it shall be lawful for the Bank forthwith or at any time thereafter absolutely to sell and dispose of all or any of the said Shares and Securities and to apply the net proceeds of such sale in satisfaction so far as the same will extend towards the liquidation of the amount due for principal and interest in respect of the said* together with all costs, charges and expenses incurred by the Bank, and I/we agree to accept the Bank's account of such sale, signed by the Manager, Accountant, or other duly authorised Officer of the Bank, as sufficient proof of the correctness of the amount realised by, and the charges and expenses in connection with, such sale.

If the net sum realised by such sale should be insufficient to cover the full amount due in respect of the said* with interest and charges as shown by the said account of the Bank, I/we agree to pay to the Bank forthwith on delivery of the said account any balance due by me/us on the footing thereof.

It is understood that the lien created by the said deposit and pledge shall be and remain as a continuing security for the balance from time to time due and payable to the Bank in respect of my/our said* so long as the same shall not be formally closed, and notwithstanding that in the meantime the said* should have shown a balance in my/our favour.

It is understood that the Bank's lien on the Shares and Securities from time to time pledged under this Agreement shall extend to any other sum or sums of money for which I/we (or any or either of us) either separately or jointly with any other person or persons, may be or become indebted or liable to the Bank on any account.

On payment of all sums, including interest and charges payable hereunder, any part of the Shares and Securities so deposited and pledged which may not have been sold (together with the relative blank Transfers) shall be returned to me/us and any surplus of the net proceeds of any such sale of the said Shares and Securities shall be paid to me/us or as I/we shall direct.

Particulars of the Shares and Securities above referred to.

INSTRUCTIONS OF JOINT-STOCK COMPANIES TO PAY ALL DIVIDENDS DIRECT TO THE BANK

Address

Dated .....

Dear Sirs,

Be pleased to pay, until further orders, all dividends and interest now due, or which may from time to time become due, on my/our shares, deposits or stock I/we now, or may hereafter, hold in your Company, to THE POPULAR BANK OF INDIA, BOMBAY, whose receipt shall be your full and sufficient discharge.

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* Insert "Cash Credit" or "Overdraft."

† Insert "On Demand" "on the day of 19 " or "on days' notice."

Reports and Balance Sheets are to be forwarded to me/us direct.

Yours faithfully,

Signature

Signature

Full Name

Full Name

To

ACKNOWLEDGMENT OF DEPOSIT OF DOCUMENTS OR VALUABLES FOR SAFE CUSTODY

Date

We hereby acknowledge that Mr. (*customer*) of, etc. has this day deposited with us for safe custody a deed box (*or* plate box) and we have received the same on the express condition that in the event of the loss or destruction of the same or any part thereof we shall not be under any liability in respect thereof.

(*Signature of bankers.*)

REQUEST BY EXECUTORS FOR ADVANCE TO PAY DUTIES BEFORE PROBATE

Date

To Messrs. (bankers).

Gentlemen,

Re : (*testator*) deceased.

(As ***executors***) of the will of the abovenamed (*testator*) we request that out of the money and securities in your care belonging to (*testator*) you will advance to us (*or* to Mr. our solicitor) £ required for payment of duty and expenses, and we hereby undertake :—

(*a*) That the sum advanced shall be so applied.

(*b*) That we will at once proceed to obtain probate of the said will and forthwith produce the probate to you for registration in your books.

(*c*) That the said advance shall be treated as received by us on account of the money and securities held by you belonging to the said (*testator*).

(*d*) That we will effectually indemnify you against the claims of all other persons to the said sum.

(*e*) That if so required by you we will treat the same as a loan to us personally and repay the same to you accordingly.

Yours faithfully,

Signed in my presence by the said (***executors***) who are to my knowledge the persons duly appointed executors by the last known will of the abovenamed (*testator*). } (*Signature of* ***executors.***)

(*Signature of solicitor.*)

UNDERTAKING BY CUSTOMER TO KEEP SPECIFIED BALANCE IN CONSIDERATION OF THE BANK DISCOUNTING BILLS

To Messrs. (*bankers*).
Gentlemen,

In consideration of your discounting from time to time such bills as you may approve of I undertake to keep and authorize you to retain on my current account during the currency of such bills and until they are paid a cash balance equal to per cent of the total amount under discount such balance never to be less than £ and in the event of my failing to carry out this undertaking you are authorized to return any cheques or bills drawn or accepted upon my account which would reduce the balance below the stipulated amount.

And I authorize you to debit my account with all legal and other expenses you may incur in reference to any such bills in consequence of the dishonour of the same and at any time to abandon any proceedings you may have instituted and to charge the expenses to the debit of my account.

Yours faithfully,
(*Signature of customer*)

LETTER OF DEPOSIT OF PRODUCE WARRANTS AS SECURITY FOR A LOAN

Date

1. In consideration of Messrs. (*bankers*) (hereinafter called the lenders) advancing to the undersigned (*borrowers*) £ to be repaid on or before the th of the undersigned deposit the warrants of goods duly indorsed as per schedule to be held by the lenders as security.

2. The undersigned hereby declare that the present value at medium market rates of the produce represented by these warrants is not less than £

3. The undersigned may with the consent of the lenders substitute other warrants for all or any of the warrants now deposited by them but the undersigned undertake that at all times during the continuance of this advance the warrants held by the lenders shall represent produce which at medium market prices shall be equal to a sum at least 25 per cent above the indebtedness of the undersigned to the lenders in respect of this advance.

4. The undersigned further agree that the total of their indebtedness to the lenders on any account whatever whether separate or joint shall be regarded as secured by these and all other warrants deposited by the undersigned with the lenders and in their possession from time to time.

5. With respect to part payments made in reduction of this loan against the withdrawal of warrants the market value of the warrants withdrawn shall in all cases be at least 25 per cent under the amount repaid.

6. In the event of default being made in payment at due date of this or any other advance with interest and charges or in any other case where the lenders may think such a course desirable the lenders are at liberty to realize all or any part of the produce represented by the warrants in their possession. And the proceeds after the payment of all interest, commission and charges (including the usual merchants' commission on sale) may be applied towards payment of the entire amount of the indebtedness or liability of the undersigned to the lenders whether on separate or joint account.

7. The undersigned further engage until the advance interest and charges be repaid to keep the goods fully insured and to deposit with the lenders the policies of insurance as per list at foot hereof failing which the lenders are hereby authorized to insure the goods at their discretion and to add the premium and charges to the amount of the advance.

The undersigned further engage that all proceeds of insurance shall be paid over to the lenders.

(*Signatures of borrowers.*)

SCHEDULE OF WARRANTS referred to in Preceding Letter:

Nos. of Warrants	Produce and place where it lies	Net Weight or Quantity	Present Market Prices per weight or quantity with discount stated	Total Present Market value £	s.	d.

The produce under lien by this letter is insured by policies duly indorsed in favour of..... .....as follows :

Policies Lodged.

Name of Office	No. of Policy	Amount £	s.	d.	Date of Expiry

Encyclopaedia of Forms and Precedents—Butterworths.

MORTGAGE OF LIFE POLICY

THIS MORTGAGE, made the day of 19 BETWEEN (hereinafter called the " Mortgagor " which expression shall include his executors, administrators, and assigns where the context so requires or admits) of the one part, and Bank, Ltd., (hereinafter called " The Bank ", which expression shall include their successors and assigns where the context so requires or admits) of the other part.

1. Witnesseth that in consideration of the Bank opening (or continuing) a banking account with the Mortgagor, the Mortgagor doth hereby as beneficial owner assign unto the Bank ALL that Policy of Assurance effected by on the life of in the for the sum of pounds, dated the day of 19 and numbered and subject to the premium of £ and all moneys assured or to become payable by or under the same Policy and the full benefit thereof.

2. TO HOLD the same unto the Bank by way of mortgage for the purpose of securing the payment by the Mortgagor to the Bank on demand of all and every sums and sum of money not exceeding £ in which the Mortgagor is now or shall at any time hereafter be or become indebted to the Bank anywhere and whether for moneys paid or advanced by the Bank to or for the use or on behalf or at the request of the Mortgagor either solely or jointly with any other person or persons in partnership or otherwise and whether as principal or surety upon banking account or upon any discount or other account, or for any other matter or thing whatsoever, including interest, commission, law, and other costs, and other usual banking charges, such interest to be computed at all times at the current banking rate according to the usual mode of the Bank with the current accounts, notwithstanding that any account intended to be hereby secured may have ceased to be carried on as a current account (all which moneys are hereinafter referred to as "the moneys hereby secured"), and all which moneys the Mortgagor hereby covenants to pay to the Bank on demand, and upon the full payment of demand of all which moneys the policy and premises hereby assigned shall be revested in the Mortgagor or as he shall direct at his cost.

3. PROVIDED ALWAYS that it shall be lawful for the Bank at any time or times hereafter of their own absolute authority, without the consent or concurrence of the Mortgagor, and notwithstanding that no formal demand may have been made for payment of the moneys hereby secured, to sell and surrender the said Policy, moneys, and premises to the Society or Company granting the same, or absolutely to sell or otherwise dispose of the same to any other person or persons whomsoever and for the purpose of such surrender or sale to exercise all the powers of sale and other ancillary powers conferred upon mortgagees by the Law of Property Act, 1925, but free from the restrictions or limitations imposed upon a mortgagee's powers by Section 103 of the said Act.

4. AND the Mortgagor doth hereby covenant with the Bank that the said Policy of Assurance is a valid and subsisting Policy and not forfeited or otherwise become void or voidable.

5. AND FURTHER that in case the said Policy shall at any time become void the Mortgagor shall forthwith at his own cost effect a new policy on the life of the said in lieu thereof in the name of the Bank or their nominee or nominees in some office chosen by the Bank in a sum not less than the sum assured by the Policy which shall have become void, including any bonus or bonuses declared thereon, and in case he shall make default in so doing then it shall be lawful for the Bank to effect and keep on foot any such New Policy as aforesaid.

6. AND it is hereby declared that any such New Policy, whether effected by the Mortgagor or by the Bank, shall be subject to the terms and conditions of the security hereby created in the same manner, as the Policy hereby assigned

7. AND the Mortgagor doth hereby further covenant with the Bank that he will at all times punctually pay the premiums and all other moneys which may become payable in respect of the said Policy hereby assigned or any other Policy for the time being subject to this present security and observe all the conditions necessary for keeping the same on foot, and that he will from time to time deliver to the Bank the receipt for each payment of premium at least fourteen days before the expiration of the days of grace allowed for payment of the same. AND it is hereby agreed that if the Mortgagor shall make default in paying such premium, or in delivering such receipt to the Bank within such time as aforesaid, the Bank may, if they shall think fit so to do, but not otherwise, pay the premium then due and debit any account of

the Mortgagor therewith, and all premiums so paid shall be a charge upon the Policy for the time being subject to this present security.

8. AND IT IS HEREBY FURTHER DECLARED AND AGREED that the Bank shall, in the event of their receiving notice that the Mortgagor has incumbered or disposed of his equity of redemption in the said policy, moneys and premises, or any part thereof, be entitled to close the then current account and to open a new account with the Mortgagor, and that no money paid in or carried to the credit of the Mortgagor in such new account shall be appropriated towards or have the effect of discharging any part of the account due to the bank on the said closed account at the time when they received such notice as aforesaid.

9. AND IT IS HEREBY ALSO AGREED by and between the said parties hereto that this security shall not be in any wise prejudiced or affected by any collateral or other security now or hereafter held by the Bank for any part of the moneys hereby secured, nor shall such collateral or other security or any lien to which the Bank may be otherwise entitled, or the liability of any person or persons (not parties hereto) for all or any part of the moneys hereby secured be in anywise prejudiced by these presents. But that the Bank shall have full power at their discretion to give time for payment to any such other person or persons without prejudice to the liability of the Mortgagor, his Executors or Administrators hereunder. And that all moneys received by the Bank from him or them or any person or persons liable to pay the same may be applied by the Bank to any account or item of account or any transaction to which the same may be applicable. And further that notwithstanding the provisions of Section 93 of the said Law of Property Act the Mortgagor shall not be entitled to redeem the security created by these presents without at the same time all other securities given by him to the Bank, nor to redeem any of such other securities without at the same time redeeming the security created by these presents.

IN WITNESS whereof the Mortgagor has hereunto set his hand and seal the day and year first above written

Signed, sealed and delivered by
the before-named Mortgagor in
presence of

Practice and Law of Banking by H. P. Sheldon, 4th edition, pp. 496-9.

FORM OF MANDATE OR AUTHORITY FOR A PERSON TO DRAW UPON ANOTHER PERSON'S ACCOUNT

To

The Manager,

BANK, LIMITED.

Dear Sir,

I hereby authorize you to honour all cheques drawn on my account with you by whose specimen signature is given below, notwithstanding that such cheques may create an overdraft or increase it to any extent, and who is authorized also to make, draw and indorse and accept or otherwise sign any bills of exchange, promissory notes or other negotiable instruments and to discount the same with your bank or otherwise, and also to indorse cheques or other negotiable instruments of any kind.

This authority shall continue in force until I revoke it by a notice in writing delivered to you.

Dated this day of 19 .

Specimen signature of the person authorized to sign.

Banking Law and Practice in India by M. L. Tannan—page 301.

LETTER FOR OPENING ACCOUNT

The Manager,

BANK, LIMITED.

Sir,

Being desirous of opening a current deposit account with Bank, Limited, I/we beg to hand a remittance as per memo. at foot.

I/We agree to be bound by the Bank's Rules, a copy of which has been supplied.*

Special Instruction }

Yours faithfully,

Title of the A/c

Business or Profession }

Address

---

* To be used in the case of firms and limited liability companies. Names of Partners, Directors, Agents, etc. Specimen Signature.

Introduced by	Name of amount sent

Banking Law and Practice in India by M. L. Tannan—page 302.

LETTER BY PARTNERS OF THE FIRM DEALING WITH A BANK

The Manager,

BANK, LIMITED.

Dear Sir,

As the firm of have dealings with your Bank, we beg to inform you that we, the undersigned, are the partners in the said firm. We jointly and severally undertake responsibility to the Bank for liabilities of the firm with the Bank. The Bank may recover its claims from the estate of any or all of the partners of the firm.

Whenever any change occurs in our partnership we undertake to inform the Bank of the same in writing and our individual responsibility to the Bank will continue until we receive from the Bank an acknowledgment of that letter and until all our liabilities with the Bank are discharged.

To be signed here by each partner of the firm.

Yours faithfully,

Banking Law and Practice in India by M. L. Tannan—page 303.

LOAN APPLICATION

To

BANK, LIMITED,
Office.

Applicant's name (in full)
Names of Partners in case of a firm
Father's name and caste
Occupation with income
Residence and present address
Amount required
Period and purpose for which required

How repayment is proposed

Whether he applied to any other of the Branches, if so, with what result ?

Any other particulars

Nature, Extent and Particulars of Security offered :—

(1)
(2)
(3)
(4)

RULES RELATING TO SECURITY

1. If house or landed property is offered as security. The (*a*) nature, (*b*) locality, (*c*) previous encumbrances, (*d*) measurement, (*e*) value, (*f*) title and any other particulars necessary should be clearly given.

2. When stock-in-trade, goods and commodities are offered. The (*a*) particulars, (*b*) condition, (*c*) net value, (*d*) market value, and (*e*) margin to be kept, should be mentioned.

3. When Government paper and debentures are offered. The (*a*) nature, (*b*) rate of interest, and (*c*) year, etc. should be given.

4. If jewellery, i.e. gold is offered, its weight, value and margin should be given.

It should also be given if the cashier has tested it.

5. When shares of a company are offered. The (*a*) name of the company, (*b*) number of shares, (*c*) market value, (*d*) amount paid on each share should be mentioned and the last balance sheet shown if necessary.

6. In case of personal security, name, position and worth of the surety should be stated.

7. If a life policy is offered. The (*a*) amount of policy, (*b*) name of the company, (*c*) premium, (*d*) surrender value, and (*e*) due date of the policy be given. Will the policy be assigned to the Bank?

Statement of Movable and Immovable Property of the Applicant.

Station	Locality	Particulars of property	Approximate value			Remarks

Statement of Previous Liabilities.

Station	Names of creditors and addresses	On what security	Amount			Remarks

I/We hereby declare that I/we have read the rules and that the answers given above are true and I/we hold myself/ourselves, personally liable if any answer turns out to be wrong.

Signature.

Place

Designation and Address.

Dated 194 .

Banking Law and Practice in India by M. L. Tannan—pp. 315-17.

RULES RELATING TO LOAN

1. The Bank grants loans of Rs. 100 and upwards on security of Government Paper, jewellery and other good securities.

2. Promissory notes bearing one or more endorsements, if approved, are discounted.

3. Advances sanctioned, but not taken up by the borrower within one month of sanction will be considered as cancelled.

4. A half-yearly incidental charge of Re. 1 is made upon each Loan and Pro-note Account.

5. Compound interest will be charged after every half-year.

6. The Bank has a right to adjust the whole or part of the amount due to the Bank from the funds to be paid to the constituent from whatsoever account.

ANOTHER LETTER OF LIEN

Memorandum for Securing Bankers' Advances against Stock Exchange Securities

of

(hereinafter called the said Bankers) having agreed to make advances of moneys to and to permit to open and continue an account with the said Bankers of and of do hereby deposit in their hands for better securing and repayment of such advances or any renewal thereof, and as a general cover upon all accounts with the said Bankers including Bankers' interest and their usual commission and other lawful charges, and hereby authorize them to sell such securities by public auction or private contract, at such time or times, to such person or persons, and at such price or prices, and under such conditions as they in their absolute discretion shall think fit, and to apply the proceeds after payment of the costs attending such sale and transfer, in or towards satisfaction of the said advances and all other moneys which may at any time be owing by to the Bankers, either separately or jointly with any other person or persons, and either as a principal debtor or as a surety for any other person or persons including such interest, commission and charges as aforesaid.

Signature.

Banking Law and Practice in India by M L. Tannan—page 318.

MEMORANDUM OF DEPOSIT OF THE TITLE DEEDS TO SECURE ADVANCES TO THE CUSTOMER

Memorandum that I, the undersigned of hereby acknowledge that I have this day deposited with the Bank, Ltd. (hereinafter called " The Bank ", which expression shall include their successors and assigns), the documents specified in the Schedule hereto, with intent to create an equitable mortgage upon all my estate and interest in the property to which such documents relate, for the purpose of securing the payment to the Bank on demand of all moneys now owing or which shall at any time hereafter be owing from me either solely, or jointly with any person or persons, to the Bank whether on balance of account, or by discount or otherwise in respect of bills of exchange, promissory notes, cheques, and other negotiable instruments, or in any manner whatsoever, and including interest with half-yearly rests, in connection with the account. And I hereby further agree whenever requested by the Bank at my own cost to execute to the Bank a valid legal mortgage of such property in such form and with such power of sale and other provisions as the Bank may require for securing the repayment on demand of all moneys secured by this equitable mortgage And I hereby also agree that so long as any moneys remain owing from me to the Bank to pay interest thereon to the Bank after the rate of per cent per annum. And I hereby declare that the documents now deposited are all that are in my posssesion or control, and that the property is not charged or encumbered in any way whatsoever.

As witness my hand this day of 194 .

The schedule above referred to

Witness . (Customer's Signature.)

Banking Law and Practice in India by M. L. Tannan—page 323.

APPENDIX II

THE NEGOTIABLE INSTRUMENTS ACT, 1881 (ACT XXVI OF 1881)

[*Passed by the Governor General of India in Council, 9th December* 1881.]

AN ACT TO DEFINE AND AMEND THE LAW RELATING TO PROMISSORY NOTES, BILLS OF EXCHANGE AND CHEQUES

(As modified up-to-date.)

Preamble

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques ; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short Title

1. This Act may be called the Negotiable Instruments Act, 1881.

Local extents*: *Saving of usages relating to hundis, etc.

It extends to the whole of British India ; but nothing herein contained affects the Indian Paper Currency Act, 1871, Section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ; and it shall come into force on the first day of March, 1882.

2. (Repeal of enactments) Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Interpretation

3. In this Act—

" banker " includes also persons or a corporation or company acting as bankers ; and

" notary public " includes also any person appointed by the Local Government to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES

Promissory Note

4. A " promissory note " is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:—

(*a*) " I promise to pay B or order Rs. 500."

(*b*) " I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."

(*c*) " Mr. B. I. O. U. Rs. 1,000."

(*d*) " I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) " I promise to pay B Rs. 509, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500, seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

Bill of Exchange

5 A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and Section 4 by reason of the time of payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and Section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and Section 4, although he is misnamed or designated by description only.

Cheque

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Drawer, Drawee

7. The maker of a bill of exchange or cheque is called the "drawer", the person thereby directed to pay is called the "drawee".

Drawee in case of need

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

Acceptor

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

Acceptor for honour

When a bill of exchange has been noted or protested for non-acceptance or for better security and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

Payee

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

Holder

8. The " holder " of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon, from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Holder in due course

9. " Holder in due course " means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer ;

or the payee or indorsee thereof, if payable to order before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Payment in due course

10. " Payment in due course " means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned

Inland Instrument

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument.

Foreign Instrument

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Negotiable Instrument

13. (1) A " negotiable instrument " means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) . A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) : A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable to bearer or on which the only or last indorsement is an indorsement in blank.

Explanation (iii) : Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or more of several payees.

Negotiation

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to contribute that person the holder thereof, the instrument is said to be negotiated.

Indorsement

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation,

on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement in blank and in full ; Indorsee

16. (1) If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full" ; and the person so specified is called the "indorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

Ambiguous Instruments

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand

Inchoate Stamped Instruments

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

At sight ; On presentment ; After sight

21. In a promissory note or bill of exchange the expression "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or nothing for non-acceptance or protest for non-acceptance.

Maturity

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating maturity of bill or note payable so many months after date of sight

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after

sight, or after a certain event is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(*a*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument, dated 30th August 1878, is made payable three months after date The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

Calculating maturity of bill or note payable so many days after date or sight

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays, New Year's Day, Christmas Day, if either of such days falls on a Sunday, the next following Monday. Good Friday; and any other day declared by the "Local Government", by notification in the Official Gazette, to be a public holiday.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

Capacity to make, etc. promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiations of a promissory note, bill of exchange or cheque.

Minor

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in Section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such

Liability of drawer

30 The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque, must pay the cheque when duly required to do so, and in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptor respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Only drawee can be acceptor except in need or for honour

33. No person except the drawee of a bill of exchange, or all or some of the several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Acceptance by several drawees not partners

34. Where there are several drawees of a bill of exchange, who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Liability of indorser

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Maker, drawer and acceptor principals

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Prior party is principal in respect of such subsequent party

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under Sections 134 and 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Discharge of indorser's liability

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity

Illustration

A is the holder of a bill of exchange made payable to the order of B which contains the following indorsements in blank :—

First indorsement, " B ".
Second indorsement, " Peter Williams."
Third indorsement, " Wright & Co."
Fourth indorsement, " John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsement by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound although indorsement forged

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name

is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, etc. without consideration

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception 1.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception 2.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money consideration

44 When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entited to receive from him is proportionately reduced.

Explanation —The drawer of a bill of exchange stands in immediate relation with the acceptor The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with the indorsee Other signors may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on B for Rs 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Partial failure of consideration not consisting of money

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

Holder's right to duplicate of lost bill

45A. Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

CHAPTER IV

OF NEGOTIATIONS

Delivery

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation delivery to be effectual must be made by a party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery

47. Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated and B has become the holder of it.

Negotiation by indorsement

48. Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full

49. The holder of a negotiable instrument indorsed in bank may, without signing his own name, by writing above, the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full ; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation ; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer :—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the rights of further negotiation by C.

Who may negotiate

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof ; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words, B may negotiate the instrument

Indorser who excludes his own liability or makes it conditional

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations

(*a*) The indorser of a negotiable instrument signs his name adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Instrument indorsed in blank

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful means or for unlawful consideration

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in the course.

Instrument acquired after dishonour or when overdue

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity has only as against the other parties, the rights thereon of his transferor :

Accommodation note or bill

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity), until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V

OF PRESENTMENT

Presentment for acceptance

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours, on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date of sight

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified

70. A promissory note or bill of exchange not made payable as mentioned in Sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc. has no known place of business or residence

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such instrument may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer

72. Subject to the provisions of Section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand

74. Subject to the provisions of Section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent representative of deceased or assignee of insolvent

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

Excuse for delay in presentment for payment

75A. Delay in presentment for (acceptance or) payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceased to operate, presentment must be made within a reasonable time.

When presentment unnecessary

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases: —

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument ; or
if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours ; or
if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours ; or
if the instrument not being payable at any specified place he cannot after due search be found ;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented ;
he makes a part payment on account of the amount due on the instrument ;
or promises to pay the amount due thereon in whole or in part ;
or otherwise waives his right to take advantage of any default in presentment for payment ;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligibility dealing with bill presented for payment

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI

ON PAYMENT AND INTEREST

To whom payment should be made

78 Subject to the provisions of Section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of six per cent per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment or indemnity in case of loss

81. Any person liable to pay, and called upon by the holder thereof, to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment, entitled to have it delivered up, to him, or if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

Discharge from liability

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

By cancellation

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder ;

By release

(*b*) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after notice of such discharge ;

By payment

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than forty-eight hours to accept

83 If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby

84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been, if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

(*a*) A draws a cheque for Rs. 1,000 and when the cheque ought to be presented, has funds at the bank to meet it. The bank fails

before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order

85. (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.

Note.—This sub-section (2) was added by the Amendment Act of 1934.

Parties not consenting discharged by qualified or limited acceptance

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation —An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid ;

(*c*) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Alteration by indorsee

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125.

Acceptor or indorser bound notwithstanding previous alteration

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII

OF NOTICE OF DISHONOUR

Dishonour by non-acceptance

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Dishonour by non-payment

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee: may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to

such party within a reasonable time, unless such party otherwise receives due notice as provided by Section 93.

Agent for presentment

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto ;

(*b*) in order to charge the drawer when he has countermanded payment ;

(*c*) when the party charged could not suffer damage for want of notice ;

(*d*) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;

(*e*) to charge the drawers when the acceptor is also a drawer ;

(*f*) in the case of a promissory note which is not negotiable ;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX

OF NOTING AND PROTEST

Noting

99 When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if any, assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest

101. A protest under Section 103 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;

(*b*) the name of the person for whom and against whom the instrument has been protested ;

(*c*) statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public ; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found ;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(*e*) the subscription of the notary public making the protest ;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which such acceptance or payment was offered and effected

A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.

Notice of protest

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions ; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

When nothing equivalent to protest

104A. For the purposes of this Act, where a bill or note required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time for the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.

CHAPTER X

OF REASONABLE TIME

Reasonable time

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual

course of dealing with respect to similar instruments ; and in calculating such time public holidays shall be excluded.

Reasonable time of giving notice of dishonour

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

Acceptance for honour

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any part thereto.

How acceptance for honour must be made

109. A person desiring to accept for honour must (by writing on the bill under his hand) declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

Acceptance not specifying for whose honour it is made

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not ; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying (or his agent in that behalf) has previously declared before a notary public the party

for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in case of need

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII

OF COMPENSATION

Rules as to compensation

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall be determined by the following rules:—

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per cent per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all the expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any) If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

Presumptions as to negotiable instruments of consideration

118. Until the contrary is proved, the following presumptions shall be made:—

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred was accepted, indorsed, negotiated or transferred for consideration:

as to date

(*b*) that every negotiable instrument bearing a date was made or drawn on such date ;

as to time of acceptance

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

as to time of transfer

(*d*) that every transfer of a negotiable instrument was made before its maturity ;

as to order of indorsement

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

as to stamp

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped ;

that the holder is a holder in due course

(*g*) that the holder of a negotiable instrument is a holder in due course ; Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration the burden of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptance of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse

121. No maker of a promissory note and no acceptor of a bill of exchange (payable to order) shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying signature or capacity of prior party

122. No indorser of a negotiable instrument shall in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV

OF CROSSED CHEQUES

Cheques crossed generally

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue

125 Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, for collection.

Payment of cheque crossed generally

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially

Where a cheque is crossed specially the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing 'not negotiable'

130. A person taking a cheque crossed generally or specially bearing in either case the words "not negotiable", shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Non-liability of banker receiving payment of cheque

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Explanation.— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

CHAPTER XV

OF BILLS IN SETS

Set of Bills

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.— When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsees of each part are liable on such part as if it were a separate bill.

Holder of first acquired part entitled to it

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI

OF INTERNATIONAL LAW

Law governing liability of maker, acceptor or indorser of foreign instrument

134 In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable

Illustration

A bill of exchange was drawn by A in Calcutta where the rate of interest is 25 per cent, and accepted by B payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India He is liable to pay interest at the rate of 6 per cent only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour

135 Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, etc. out of British India, but in accordance with its law

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in acceptance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII

NOTARIES PUBLIC

Power to appoint notaries public

138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to make rules for notaries public

139. The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

SCHEDULE

(ENACTMENTS REPEALED)

Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

APPENDIX III

BILLS OF EXCHANGE ACT, 1882

(45 & 46 Vict. C. 61)

An Act to codify the law relating to Bills of Exchange, Cheques and Promissory Notes.
(18th August 1882.)

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

PART I—PRELIMINARY

Short Title

1. This Act may be cited as the Bills of Exchange Act, 1882.

Interpretation of terms

2. In this Act, unless the context otherwise requires.
"Acceptance" means an acceptance completed by delivery or notification.
"Action" includes counter-claim and set-off
"Banker" includes a body of persons whether incorporated or not who carry on the business of banking.
"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.
"Bearer" means the person in possession of a bill or note which is payable to bearer.
"Bill" means bill of exchange, and "note" means promissory note.
"Delivery" means transfer of possession, actual or constructive, from one person to another.
"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.
"Indorsement" means an indorsement completed by delivery.
"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.
"Person" includes a body of persons whether incorporated or not.
"Value" means valuable consideration.
"Written" includes printed and "writing" includes print.

PART II.—BILLS OF EXCHANGE

Form and Interpretation

Bill of exchange defined

3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay,

coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

Inland and foreign bill

(4) A bill is not invalid by reason—

(*a*) That it is not dated ;

(*b*) That it does not specify the value given, or that any value has been given therefor ;

(*c*) That it does not specify the place where it is drawn or the place where it is payable.

4. (1) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersy, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person

5. (1) A bill may be drawn payable to, or to the order of, the drawer ; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his opinion, either as a bill of exchange or as a promissory note.

Address to drawee

6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee

7 (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one or two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable

8. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable

9. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof

Bill payable on demand

10 (1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation ; or

(*b*) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1) At a fixed period after date or sight

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect

Omission of date in bill payable after date

12. Where a bill expressed to be payable at a fixed period after date is issued undated or where the acceptance of a bill payable at a fixed period after sight undated any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly :

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating

13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment

14. Where a bill is not payable on demand the day on which it falls due is determined as follows :—

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; Provided that

(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as a public feast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

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(*b*) When the last day of grace is a Bank Holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4) The term "month" in a bill means calendar month.

Case of need

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder;

(2) Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance

17. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:—

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance

18. A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete;

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment;

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified

19. (1) An acceptance is either (*a*) general or (*b*) qualified.

(2) A general acceptance assents without qualification to the order of the drawee. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a*) conditional, that is to say, which makes payment to the acceptor dependent on the fulfilment of a condition therein stated ;

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn ;

(*c*) local, that is to say, an acceptance to pay only at a particular specified place ;

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere ;

(*d*) qualified as to time ;

(*e*) the acceptance of some one or more of the drawees, but not of all.

Inchoate Instruments

20 (1) Where a simple signature on a blank stamped paper is delivered by the signor in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be ;

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

22. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

Capacity of parties

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto

Signature essential to liabilities

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such Provided that—

(1) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

(2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorized signature

24 Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

Procuration signatures

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

Value and holder for value

27. (1) Valuable consideration for a bill may be constituted by—

(*a*) any consideration sufficient to support a simple contract;

(*b*) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time;

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party

28. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course

29 (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

(*a*) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(*b*) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defecting within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force or fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith

30 (1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force or fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

Negotiation of bill

31. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title

as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally does not operate as negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Indorsement in blank and special indorsement

34. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or the order of himself or some other person.

Restrictive indorsement

35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill

36. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed, or (*b*) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course

Negotiation of bill to party already liable thereon

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, reissue and further negotiate the bill but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder

38. The rights and powers of the holder of a bill are as follows :—

(1) He may sue on the bill in his own name ;

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties, liable on the bill ;

(3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

When presentment for acceptance is necessary

39. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with

the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight

40. (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within reasonable time

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Rules as to presentment for acceptance and excuses for non-presentment

41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules :—

(*a*) the presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue ;

(*b*) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only ;

(*c*) where the drawee is dead, presentment may be made to his personal representative ;

(*d*) where the drawee is bankrupt, presentment may be made to him or to his trustee ;

(*e*) where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill ,

(*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected ;

(*c*) where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment.

Non-acceptance

42. (1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers

Dishonour by non-acceptance and its consequences

43. (1) A bill is dishonoured by non-acceptance—

(*a*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained ; or

(*b*) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptance

44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Rules as to presentment for payment

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules —

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour or business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place—

(*a*) Where a place of payment is specified in the bill and the bill is there presented.

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known and, if not, at his ordinary residence if known.

(*d*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or the acceptor of a bill is dead and no place of payment is specified, presentment must be made to

a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorized by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment

46. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be affected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b*) Where the drawee is a fictitious person

(*c*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented.

(*e*) By waiver of presentment, express or implied.

Dishonour by non-payment

47. (1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged ; Provided that :—

(1) Where a bill is dishonoured by acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules :—

(1) The notice must be given by or on behalf of the holder or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of indorsers recourse against the party to whom it is given.

(4) When notice is given by or on behalf of an indorser entitled to give notice as hereinafter provided, it ensures for the benefit of the holder and all indorsers subsequent to the party to whom the notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the other.

(12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill is dishonoured is in the hands of the agent he may either himself give notice to the parties liable on the bill, or he may give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay

50. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party

giving notice, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged.

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

(*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment.

(*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation

Noting or protest of bill

51. (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill protest thereof in case dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting

(5) Where the acceptor of the bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers

(6) A bill must be protested at the place where it is dishonoured; Provided that—

(*a*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during the business hours, and if not received during business hours, then not later than the next business day.

(*b*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for

non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested.

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor

52 (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or the notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

Funds in hands of drawee

53 (1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor

54. The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance.

(2) Is precluded from denying to a holder in due course—

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b*) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c*) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser

55. (1) The drawer of a bill by drawing it—

(*a*) Engages that on due presentation it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements.

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereof.

Stranger signing bill liable as indorser

56. Where a person signs a bill otherwise than as drawee or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) The amount of the bill ;

(*b*) Interest thereon from the time of presentment for payment if the bill is payable on demand and from the maturity of the bill in any other case ;

(*c*) The expenses of noting, or when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer, or indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interests at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee

58. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill

Payment in due course

59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(*a*) When a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill

(*b*) When a bill is paid by an indorser or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged

60 When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver

62. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

The renunciation must be in writing unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation

63. (1) Where a bill intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, under a mistake or without authority.

Alteration of bill

64. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent

ACCEPTANCE AND PAYMENT FOR HONOUR

Acceptance for honour supra protest

65 (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security and is not overdue, any person, not being a party already liable thereon, may with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *supra* protest in order to be valid must

(*a*) be written on the bill, and indicate that it is an acceptance for honour;

(*b*) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honour.

Liability of acceptor for honour

66. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour

67. (1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him

Payment for honour supra protest

68. (1) When a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holders as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments

Holder's right to duplicate of lost bill

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set

Rules as to sets

71. (1) When a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of the holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

Rules where laws conflict

72 Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsements, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided that—

(*a*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(*b*) Where a bill, issued out of the United Kingdom, conforms as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) Subject to the provision to this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of, but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation,

be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III—CHEQUES ON A BANKER

Cheque defined

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment

74. Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) Countermand of payment.

(2) Notice of the customer's death.

General and special crossings defined

76. (1) Where a cheque bears across its face an addition of—

(*a*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable", or

(*b*) Two parallel transverse lines, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue

77. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque

78. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheques

79. (1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Note.—Bank drafts on demand are now treated as cheques though drawn by a bank on its branch or *vice versa* and Sections 76 to 82 apply to them. (Bills of Exchange Amending Act 1932). Also see Bills of Exchange (Crossed Cheques) Act, 1906. See later full Text of the Acts appended.

PART IV—PROMISSORY NOTES

Promissory note defined

83. (1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Delivery necessary

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes

85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

Note payable on demand

86 (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment

87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker

88. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor;

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II to notes

89. (1) Subject to the provisions of this Act, and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes, namely, provisions relating to—

(*a*) Presentment for acceptance ;
(*b*) Acceptance ;
(*c*) Acceptance *supra* protest ;
(*d*) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V—SUPPLEMENTARY

Good faith

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature

91. (1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation where by this Act any instrument or writing is required to be signed it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business" days " for the purpose of this Act mean—

(*a*) Sunday, Good Friday, Christmas Day ;
(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it ;
(*c*) A day appointed by Royal Proclamation as a public fast or thanksgiving day.

Any other day is a business day.

When noting equivalent to protest

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible

94. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the

certificate shall in all respects operate as if it were a formal protest of the bill.

The Form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repealed by the Statute Law Revision Act, 1898

96. The enactments mentioned in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that Schedule mentioned :

Provided that such repeal shall not affect anything done or suffered, or any right, title or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title or interest.

Savings

97 (1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect—

33 & 34 *Vict. c.* 97

(*a*) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue ;

25 & 26 *Vict. c.* 89

(*b*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint-stock banks or companies ;

(*c*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively ;

(*d*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Saving of summary diligence in Scotland

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, etc.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence allowed in certain judicial proceedings in Scotland

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence : Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge or threatened charge, to make such consignation, or to find such caution as the Court or Judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

SCHEDULE I

Sec. 94

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, A B (householder) of in the country of , in the United Kingdom, at the request of C. D , there being no notary public available, did on the day of 19 at demand payment (or acceptance) of the bill of exchange hereunder written, from E F., to which demand he made answer (state answer, if any) wherefore I now, in the presence of G H. and J K do protest the said bill of exchange

(Signed) A. B.)
,, G. H. } *Witnesses.*
,, J. K.)

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten

BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906

An Act to amend section eighty-two of the Bills of Exchange Act, 1882.
(*4th August* 1906)

BE it enacted, etc

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917 (7 & 8 Geo. 5 c. 48)

An Act to amend the Bills of Exchange Act, 1882, *with respect to time for noting Bills.*
(*8th November* 1917)

BE it enacted, etc.

1. In sub-section (4) of S. 51 of the Bills of Exchange Act, 1882 which relates to the time of noting a dishonoured bill), the words " It must be noted on the day of its dishonour " shall be repealed, and the following words shall be substituted therefor, namely, " it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day."

2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917.

Regulations relating to Bank of England Notes, etc. alleged to have been Lost, Mislaid or Stolen

1. Any person desirous of tracing Bank Notes, Post Bills, etc. lost, mislaid, or stolen, with a view, if possible, of recovering the property, may, upon payment of a registration fee of 2*s*. 6*d*., cause the Numbers, Dates and other Particulars of such Notes, etc. to be entered, together with the Name and Address of the Applicant, in a Book kept in the Secretary's Office at the Bank of England for that purpose:—Bank Notes, however, being payable to bearer on demand, the Bank cannot hold themselves under any responsibility should notes so entered be paid on presentation, whether from inadvertence of the clerks of the establishment, under an order from the Governors, or from any cause whatever.

2. The proper officers of the Bank will endeavour, if the circumstances of the case permit, to delay payment of the Notes, etc. and to give information of their presentation to the person who has given notice, and paid the registration fee; but such notice shall not be in force for more than twelve months from its date.

3 Many Bank Notes, etc. the subject of notice, are presented at the Bank by bankers and other undoubted holders for value, and must be paid on presentation, in these cases the Bank cannot do more than endeavour to give the earliest information to the giver of the Notice

BILLS OF EXCHANGE

Act (1882) Amendment Act, 1932

An Act to amend the Bills of Exchange Act, 1882
(12*th July* 1932.)

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

Amendment as to cheques drawn by a bank on itself

1. Sections seventy-six to eighty-two of the Bills of Exchange Act, 1882 (which relate to crossed cheques), as amended by the Bills of Exchange (Crossed Cheques) Act, 1906, shall apply to a banker's draft as if the draft were a cheque.

45 & 46 *Vict c* 61 6 *Edw*. 7 *c*. 17

For the purpose of this section, the expression "banker's draft" means a draft payable on demand drawn by or on behalf of a bank upon itself whether payable at the head office or some other office of the bank.

2. This Act may be cited as the Bills of Exchange Act (1882) Amendment Act, 1932.

APPENDIX IV

THE RESERVE BANK OF INDIA ACT, 1934
ACT No. II OF 1934

(Passed by the Indian Legislature)

Received the assent of the Governor-General on the 6th March 1934.

An Act to constitute a Reserve Bank of India

Whereas it is expedient to constitute a Reserve Bank for India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in British India and generally to operate the currency and credit system of the country to its advantage ;

And whereas in the present disorganization of the monetary system of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system ;

But whereas it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Reserve Bank of India Act, 1934.

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

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates as the Governor-General-in-Council may, by notification in the Gazette of India, appoint.

Definitions

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

(*a*) " the Bank " means the Reserve Bank of India constituted by this Act ;

(*b*) " the Central Board " means the Central Board of Directors of the Bank ;

(*c*) " provincial co-operative bank " means the principal society in a province which is registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies and the primary object of which is the financing of the other societies in the province which are or are deemed to be so registered :

Provided that in addition to such principal society in a province or where there is no such principal society in a province the Local Government may declare any central co-operative society in that province to be a provincial co-operative bank within the meaning of this definition ;

(*d*) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906; and

(*e*) "scheduled bank" means a bank included in the Second Schedule.

CHAPTER II

INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS

Establishment and incorporation of Reserve Bank

3. (1) A Bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Governor-General-in-Council and of carrying on the business of banking in accordance with the provisions of this Act.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued

Share capital, share registers and shareholders

4 (1) The original share capital of the Bank shall be five crores of rupees divided into shares of one hundred rupees each, which shall be fully paid up

(2) Separate registers of shareholders shall be maintained at Bombay, Calcutta, Delhi, Madras and Rangoon, and a separate issue of shares shall be made in each of the areas served by those registers, as defined in the First Schedule, and shares shall be transferable from one register to another

(3) A shareholder shall be qualified to be registered as such in any area in which he is ordinarily resident or has his principal place of business in India, but no person shall be registered as a shareholder in more than one register; and no person who is not—

(*a*) domiciled in India and either an Indian subject of His Majesty or a subject of a State in India, or

(*b*) a British subject ordinarily resident in India and domiciled in the United Kingdom or in any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, or

VII of 1913; II of 1912

(*c*) a company registered under the Indian Companies Act, 1913, or a society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies or a scheduled bank, or a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in or any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, and having a branch in British India,

shall be registered as a shareholder or be entitled to payment of any dividend on any share, and no person, who, having been duly registered as a shareholder, ceases to be qualified to be so registered, shall be able to exercise any of the rights of a shareholder otherwise than for the purpose of the sale of his shares.

(4) The Governor-General-in-Council shall, by notification in the Gazette of India, specify the parts of His Majesty's Dominions which shall be deemed for the purposes of clauses (*b*) and (*c*) of sub-section (3) to be the parts of His Majesty's Dominions in which no discrimination against Indian subjects of His Majesty exists.

(5) The nominal value of the shares originally assigned to the various registers shall be as follows, namely :—

(*a*) to the Bombay register—one hundred and forty lakhs of rupees ;

(*b*) to the Calcutta register—one hundred and forty-five lakhs of rupees ;

(*c*) to the Delhi register—one hundred and fifteen lakhs of rupees ;

(*d*) to the Madras register—seventy lakhs of rupees ;

(*e*) to the Rangoon register—thirty lakhs of rupees :

Provided that if at the first allotment the total nominal value of the shares on the Delhi register for which applications are received is less than one hundred and fifteen lakhs of rupees, the Central Board shall, before proceeding to any allotment, transfer any share not applied for up to a maximum nominal value of thirty-five lakhs of rupees from that register in two equal portions to the Bombay and the Calcutta register.

A Committee consisting of two elected members of the Assembly and one elected member of the Council of State to be elected by non-official members of the respective Houses shall be associated with the Central Board for the purpose of making public issue of shares and looking after the first allotment of shares.

(6) In allotting the shares assigned to a register, the Central Board shall, in the first instance, allot five shares to each qualified applicant who has applied for five or more shares, and, if the number of such applications is greater than one-fifth of the total number of shares assigned to the register, shall determine by lot the applicants to whom the shares shall be allotted.

(7) If the number of such applicants is less than one-fifth of the number of shares assigned to the register, the Central Board shall allot the remaining shares firstly, up to the limit of one-half of such remaining shares, to those applicants who have applied for less than five shares, and thereafter as to the balance to the various applicants in such manner as it may deem fair and equitable, having regard to the desirability of distributing the shares and the voting rights attached to them as widely as possible.

(8) Notwithstanding anything contained in sub-sections (6) and (7), the Central Board shall reserve for and allot to Government shares of the nominal value of two lakhs and twenty thousand rupees to be held by Government for disposal at par to Directors seeking to obtain the minimum share qualification required, under sub-section (2) of Section 11.

(9) If, after all applications have been met in accordance with the provisions of sub-sections (6), (7) and (8), any shares remain unallotted, they shall, notwithstanding anything contained in this section, be allotted to and taken up by Government, and shall be sold by the Governor-General-in-Council as soon as may be, at not less than par, to residents of the areas served by the register concerned.

(10) The Governor-General-in-Council shall have no right to exercise any vote under this Act by reason of any shares allotted to him under sub-section (8) or under sub-section (9).

(11) A Director shall not dispose of any shares obtained from Government under the provisions of sub-section (8) otherwise than by resale to Government at par, and Government shall be entitled to re-purchase at par all such shares held by any Director on his ceasing from any cause to hold office as Director.

Increase and reduction of share capital

5. (1) The share capital of the Bank may be increased or reduced on the recommendation of the Central Board, with the previous sanction of the Governor-General-in-Council and with the approval of the

Central Legislature, to such extent and in such manner as may be determined by the Bank in general meeting.

(2) The additional shares so created shall be of the nominal value of one hundred rupees each and shall be assigned to the various registers in the same proportions as the shares constituting the original share capital.

(3) Such additional shares shall be fully paid up, and the price at which they may be issued shall be fixed by the Central Board with the previous sanction of the Governor-General-in-Council.

(4) The provisions of Section 4 relating to the manner of allotment of the shares constituting the original share capital shall apply to the allotment of such additional shares, and existing shareholders shall not enjoy any preferential right to the allotment of such additional shares.

Offices, branches and agencies

6 The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, Delhi, Madras and Rangoon and a branch in London, and may establish branches or agencies in any other place in India or, with the previous sanction of the Governor-General-in-Council, elsewhere.

Management

7 The general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting.

Composition of the Central Board and term of office of Directors

8. (1) The Central Board shall consist of the following Directors, namely :—

(*a*) a Governor and two Deputy Governors, to be appointed by the Governor-General-in-Council after consideration of the recommendations made by the Board in that behalf ;

(*b*) four Directors to be nominated by the Governor-General-in-Council ,

(*c*) eight Directors to be elected on behalf of the shareholders on the various registers, in the manner provided in section 9 and in the following numbers, namely .—

(*i*) for the Bombay register—two Directors ;

(*ii*) for the Calcutta register—two Directors ;

(*iii*) for the Delhi register—two Directors ;

(*iv*) for the Madras register—one Director ;

(*v*) for the Rangoon register—one Director ; and

(*d*) one government official to be nominated by the Governor-General-in-Council.

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the Governor-General-in-Council.

(3) A Deputy Governor and the Director nominated under clause (*d*) of sub-section (1) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote :

Provided that when the Governor is absent, a Deputy Governor authorized by him in this behalf in writing may vote for him.

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the Governor-General-in-Council may fix when appointing them, and shall be eligible for re-appointment.

A Director nominated under clause (*b*) or elected under clause (*c*) of sub-section (1) shall hold office for five years, or thereafter until his

successor shall have been duly nominated or elected, and, subject to the provisions of section 10, shall be eligible for re-nomination or re-election.

A Director nominated under clause (*d*) of sub-section (1) shall hold office during the pleasure of the Governor-General-in-Council.

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

Local Boards, their constitution and functions

9. (1) A Local Board shall be constituted for each of the five areas specified in the First Schedule, and shall consist of—

(*a*) five members elected from amongst themselves by the shareholders who are registered on the register for that area are disqualified to vote, and

(*b*) not more than three members nominated by the Central Board from amongst the shareholders registered on the register for that area, who may be nominated at any time .

Provided that the Central Board shall in exercising this power of nomination aim at securing the representation of territorial or economic interests not already represented and in particular the representation of agricultural interests and the interests of co-operative banks.

(2) At an election of members of a Local Board for any area, any shareholder who has been registered on the register for that area, for a period of not less than six months ending with the date of the election, as holding five shares shall have one vote, and each shareholder so registered as having more than five shares shall have one vote for each five shares, but subject to a maximum of ten votes, and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an employee of the Bank.

(3) The members of a Local Board shall hold office until they vacate it under sub-section (6) and, subject to the provisions of Section 10, shall be eligible for re-election or re-nomination, as the case may be.

(4) At any time within three months of the day on which the Directors representing the shareholders on any register are due to retire under the provisions of this Act, the Central Board shall direct an election to be held of members of the Local Board concerned, and shall specify a date from which the registration of transfers from and to the register shall be suspended until the election has taken place.

(5) On the issue of such direction the Local Board shall give notice of the date of the election and shall publish a list of shareholders holding five or more shares, with the dates on which their shares were registered, and with their registered addresses, and such list shall be available for purchase not less than three weeks before the date fixed for the election.

(6) The names of the persons elected shall be notified to the Central Board which shall thereupon proceed to make any nominations permitted by clause (*b*) of sub-section (1) it may then decide to make, and shall fix the date on which the out-going members of the Local Board shall vacate office, and the incoming members shall be deemed to have assumed office on that date.

(7) The elected members of a Local Board shall, as soon as may be after they have been elected, elect from amongst themselves one or two persons, as the case may be, to be Directors representing the shareholders on the register for the area for which the Board is constituted.

(8) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform such duties as the Board may, by regulations, delegate to it.

Disqualifications of Directors and members of Local Boards

10. (1) No person may be a Director or a member of a Local Board who—

(*a*) is a salaried government official or a salaried official of a State in India, or

(*b*)* is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or

(*c*) is found lunatic or becomes of unsound mind, or

(*d*) is an officer or employee of any bank, or

(*e*) is a director of any bank, other than a bank, which is a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in British India relating to co-operative societies.

(2) No two persons who are partners of the same mercantile firm, or are directors of the same private company, or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm of which the other is a partner, may be Directors or members of the same Local Board at the same time.

(3) Nothing in clause (*a*), clause (*d*) or clause (*e*) of sub-section (1) shall apply to the Governor, or to a Deputy Governor or to the Director nominated under clause (*d*) of sub-section (1) of Section 8.

Removal from and vacation of office

11. (1) The Governor-General-in-Council may remove from office the Governor or a Deputy Governor or any nominated or elected Director :

Provided that in the case of a Director nominated or elected under clause (*b*) or clause (*c*) of sub-section (1) of Section 8, this power shall be exercised only on a resolution passed by the Central Board in that behalf by a majority consisting of not less than nine Directors.

(2) A Director nominated or elected under clause (*b*) or clause (*c*) of sub-section (1) of Section 8, and any member of a Local Board shall cease to hold office if, at any time after six months from the date of his nomination or election, he is not registered as a holder of unencumbered shares of the Bank of a nominal value of not less than five thousand rupees, or if he ceases to hold unencumbered shares* of that value, and any such Director shall cease to hold office if without leave from the Governor-General-in-Council he absents himself from three consecutive meetings of the Central Board convened under sub-section (1) of Section 13.

(3) The Governor-General-in-Council shall remove from office any Director, and the Central Board shall remove from office any member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub-section (2) of Section 10.

(4) A Director or member of a Local Board removed or ceasing to hold office under the foregoing sub-sections shall not be eligible for re-appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made.

(5) The appointment, nomination or election as Director or member of a Local Board of any person who is a member of the Indian Legislature or of a Local Legislature shall be void, unless, within two months of the date of his appointment, nomination or election, he ceases to be such member, and, if any Director or member of a Local Board is elected or nominated as a member of any such Legislature, he shall cease to be a Director or member of the Local Board as from the date of such election or nomination, as the case may be

(6) A Director may resign his office to the Governor-General-in-Council, and a member of a Local Board may resign his office to the

Central Board, and on the acceptance of the resignation the office shall become vacant.

Casual vacancies and absences

12. (1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor-General-in-Council may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (*d*) of sub-section (1) of Section 10, be an officer of the Bank

(2) If an elected Director is for any reason unable to attend a particular meeting of the Central Board, the elected members of the Local Board of the area which he represents may elect one of their number to take his place, and for the purposes of that meeting the substitute so elected shall have all the powers of the absent Director.

(3) Where any casual vacancy in the office of any member of a Local Board, occurs otherwise than by the occurrence of a vacancy in the office of a Director elected by the Local Board, the Central Board may nominate thereto any qualified person recommended by the elected members of the Local Board

(4) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub-section (1), the vacancy shall be filled, in the case of a nominated Director by nomination, and in the case of an elected Director by election held in the manner provided in Section 9 for the election of Directors :

Provided that before such election is made the resulting vacancy, if any, in the Local Board and any vacancy in the office of an elected member of such Board which may have been filled by a member nominated under sub-section (3) shall be filled by election held as nearly as may be in the manner provided in Section 9 for the election of members of a Local Board.

(5) A person nominated or elected under this section to fill a casual vacancy shall, subject to the proviso contained in sub-section (4), hold office for the unexpired portion of the term of his predecessor

Meetings of the Central Board

13. (1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter

(2) Any three Directors may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly.

(3) The Governor, or in his absence the Deputy Governor authorized by the Governor under the proviso to sub-section (3) of Section 8, to vote for him, shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote

General meetings

14. (1) A general meeting (hereinafter in this Act referred to as the annual general meeting) shall be held annually at a place where there is an office of the Bank within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Central Board at any other time :

Provided that the annual general meeting shall not be held on two consecutive occasions at any one place.

(2) The shareholders present at a general meeting shall be entitled to discuss the annual accounts, the report of the Central Board on the working of the Bank throughout the year and the auditor's report on the annual balance sheet and accounts.

(3) Every shareholder shall be entitled to attend at any general meeting and each shareholder who has been registered on any register, for a period of not less than six months ending with the date of the meeting, as holding five or more shares shall have one vote and on a poll being demanded each shareholder so registered shall have one vote for each five shares, but subject to a maximum of ten votes, and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an officer or employee of the Bank.

First Constitution of the Central Board

15. (1) The following provisions shall apply to the first constitution of the Central Board, and, notwithstanding anything contained in Section 8, the Central Board as constituted in accordance therewith shall be deemed to be duly constituted in accordance with this Act.

(2) The first Governor and the first Deputy Governor or Deputy Governors shall be appointed by the Governor-General-in-Council on his own initiative, and shall receive such salaries and allowances as he may determine

(3) The first eight Directors representing the shareholders on the various registers shall be nominated by the Governor-General-in-Council from the areas served respectively by those registers, and the Directors so nominated shall hold office until their successors shall have been duly elected as provided in sub-section (4).

(4) On the expiry of each successive period of twelve months after the nomination of Directors under sub-section (3) two Directors shall be elected in the manner provided in Section 9 until all the Directors so nominated have been replaced by elected Directors holding office in accordance with Section 8 The register in respect of which the election is to be held shall be selected by lot from among the registers still represented by nominated Directors, and for the purposes of such lot the Madras and Rangoon registers shall be treated as if they comprised one register only.

First Constitution of Local Boards

16 As soon as may be after the commencement of this Act, the Central Board shall direct elections to be held and may make nominations, in order to constitute Local Boards in accordance with the provisions of Section 9, and the members of such Local Boards shall hold office up to the date fixed under sub-section (6) of Section 9, but, shall not exercise any right under sub-section (7) of that section.

Business which the Bank may transact

17. The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely :—

(1) the accepting of money on deposit without interest form, and the collection of money for, the Secretary of State in Council, the Governor-General-in-Council, Local Governments, States in India, local authorities, banks and any other persons ;

(2) (*a*) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of *bona fide* commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace ,

(*b*) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank, or a provincial co-operative bank, and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and

maturing within nine months from the date of such purchase or rediscount, exclusive of days of grace ;

(*c*) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or trading in securities of the Government of India or a Local Government, or such securities of States in India as may be specified in this behalf by the Governor-General-in-Council on the recommendation of the Central Board, and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace ;

(3) (*a*) the purchase from and sale to scheduled banks of sterling in amounts of not less than the equivalent of one lakh of rupees ;

(*b*) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in the United Kingdom and maturing within ninety days from the date of purchase, provided that no such purchase, sale or rediscount shall be made in India except with a scheduled bank ; and

(*c*) the keeping of balance with banks in the United Kingdom ;

(4) the making to States in India, local authorities, scheduled banks and provincial co-operative banks of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of—

(*a*) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament of by any law for the time being in force in British India ;

(*b*) gold or silver or documents of title to the same ;

(*c*) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the bank ;

(*d*) promissory notes of any scheduled bank or a provincial co-operative bank, supported by documents of title to goods which have been transferred, assigned, or pledged to any such bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops ;

(5) the making to the Governor-General-in-Council and to such Local Governments as may have the custody and management of their own provincial revenues of advances repayable in each case not later than three months from the date of the making of the advance ;

(6) the issue of demand drafts made payable at its own offices or agencies and the making, issue and circulation of bank post bills ;

(7) the purchase and sale of Government securities of the United Kingdom maturing with ten years from the date of such purchase ;

(8) the purchase and sale of securities of the Government of India or of a Local Government of any maturity or of such securities of a local authority in British India or of such States in India as may be specified in this behalf by the Governor-General-in-Council on the recommendation of the Central Board ;

Provided that securities fully guaranteed as to principal and interest by the Government of India, a Local Government, a local authority or a State in India shall be deemed for the purposes of this clause to be securities of such Government, authority or State ;

Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(*a*) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and three-fifths of the liabilities of the Banking Department in respect of deposits ;

(*b*) the value of such securities maturing after one year shall not exceed the aggregate amount of the share capital of the Bank, the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits ; and

(*c*) the value of such securities maturing after ten years shall not exceed the aggregate amount of the share capital of the Bank and the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits ;

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities ;

(10) the sale and realization of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims ;

(11) the acting as agent for the Secretary of State in Council, the Governor-General-in-Council or any Local Government or local authority or State in India in the transaction of any of the following kinds of business, namely :—

(*a*) the purchase and sale of gold or silver ;

(*b*) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company ;

(*c*) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares ;

(*d*) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere ;

(*e*) the management of public debt ;

(12) the purchase and sale of gold coin and bullion ;

(13) the opening of an account with or the making of an agency agreement with, and the acting as agent or correspondent of, a bank which is the principal currency authority of any country under the law for the time being in force in that country or any international bank formed by such banks, and the investing of the funds of the Bank in the shares of any such international bank ;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the bank, and the giving of security for money so borrowed :

Provided that no money shall be borrowed under this clause from any person in India other than a scheduled bank, or from any person outside India other than a bank which is the principal currency authority of any country under the law for the time being in force in that country :

Provided further that the total amount of such borrowings from persons in India shall not at any time exceed the amount of the share capital of the Bank ,

(15) the making and issue of bank notes subject to the provisions of this Act ; and

(16) generally, the doing of all such matters and things as may be incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.

Power of direct discount

18. When, in the opinion of the Central Board or, where the powers and functions of the Central Board under this section have been delegated to a committee of the Central Board or to the Governor, in the opinion of such committee or of the Governor as the case may be, a special occasion has arisen making it necessary or expedient that action should be taken under this section for the purpose of regulating credit in the interests of Indian trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in sub-clauses (*a*) and (*b*) of clause (2) or sub-clause (*a*) or (*b*) of clause (3) or clause (4) of section 17,—

(1) purchase, sell or discount any of the bills of exchange or promissory notes specified in sub-clause (*a*) or (*b*) of clause (2) or sub-clause (*b*) of clause (3) of that section though such bill or promissory note

does not bear the signature of a scheduled bank or a provincial co-operative bank ; or

(2) purchase or sell sterling in amounts of not less than the equivalent of one lakh of rupees ; or

(3) make loans or advances repayable on demand or on the expiry of fixed periods not exceeding ninety days against the various forms of security specified in clause (4) of that section:

Provided that a committee of the Board or the Governor shall not, save in cases of special urgency, authorize action under this section without prior consultation with the Central Board and that in all cases action so authorized shall be reported to the members of the Central Board forthwith.

Business which the Bank may not transact

19. Save as otherwise provided in sections 17, 18 and 45, the Bank may not—

(1) engage in trade or otherwise have a direct interest in any, commercial, industrial, or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims Provided that all such interests shall be disposed of at the earliest possible moment ;

(2) purchase its own shares or the shares of any other bank or of any company, or grant loans upon the security of any such shares ;

(3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants ;

(4) make loans or advances ;

(5) draw or accept bills payable otherwise than on demand ;

(6) allow interest on deposits or current accounts.

CHAPTER III

CENTRAL BANKING FUNCTIONS

Obligation of the Bank to transact Government business

20. The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor-General-in-Council and such Local Governments as may have the custody and management of their own provincial revenues and such States in India as may be approved of and notified by the Governor-General-in-Council in the Gazette of India, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the public debt.

Bank to have the right to transact Government business in India

21. (1) The Governor-General-in-Council and such Local Governments as may have the custody and management of their own provincial revenues shall entrust the Bank, on such conditions as may be agreed upon, with all their money, remittance, exchange and banking transactions in India, and, in particular, shall deposit free of interest all their cash balances with the Bank:

Provided that nothing in this sub-section shall prevent the Governor-General-in-Council or any Local Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Governor-General-in-Council and Local Governments may hold at such places such balances as they may require.

(2) The Governor-General-in-Council and each Local Government shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans

(3) In the event of any failure to reach agreement on the conditions referred to in this section the Governor-General-in-Council shall decide what the conditions shall be.

(4) Any agreement made under this section to which the Governor-General-in-Council or any Local Government is a party shall be paid, as soon as may be after it is made, before the Central Legislature and in the case of a Local Government before its Local Legislature also.

Right to issue bank notes

22 (1) The Bank shall have the sole right to issue bank notes in British India, and may, for a period which shall be fixed by the Governor-General-in-Council on the recommendation of the Central Board, issue currency notes of the Government of India supplied to it by the Governor-General-in-Council, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Governor-General-in-Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly

(2) On and from the date on which this Chapter comes into force the Governor-General-in-Council shall not issue any currency notes.

Issue Department

23 (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

Denominations of notes

24 Bank notes shall be of the denominational values of five rupees, ten rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Governor-General-in-Council on the recommendation of the Central Board

Form of bank notes

25 The design, form and material of bank notes shall be such as may be approved by the Governor-General-in-Council after consideration of the recommendations made by the Central Board.

Legal tender character of notes

26. (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor-General-in-Council.

(2) On recommendation of the Central Board the Governor-General-in-Council may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

Re-issue of notes

27. The Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.

Recovery of notes lost, stolen, mutilated or imperfect

28. Notwithstanding anything contained in any enactment of rule of law to the contrary, no person shall of right be entitled to recover from the Governor-General-in-Council or the Bank, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note :

Provided that the Bank may, with the previous sanction of the Governor-General-in-Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of both Houses of the Central Legislature.

Bank exempt from Stamp Duty on bank notes

29. The Bank shall not be liable to the payment of any Stamp Duty under the Indian Stamp Act, 1889, (II of 1899) in respect of bank notes issued by it.

Powers of Governor-General-in-Council to supersede Central Board

30. (1) If in the opinion of the Governor-General-in-Council the Bank fails to carry out any of the obligations imposed on it by or under this Act, he may, by notification in the Gazette of India, declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Governor-General-in-Council may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act.

(2) When action is taken under this section the Governor-General-in-Council shall cause a full report of the circumstances leading to such action and of the action taken to be laid before the Central Legislature at the earliest possible opportunity and in any case within three months from the issue of the notification superseding the Board.

Issue of demand bills and notes

31. No person in British India other than the Bank or, as expressly authorized by this Act, the Governor-General-in-Council shall draw, accept, make or issue any bill of exchange, *hundi*, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, *hundis* or notes payable to bearer on demand of any such person :

Provided that cheques or drafts, including *hundis*, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent.

Penalty

32. (1) Any person contravening the provisions of Section 31 shall be punishable with fine which may extend to the amount of the bill, *hundi*, note or engagement in respect whereof the offence is committed.

(2) No prosecution under this section shall be instituted except on complaint made by the Bank.

Assets of the Issue Department

33. (1) The assets of the Issue Department shall consist of gold coin, gold bullion, sterling securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

(2) Of the total amount of the assets, not less than two-fifths shall consist of gold coin, gold bullion or sterling securities :

Provided that the amount of gold coin and gold bullion shall not at any time be less than forty crores of rupees in value.

(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes payable in British India as are eligible for purchase by the Bank under sub-clause (*a*) or sub-clause (*b*) of clause (2) of Section 17 or under clause (1) of Section 18 :

Provided that the amount held in Government of India rupee securities shall not at any time exceed one-fourth of the total amount of the assets or fifty crores of rupees, whichever amount is greater, or, with the previous sanction of the Governor-General-in-Council, such amount *plus* a sum of ten crores of rupees.

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 8 47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and securities shall be valued at the market rate for the time being obtaining.

(5) Of the gold coin and gold bullion held as assets, not less than seventeen/twentieths shall be held in British India, and all gold coin and gold bullion held as assets shall be held in the custody of the Bank or its agencies

Provided that gold belonging to the Bank which is in any other bank or in any mint or treasury or in transit may be reckoned as part of the assets

(6) For the purposes of this section, the sterling securities which may be held as part of the assets, shall be securities of any of the following kinds payable in the currency of the United Kingdom, namely —

(*a*) balances at the credit of the Issue Department with the Bank of England ;

(*b*) bills of exchange bearing two or more good signatures and drawn on and payable at any place in the United Kingdom and having a maturity not exceeding ninety days ;

(*c*) Government securities of the United Kingdom maturing within five years

Provided that, for a period of two years from the date on which this Chapter comes into force any of such last mentioned securities may be securities maturing after five years, and the Bank may, at any time before the expiry of that period, dispose of such securities notwithstanding anything contained in Section 17.

Liabilities of the Issue Department

34 (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

(2) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall notwithstanding anything contained in sub-section (2) of Section 23, be paid by the Issue Department to the Governor-General-in-Council or the Banking Department, as the case may be ; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Governor-General-in-Council.

Initial assets and liabilities

35. On the date on which this Chapter comes into force the Issue Department shall take over from the Governor-General-in-Council the liability for all the currency notes of the Government of India for the

time being in circulation and the Governor-General-in-Council shall transfer to the Issue Department gold coin, gold bullion, sterling securities, rupee coin and rupee securities to such aggregate amount as is equal to the total of the amount of the liability so transferred. The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of Section 33 :

Provided that the total amount of the gold coin, gold bullion and sterling securities so transferred shall not be less than one-half of the whole amount transferred, and that the amount of rupee coin so transferred shall not exceed fifty crores of rupees

Provided further that the whole of the gold coin and gold bullion held by the Governor-General-in-Council in the gold standard reserve and the paper currency reserve at the time of transfer shall be so transferred.

Method of dealing with fluctuations in rupee coin assets

36 (1) After the close of any financial year in which the minimum amount of rupee coin held in the assets, as shown in any of the weekly accounts of the Issue Department for that year prescribed under sub-section (1) of Section 53 is greater than fifty crores of rupees or one-sixth of the total amount of the assets as shown in that account, whichever may be the greater the Bank may deliver to the Governor-General-in-Council rupee coin up to the amount of such excess but not without his consent exceeding five crores of rupees, against payment of legal tender value in the form of bank notes, gold or securities

Provided that if the Bank so desired and if the amount of gold coin, gold bullion and sterling securities in the assets does not at that time exceed one-half of the total assets, a proportion not exceeding two-fifths of such payment shall be in gold coin, gold bullion or such sterling securities as may be held as part of the assets under sub-section (6) of Section 33.

(2) After the close of any financial year in which the maximum amount of rupee coin held in the assets, as so shown, is less than fifty crores of rupees or one-sixth of the total amount of the assets, as so shown, whichever may be the greater, the Governor-General-in-Council shall deliver to the Bank rupee coin up to the amount of such deficiency, but not without its consent exceeding five crores of rupees, against payment of legal tender value.

Suspension of assets requirements

37 (1) Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Governor-General-in-Council, for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold as assets gold coin, gold bullion or sterling securities of less aggregate amount than that required by sub-section (2) of Section 33 and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative .

Provided that the gold coin and gold bullion held as such assets shall not be reduced below the amount specified in the proviso to sub-section (2) of Section 33 so long as any sterling securities remain held as such assets.

(2) In respect of any period during which the holding of gold coin, gold bullion and sterling securities as reduced under sub-section (1), the Bank shall pay to the Governor-General-in-Council a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (2) of Section 33 ; and such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent per annum when such holding exceeds thirty-two and a half per cent of the total amount of the assets and of a further one and a half per cent

per annum in respect of every further decrease of two and a half per cent or part of such decrease:

Provided that the tax shall not in any event be payable at a rate less than six per cent per annum.

Obligations of Government and the Bank in respect of rupee coin

38. The Governor-General-in-Council shall undertake not to re-issue any rupee coin delivered under Section 36 not to put into circulation any rupees, except through the Bank and as provided in that section; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor-General-in-Council under that section.

Obligation to supply different forms of currency

39. (1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906 (III of 1906).

(2) The Bank shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906 (III of 1906), in such quantities as may, in the opinion of the Bank, be required for circulation; and the Governor-General-in-Council shall supply such coins to the Bank on demand If the Governor-General-in-Council at any time fails to supply such coins, the Bank shall be released from its obligations to supply them to the public

Obligation to sell sterling

40. The Bank shall sell, to any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi, Madras or Rangoon and pays the purchase price in legal tender currency, sterling for immediate delivery in London, at a rate not below one shilling and five pence and forty-nine/sixty-fourths of a penny for a rupee

Provided that no person shall be entitled to demand to buy an amount of sterling less than ten thousand pounds

Obligation to buy sterling

41 The Bank shall buy, from any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi, Madras or Rangoon, sterling for immediate delivery in London, at a rate not higher than one shilling and six pence and three/sixteenths of a penny for a rupee:

Provided that no person shall be entitled to demand to sell an amount of sterling less than ten thousand pounds:

Provided further that no person shall be entitled to receive payment unless the Bank is satisfied that payment of the sterling in London has been made.

Cash reserves of scheduled banks to be kept with the Bank

42 (1) Every bank included in the Second Schedule shall maintain with the Bank a balance the amount of which shall not at the close of business on any day be less than five per cent of the demand liabilities and two per cent of the time liabilities of such bank in India as shown in the return referred to in sub-section (2).

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves, or any credit balance in the profit and loss account of the bank or the amount of any loan taken from the Reserve Bank.

(2) Every scheduled bank shall send to the Governor-General-in-Council and to the Bank a return signed by two responsible officers of such bank showing:—

(*a*) the amounts of its demand and time liabilities, respectively, in India,

(*b*) the total amount held in India in currency notes of the Government of India and bank notes,

(*c*) the amounts held in India in rupee coin and subsidiary coin, respectively,

(*d*) the amounts of advances made and of bills discounted in India, respectively, and

(*e*) the balance held at the Bank,

at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the preceding working day; and such return shall be sent not later than two working days after the date to which it relates :

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub-section is impracticable in the case of any scheduled bank by reason of the geographical position of the bank and its branches, the Bank may require such bank to furnish in lieu of a weekly return, a monthly return to be despatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub-section in respect of such bank at the close of business for the month

(3) If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled bank is below the minimum prescribed in sub-section (1), such scheduled bank shall be liable to pay the Bank in respect of each such day penal interest at a rate three per cent above the bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum, and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interest shall be increased to a rate five per cent above the bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the minimum

(4) Any scheduled bank failing to comply with the provisions of sub-section (2) shall be liable to pay the Governor-General-in-Council or to the Bank, as the case may be, or to each, a penalty of one hundred rupees for each day during which the failure continues.

(5) The penalties imposed by sub-section (3) and (4) shall be payable on demand made by the Bank, and, in the event of a refusal by the defaulting bank to pay on such demand, may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon application made in this behalf to the Court by the Governor-General-in-Council in the case of a failure to make a return under sub-section (2) to the Governor-General-in-Council, or by the Bank with the previous sanction of the Governor-General-in-Council in other cases.

(6) The Governor-General-in-Council shall, by notification in the Gazette of India, direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in British India and which—

(*a*) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(*b*) is a company as defined in clause (2) of Section 2 of the Indian Companies Act, 1913 (VII of 1913), or a corporation or a company incorporated by or under any law in force in any place outside British India,

and shall by a like notification direct the exclusion from that Schedule of any scheduled bank the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or which goes into liquidation or otherwise ceases to carry on banking business.

Publication of consolidated statement by the Bank

43. The Bank shall compile and shall cause to be published each week a consolidated statement showing the aggregate of the amounts under each clause of sub-section (2) of Section 42 exhibited in the returns received from scheduled banks under that section.

Power to require returns from co-operative banks

44. The Bank may require any provincial co-operative bank with which it has any transactions under Section 17 to furnish the return referred to in sub-section (2) of Section 42, and if it does so, the provisions of sub-sections (4) and (5) of Section 42 shall apply so far as may be to such co-operative bank as if it were a scheduled bank.

Agreement with the Imperial Bank

45. (1) The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Governor-General-in-Council, and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for fifteen years and thereafter until terminated after five years' notice on either side, and shall further contain the provisions set forth in the Third Schedule

Provided that the agreement shall be conditional on the maintenance of a sound financial position by the Imperial Bank and that if, in the opinion of the Central Board, the Imperial Bank has failed either to fulfil the conditions of the agreement or to maintain a sound financial position, the Central Board shall make a recommendation to the Governor-General-in-Council, and the Governor-General-in-Council, after making such further enquiry as he thinks fit, may issue instructions to the Imperial Bank with reference either to the agreement or to any matter which in his opinion involves the security of the Government monies or the assets of the Issue Department in the custody of the Imperial Bank, and in the event of the Imperial Bank disregarding such instructions may declare the agreement to be terminated

(2) The agreement referred to in sub-section (1) shall, as soon as may be after it is made, be laid before the Central Legislature

CHAPTER IV

GENERAL PROVISIONS

Contribution by Governor-General-in-Council to the Reserve Fund

46. The Governor-General-in-Council shall transfer to the Bank rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve Fund.

Allocation of surplus

47 After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and super-annuation funds, and such other contingencies as are usually provided for by bankers, and after payment out of the net annual profits of a cumulative dividend at such rate not exceeding five per cent per annum on the share capital as the Governor-General-in-Council may fix at the time of the issue of shares, a portion of the surplus shall be allocated to the payment of an additional dividend to the shareholders calculated on the scale set forth in the Fourth Schedule and the balance of the surplus shall be paid to the Governor-General-in-Council.

Provided that if at any time the Reserve Fund is less than the share capital, not less than fifty lakhs of rupees of the surplus, or the whole of the surplus if less than that amount, shall be allocated to the Reserve Fund.

Exemption of Bank from income-tax and super-tax and provision for deduction at source of income-tax on dividends

48. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922 (XI of 1922), or any other enactment for the time being in force relating to income-tax or super-tax, the Bank shall not be liable to pay income-tax or super-tax on any of its income, profits or gains.

Provided that nothing in this section shall affect the liability of any shareholder in respect of income-tax or super-tax.

(2) For the purposes of Section 18 of the Indian Income-tax Act, 1922 (XI of 1922), and of any other relevant provision of that Act relating to the levy and refund of income-tax any dividend paid under Section 47 of this Act shall be deemed to be "Interest on Securities".

Publication of Bank rate

49 The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial paper eligible for purchase under this Act

Auditors

50 (1) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no Director or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible for re-election on quitting office.

(2) The first auditors of the Bank may be appointed by the Central Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be, and continue to act as, auditors until the first annual general meeting after their respective elections

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Central Board.

Appointment of special auditors by Government

51. Without prejudice to anything contained in Section 50, the Governor-General-in-Council may at any time appoint the Auditor-General or such auditors as he thinks fit to examine and report upon the accounts of the Bank

Powers and duties of auditors

52. (1) Every auditor shall be supplied with a copy of the annual balance sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Governor-General-in-Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(2) The auditors shall make a report to the shareholders or to the Governor-General-in-Council, as the case may be, upon the annual balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read, together with the report of the Central Board, at the annual general meeting.

Returns

53. (1) The Bank shall prepare and transmit to the Governor-General-in-Council a weekly account of the Issue Department and of the Banking Department in the form set out in the Fifth Schedule or in such other form as the Governor-General-in-Council may, by notification in the Gazette of India, prescribe. The Governor-General-in-Council shall cause the accounts to be published weekly in the Gazette of India

(2) The Bank shall also within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General in Council a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors, together with a report by the Central Board on the working of the Bank throughout the year, and the Governor-General-in-Council shall cause such accounts and report to be published in the Gazette of India

(3) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor-General in Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank

Agricultural Credit Department

54. The Bank shall create a special Agricultural Credit Department the functions of which shall be—

(*a*) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Governor-General-in-Council Local Governments, provincial co-operative banks and other banking organizations,

(*b*) to co-ordinate the operations of the Bank in connection with agricultural credit and any other banks or organizations engaged in the business of agricultural credit.

Reports by the Bank

55. (1) The Bank shall, at the earliest practicable date and in any case within three years from the date on which this Chapter comes into force, make to the Governor-General-in-Council a report, with proposals, if it thinks fit for legislation, on the following matters, namely —

(*a*) the extension of the provisions of this Act relating to scheduled banks to persons and firms, not being scheduled banks, engaged in British India in the business of banking, and

(*b*) the improvement of the machinery for dealing with agricultural finance and methods for effecting a closer connection between agricultural enterprise and the operations of the Bank

(2) When the Bank is of opinion that the international monetary position has become sufficiently clear and stable to make it possible to determine what will be suitable as a permanent basis for the Indian monetary system and to frame permanent measures for a monetary standard it shall report its views to the Governor-General-in-Council.

Power to require declaration as to ownership of registered shares

56. (1) The Local Board of any area may at any time require any shareholder who is registered on the register for that area to furnish to the Local Board within a specified time, not being less than thirty days, a declaration, in such form as the Central Board may by regulations prescribe, giving particulars of all shares on the said register of which he is the owner.

(2) If it appears from such declaration that any shareholder is not the owner of any shares which are registered in his name, the Local Board may amend the register accordingly

(3) If any person required to make a declaration under sub-section (1) fails to make such declaration within the specified time, the Local Board may make an entry against his name in the register recording such failure and directing that he shall have no right to vote, either under Section 9 or Section 14, by reason of the shares registered in his name on that register.

(4) Whoever makes a false statement in any declaration furnished by him under sub-section (1) shall be deemed to have committed the offence of giving false evidence defined in Section 191 of the Indian Penal Code (XLV of 1860), and shall be punishable under the second paragraph of Section 193 of that Code.

(5) Nothing contained in any declaration furnished under sub-section (1) shall operate to affect the Bank with notice of any trust, and no notice of any trust expressed, implied or constructive shall be entered on the register or be receivable by the Bank.

(6) Until Local Boards have been constituted under Section 9 the powers of a Local Board under this Section shall be exercised by the Central Board in respect of any area for which a Local Board has not been constituted.

Liquidation of the Bank

57. (1) Nothing in the Indian Companies Act, 1913 (VII of 1913), shall apply to the Bank, and the Bank shall not be placed in liquidation save by order of the Governor-General-in-Council and in such manner as he may direct.

(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor-General-in-Council and the shareholders in the proportion of seventy-five per cent and twenty-five per cent respectively:

Provided that the total amount payable to any shareholder under this Section shall not exceed the paid-up value of the shares held by him by more than one per cent for each year after the commencement of this Act subject to a maximum of twenty-five per cent.

Power of the Central Board to make regulations

58 (1) The Central Board may, with the previous sanction of the Governor-General-in-Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:—

(*a*) the holding and conduct of elections under this Act, including provisions for the holding of any elections according to the principle of proportional representation by means of the single transferable vote;

(*b*) the final decision of doubts or disputes regarding the qualifications of candidates for election or regarding the validity of elections;

(*c*) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held, and transferred, and, generally, all matters relating to the rights and duties of shareholders;

(*d*) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which votes may be exercised;

(*e*) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons;

(*f*) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof;

(*g*) the conduct of business of Local Boards and the delegation to such Boards of powers and functions ;

(*h*) the delegation of powers and functions of the Central Board to the Governor, or to Deputy Governors, Directors or officers of the Bank ;

(*i*) the formation of Committees of the Central Board, the delegation of powers and functions of the Central Board to such Committees, and the conduct of business in such Committees ;

(*j*) the constitution and management of staff and superannuation funds for the officers and servants of the Bank ;

(*k*) the manner and form in which contracts binding on the Bank may be executed ;

(*l*) the provision of an official seal of the Bank and the manner and effect of its use ;

(*m*) the manner and form in which the balance sheet of the Bank shall be drawn up, and in which the accounts shall be maintained ;

(*n*) the remuneration of Directors of the Bank ;

(*o*) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank ;

(*p*) the regulation of clearing-houses for the scheduled banks ;

(*q*) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded ; and

(*r*) generally, for the efficient conduct of the business of the Bank.

(3) Copies of all regulations made under this Section shall be available to the public on payment.

Amendment of Act III of 1906

59. In the Indian Coinage Act, 1906 (III of 1906), for Section 11 the following Section shall be substituted, namely :—

Demonetization of sovereign and half-sovereign

"11 Gold coins, coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India, at its offices, branches and agencies in India at the bullion value of such coins calculated at the rate of 8 47512 grains troy of fine gold per rupee."

Repeals

60. The Indian Paper Currency Act, 1923 (X of 1923), the Indian Paper Currency (Amendment) Act, 1923 (XXXVI of 1923), the Indian Paper Currency (Amendment) Act, 1925 (II of 1925), and the Currency Act, 1927 (IV of 1927), are hereby repealed

Amendment of Section 11, *Act VII of* 1913

61. In sub-section (3) of Section 11 of the Indian Companies Act, 1913 (VII of 1913), after the word "Royal" the words "Reserve Bank" shall be inserted.

THE FIRST SCHEDULE

AREAS SERVED BY THE VARIOUS SHARE REGISTERS

(See Section 4)

I. The WESTERN AREA, served by the BOMBAY Register, shall consist of—

the Bombay Presidency including Sind, the Central Provinces, Berar, Hyderabad, Baroda, Khairpur, the Western India States, the Central India States (including Makrai but excluding Rewah and other States of Bundelkhand and Baghelkhand), the Gujerat States, Kolhapur and the Deccan States

II. The EASTERN AREA, served by the CALCUTTA Register, shall consist of—

the Bengal Presidency, Bihar and Orissa, Assam, Sikkhim, Manipur, Cooch-Behar, Tripura, the Eastern States, Rewah and other States of Bundelkhand and Baghelkhand, and the Khasi States

III. The NORTHERN AREA, served by the DELHI Register, shall consist of—

the United Provinces, Delhi, the Punjab, the North-West Frontier Province, Ajmere-Merwara, Baluchistan, Kashmir, the Punjab States, excluding Khairpur, the Simla Hill States, Dujana, Pataudi, Kalsia, Rampur, Tehri-Garhwal, Benares, the Rajputana States including Palanpur and Danta, Gwalior, Khamadhana, Kalat, Las Bela, Hunza, Nagir, Amb, Chitral, Dir, Phulera and Swat.

IV. The SOUTHERN AREA, served by the MADRAS Register, shall consist of—

the Madras Presidency, Coorg, Mysore and the Madras States.

V. The BURMA AREA served by the RANGOON Register, shall consist of—

Burma, the Andaman and Nicobar Islands, Bawlake, Kantarawadi and Kyebogyi.

THE SECOND SCHEDULE

[See section 42 and section 2 (e)]

SCHEDULED BANKS

Ajodhia Bank, Fyzabad.
Allahabad Bank.
American Express Company Incorporated.
Banco Nacional Ultramarino.
Bangalore Bank
Bank of Baroda.
Bank of Behar.
Bank of Chettinad, Madras.
Bank of Hindustan, Madras.
Bank of India, Bombay.
Bank of Mysore.
Bank of Taiwan.
Bank of Upper Burma.
Benares Bank.
Bengal Central Bank.
Bhagwan Das & Co, Dehra Dun.
Canada Bank.
Central Bank of India.
Chartered Bank of India, Australia and China.
Comptoir National d'Escompte de Paris.
Eastern Bank.

Grindlay and Company.
Hongkong and Shanghai Banking Corporation.
Imperial Bank of India.
Imperial Bank of Persia.
Indian Bank, Madras.
Industrial Bank of Western India, Ahmedabad.
Jalpaiguri Banking and Trading Corporation.
Karnani Industrial Bank.
Lloyds Bank
Mercantile Bank of India.
Mitsui Bank, Bombay.
Muflassil Bank, Gorakhpur.
National Bank of India.
National City Bank of New York.
Nederlansche Indische Handles-bank.
Nederlandsche Handel-Maatschappij.
Nedungadi Bank, Calicut
Oudh Commercial Bank
Peoples' Bank of Northern India.
P. and O Banking Corporation.
Punjab and Sind Bank, Amritsar.
Punjab Co-operative Bank, Amritsar.
Punjab National Bank, Lahore.
Simla Banking and Industrial Company.
Thomas Cook and Son.
Travancore National Bank, Tiruvalla.
Union Bank of India, Bombay.
U Rai Gyaw Thoo and Co., Akyab.
Yokohama Specie Bank.

THE THIRD SCHEDULE

(See Section 45)

Provisions to be contained in the agreement between the Reserve Bank of India and the Imperial Bank of India

1 The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India which was in existence at the commencement of the Reserve Bank of India Act, 1934, and there is no branch of the Banking Department of the Reserve Bank of India.

2 In consideration of the performance at the places referred to in clause 1 by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor-General-in-Council before the coming into force of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall pay to the Imperial Bank of India as remuneration a sum which shall be for the first ten years during which this agreement is in force a commission calculated at one/sixteenth of one per cent on the first 250 crores and one/thirty-second of one per cent on the remainder of the total of the receipts and disbursement dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. At the close of the said ten years the remuneration to be paid by the Reserve Bank of India to the Imperial Bank of India for the performance of these functions shall be revised and the remuneration for the ensuing five years shall be determined on the basis of the actual cost to the Imperial Bank of India, as ascertained by expert accounting investigation, of performing

the said functions. The remuneration so determined shall thereafter be subject to revision in like manner at the end of each period of five years so long as this agreement remains in force. If any dispute arises between the Reserve Bank of India and the Imperial Bank of India as to the amount of the said remuneration the matter shall be referred for final decision to the Governor-General-in-Council who may require from the Imperial Bank such information and may order such accounting investigation as he thinks fit.

3. In consideration of the maintenance by the Imperial Bank of India of branches not less in number than those existing at the commencement of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall, until the expiry of fifteen years from the coming into force of this agreement, make to the Imperial Bank of India the following payments, namely:—

(*a*) during the first five years of this agreement—nine lakhs of rupees per annum;

(*b*) during the next five years of the agreement—six lakhs of rupees per annum, and

(*c*) during the next five years of the agreement—four lakhs of rupees per annum.

4. The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force.

THE FOURTH SCHEDULE

(See Section 47)

Scale of Additional Dividend Payable to Shareholders

A. If the maximum rate of dividend fixed under Section 47 is five per centum and so long as the share capital of the Bank is five crores of rupees—

(1) if the surplus does not exceed four crores of rupees—*Nil*.

(2) if the surplus exceeds four crores of rupees—

(*a*) out of such excess up to the first one and a half crores of rupees—a fraction equal to one-sixtieth;

(*b*) out of each successive additional excess up to one and a half crores of rupees—one-half of the fraction payable out of the next previous one and a half crores of excess:

Provided that the additional dividend shall be a multiple of one-eighth of one per cent on the share capital, the amount of the surplus allocated thereto being rounded up or down to the nearest one-eighth of one per cent on the share capital.

B. If the maximum rate of dividend fixed under Section 47 is below five per centum, the said fraction of one-sixtieth shall be increased in the ratio of the difference between six and the fixed rate to unity.

C. When the original share capital of the Bank has been increased or reduced, the said fraction of one-sixtieth shall be increased or diminished in proportion to the increase or reduction of the share capital.

THE FIFTH SCHEDULE

Reserve Bank of India

An account pursuant to the Reserve Bank of India Act, 1934, for the week ending on the day of

Liabilities	Rs.	*Assets*	Rs.
Bank Notes held in the Banking Department		A. Gold coin in Bullion—	
Bank Notes in circulation ...		(*a* held in India ...	
Total Bank Notes issued ...		(*b*) held outside India ...	
Government of India Notes in circulation		Sterling Securities ...	
		Total of A.	
		B. Rupee coin	
		Government of India rupee securities	
		Internal bills of exchange and other commercial paper	
Total Liabilities ...		Total Assets ...	

Ratio of total of A to liabilities per cent dated the day of 19 .

BANKING DEPARTMENT

Liabilities	Rs.	*Assets*	Rs.
Capital paid up		Notes	
Reserve		Rupee coin	
Deposits—		Subsidiary coin	
(*a*) Government		Bills discounted—	
(*b*) Banks		(*a*) Internal	
(*c*) Others		(*b*) External	
Bills payable		(c) Government of India Treasury Bills ...	
Other liabilities		Balances held abroad ...	
		Loans and advances to the Government	
		Other loans and advances ...	
		Investments	
		Other assets	

Dated the day of 19 .

RESERVE BANK OF INDIA

NOTE REFUND RULES, 1935

NOTIFICATION No. 1

New Delhi, the 16th March 1935

In exercise of the power conferred by the proviso to Section 28 of the Reserve Bank of India Act, 1934 (II of 1934) the Central Board of Directors of the Reserve Bank of India by virtue of the power conferred by Section 7 of the said Act, and with the previous sanction of the Central Government, makes the following rules prescribing the circumstances in, and the conditions and limitations subject to, which the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded as of grace:—

Short title

1. These rules may be called the Reserve Bank of India (Note Refund) Rules, 1935.

Definitions

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

(*a*) 'altered note' means a note in which an alteration has been made in the number, date, signature or value or in any other respect ;

(*b*) 'the Bank' means the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934 ;

(*c*) 'half note' means a half of a note which has been divided vertically through or near the centre ;

(*d*) 'mismatched note' means an imperfect note formed by joining a half note of one note to a half note of another note ;

(*e*) 'mutilated note' means a note of which a portion is missing. Provided that the portion presented is clearly more than a half note and that if the portion presented consists of parts of a note joined together each part of such portion is identifiable as part of the same note ,

(*f*) 'note' means a note of the Reserve Bank of India, including a currency note of the Government of India issued either by the Central Government or by the Bank ;

(*g*) 'number' includes the letters of the series to which the note belongs ;

(*h*) 'obliterated note' means a note, not being a mutilated or altered note, of which a portion has become or has been rendered undecipherable ;

(*i*) 'office of issue' means the office of the Issue Department of the Bank of Bombay, Calcutta, Madras or Rangoon or the Branch of the Issue Department of the Bank at Cawnpore, Karachi or Lahore ;

(*j*) 'prescribed officer' means the officer in charge of an office of issue.

Presentation of claims

3. (1) A claim in respect of a note of which the denomination does not exceed ten rupees may be presented at any office of issue and may be dealt with by the prescribed officer at any such office.

(2) A claim in respect of a note of which the denomination exceeds ten rupees shall be presented to the prescribed officer in charge of the office of issue to which such note appears to belong, and such prescribed officer shall alone be authorized to entertain it.

(3) When a claim has been presented to a prescribed officer who is not authorized to entertain it under sub-rule (2), such officer shall return the note to the presenter and refer him to the officer to whom it should be presented under sub-rule (2).

Time limit to claims

4. If it appears to the prescribed officer authorized to entertain the claim that any claim was not made by the claimant within 12 months of the time when it might first have been made by him, the prescribed officer shall not entertain the claim.

Value limit to claims

5. (1) No claim in respect of a note alleged to have been lost, stolen or wholly destroyed, or of which the portion presented is neither

a half note nor a mutilated note, shall be entertained unless the denomination of the note exceeds ten rupees.

(2) No claim in respect of a half note or a mismatched note shall be entertained unless such half note or one of the half notes comprising the mismatched note is part of a note of which the denomination exceeds ten rupees

Enquiry into claims

6 (1) Where any claim is made under these rules the prescribed officer authorized to entertain the claim shall hold an enquiry unless the claim relates to a note alleged to have been stolen, in which case he may reject the claim without holding any inquiry

(2) If in the course of the inquiry referred to in sub-rule (1) the claimant fails without reasonable cause in the opinion of the prescribed officer to furnish within three months any information called for by the prescribed officer, the prescribed officer may reject the claim

Rejection of claim concerning half note

7 A claim for the value of a half note shall be rejected unless the number of the note is identified by the prescribed officer on the half note and the half note is entire and has not been divided and rejoined

Rejection of claim concerning mutilated note of ten rupees and under

8. A claim for the value of a mutilated note of a denomination not exceeding ten rupees shall be rejected unless in the opinion of the prescribed officer the portion presented clearly forms part of a genuine note and the missing portion is too small to be used in support of any other claim under these rules.

Rejection of claim concerning mutilated note of more than ten rupees

9 (1) A claim for the value of a mutilated note of a denomination exceeding ten rupees shall be rejected unless the number of the note on examination is identified with certainty by the prescribed officer as one of not more than six *numbers*.

Provided that, if the number of the note though not capable of such identification is declared by the claimant, the claim shall be dealt with under rules 13 and 15 as a claim to the value of a wholly destroyed note

Provided further that, where the claimant is unable to declare the number, if the prescribed officer is of opinion that the number may be identified with certainty within a reasonable period, he may permit the claimant to leave the note in deposit with a view to future identification.

(2) Where a claim is rejected under sub-rule (1) the note shall be stamped by the prescribed officer and returned to the claimant.

(3) If a mutilated note of a denomination exceeding ten rupees has been identified with certainty by the prescribed officer as one of not more than six *numbers* he may order the claim to be paid at once.

Deposit of Mutilated notes

10 (1) The prescribed officer shall enter the particulars of any mutilated note placed in deposit under the second proviso to sub-rule (1) of rule 9 in a register to be maintained in this behalf and shall give a receipt to the claimant for such note.

(2) Where the number of a note so placed in deposit is not identified within a period of three years to the extent specified in sub-rule (1) of rule 9 the claim shall be rejected and the note shall be stamped and returned to the claimant or, if the claimant cannot be found, shall be destroyed.

Disposal of claims concerning half notes

11. (1) A claim for half the value of a note of which a half note only is presented by the claimant shall be dealt with as follows:—

(*a*) If a counter-claim for the full value of the note has not been received at the office of issue before the presentation of the claim or within a period of fourteen working days thereafter, half the value of the note may be paid to the claimant on the expiration of such period.

(*b*) If the full value of the note has already been paid on a claim under rule 14, the claim shall be rejected.

(*c*) If a counter-claim for the full value of the note has been received before the presentation of the claim or is received before payment of half the value of the note is made under clause (*a*), the prescribed officer may order that one claimant be paid forthwith the full value of the note or that one or both claimants be paid forthwith half the value of the note or that both claims be rejected.

(2) Claims in respect of a mismatched note shall be deemed to be separate claims in respect of each half note thereof and shall be dealt with as provided in sub-rule (1).

Obliterated and altered notes

12. A claim in respect of an obliterated or altered note or half note shall be rejected unless the prescribed officer is satisfied as to the identity of such note or half note and that the note or half note has not been fraudulently altered so as to appear to be of a higher denomination.

Method of presenting certain claims

13. (1) A claim for the full value of a note—

(*a*) where a half note only is presented by the claimant or

(*b*) where the note is alleged to have been lost or wholly destroyed, or where the portion of the note presented is neither a half note nor a mutilated note,

shall be accompanied by a signed statement (or if the prescribed officer so requires, an affidavit) asserting that the claimant was the last lawful holder of the entire note and detailing the circumstances attending the loss or destruction of the missing half note or note as the case may be, and by a statement obtained from the police or postal authorities of the result of the enquiry, if any, held by them

(2) The prescribed officer shall consider the statements furnished and the affidavit, if any, and shall make such further enquiry, if any, as he may consider necessary.

Disposal of claims under rule 13(1)(*a*)

14. (1) Where a claim is made under clause (*a*) of sub-rule (1) of rule 13 and a counter-claim has been presented in respect of the counterpart of the half note—

(*a*) if the full value of the note has been paid, the claim shall be rejected ;

(*b*) if half the value of the note has been paid, the prescribed officer may order half the value of the note to be paid to the claimant forthwith ;

(*c*) if the counter-claim is pending, the prescribed officer may order that one claimant be paid forthwith the full value of the note or that each claimant be paid forthwith half the value of the note or that both claims be rejected.

(2) Where a claim is made under clause (*a*) of sub-rule (1) of rule 13 and the counterpart of the half note has not been presented—

(*a*) if the prescribed officer is not satisfied that the counterpart of the half note has been lost or destroyed in such circumstances that there is no probability of its being presented at some future date, he may order payment of half the value of the note forthwith ;

(*b*) if he is so satisfied and is also satisfied that the claimant was the last lawful holder of the whole note he shall cause to be published in the Gazette of India and in three successive issues of the local Official Gazette a notification setting forth the particulars of the note of which one half is alleged to have been lost or destroyed and the name of the claimant and calling upon any person having any claim in respect of such note to submit the claim forthwith ;

(*c*) if on the expiration of two years from the date of the first publication under clause (*b*) the counterpart of the half note has not been presented, he may invest in Government securities or deposit in the Post Office Savings Bank an amount equivalent to the full value of the note ;

(*d*) if on the expiration of a period which shall be determined by him but which unless the Central Board otherwise directs shall not be less than five years from the date of the first publication referred to in clause (*b*) the counterpart of the half note has not been presented, he shall deliver the securities or deposit referred to in clause (*c*) with any interest which has in the meantime accumulated thereon to the claimant, or if the claimant is dead, to his legal representative on such claimant or representative executing a bond with or without sureties in the form set forth in Schedule I or II ;

(*e*) if before the expiration of such period the counterpart is presented with a claim for the full value or for half the value of the note, the proceedings under clauses (*b*), (*c*) and (*d*) shall be cancelled and the two claims shall be dealt with under sub-rule (1).

Disposal of claims under rule 13(1)(b)

15. Where a claim is made under clause (*b*) of sub-rule (*a*) of rule 13 –

(*a*) if the prescribed officer is not satisfied that the note or the unpresented portion of the note has been wholly destroyed or lost in such circumstances that there is no probability of its being presented at some future date, he shall reject the claim ;

(*b*) if he is so satisfied and is also satisfied that the claimant was the last lawful holder of the note, he shall cause to be published in the Gazette of India and in three successive issues of the local Official Gazette a notification setting forth the particulars of the note alleged to have been lost or destroyed and the name of the claimant and calling upon any person having any claim in respect of such note to submit the claim forthwith ;

(*c*) if on the expiration of two years from the date of the first publication under clause (*b*) the note has not been presented, he may invest in Government securities or deposit in the Post Office Savings Bank an amount equivalent to the value of the note ,

(*d*) if on the expiration of a period which shall be determined by him but which unless the Central Board otherwise directs shall be not less than five years from the first publication referred to in clause (*b*) the note has not been presented and no subsequent claim in respect thereto has been substantiated,

he shall deliver the securities or deposit referred to in clause (*c*) with an interest which has in the meantime accumulated thereon to the claimant, or if the claimant is dead, to his legal representative, on such claimant or representative executing a bond with or without sureties in the form set forth in Schedule III or IV ;

(*e*) if before the expiration of such period a subsequent claim in respect of the note is substantiated, the securities or deposit referred to in clause (*d*) shall be delivered in the manner provided in that clause to the person making such subsequent claim, or if such person is dead to his legal representative ;

(*f*) if before the expiration of such period the note alleged to have been lost or destroyed is produced by the claimant or any other person, the proceedings under this rule in respect of such note shall be cancelled.

Bonds

16. Printed forms, to be supplied by the Bank, shall be used in execution of any bond required in pursuance of clause (*d*) of rule 14 or clause (*d*) of rule 15 and the value of the stamp on any such bond shall be recovered from the person executing the bond

Retention of notes by Bank

17 Save as otherwise provided in rule 9 and rule 10, any note presented in prosecution of a claim shall be retained by the Bank whatever be the decision on the claim.

Procedure when payee is untraced

18 Where as the result of a claim under these rules the value or part of the value of a note is payable to a claimant, and such claimant, or if he is dead his legal representative, cannot be found or fails within a period of three months from the communication to him of the decision to take steps to receive payment, the amount payable shall be paid by the Issue Department of the Bank in the case of a currency note of the Government of India to the Central Government and in the case of a Bank note to the Banking Department of the Bank

OSBORNE A. SMITH,

Governor

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