

THE ORISSA CO-OPERATIVE SOCIETIES ACT, 1951

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ORISSA ACT XI OF 1952

THE ORISSA CO-OPERATIVE SOCIETIES ACT, 1951

[Received the assent of the President on the 2nd June 1952, first published in the Orissa Gazette, dated the 27th June 1952]

AN ACT TO CONSOLIDATE AND AMEND THE LAWS RELATING TO CO-OPERATIVE SOCIETIES IN THE STATE OF ORISSA

WHEREAS it is expedient to facilitate the formation, working and consolidation of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common needs so as to bring about better living, better business and better methods of production, and for that purpose to consolidate and amend the law relating to Co-operative Societies in the State of Orissa ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Co-operative Societies Act, 1951.

(2) It extends to the whole of the State of Orissa.

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

Definitions

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

(a) " arbitrator " means a person appointed under clause (c) of sub-section (1) of section 73 to decide any dispute referred to him ;

(b) " Auditor " means a person authorised under section 61 by general or special order of the Registrar to audit the accounts of a society ;

(c) "bye-laws" means the registered bye-laws for the time being in force and includes a registered amendment of the bye-laws ;

(d) "co-operative year" means such period of twelve months as may be prescribed for keeping the accounts of societies ;

(e) "Committee" means the Committee of management, or other governing body to whom the management of the affairs of a society is entrusted under section 18 ; and includes a Committee referred to in section 83 ;

(f) "dispute" means any matter capable of being the subject of civil litigation ; and includes a claim in respect of any sum payable to or by a society ;

(g) "Financing Bank" means a society which includes among its objects, the creation of funds for making advances in cash or kind to other societies and individuals who are its members or to persons who are not members of other societies or to both such members and persons ;

(h) "Land Mortgage Bank" means the Orissa Provincial Co-operative Land Mortgage Bank Limited ;

(i) "liquidator" means a person appointed by the Registrar under sub-section (1) of section 77 to wind up the affairs of a society ;

(j) "member" includes, a joint Hindu family, a society or an individual who joins in the application for the registration of a society or who is admitted to membership after registration in accordance with the rules and the bye-laws ;

(k) "net profits" means profits after deduction of establishment charges, contingent charges, interest payable on loans and deposits, audit fees and such other sums as may be prescribed ;

(l) "Officer" includes a President, Vice-President, Chairman, Vice-Chairman, Secretary, Assistant Secretary, treasurer, member of the Committee, internal Auditor elected from among the members or any other person empowered, by or under this Act, or the rules or bye-laws of a society, to give directions in regard to the business of a society ;

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

(n) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act ;

(o) "rules" means rules made for the time being in force under this Act ;

(p) "society" means a Co-operative Society registered or deemed to be registered under this Act ;

(q) "society with limited liability" means a Co-operative Society having the liability of its members limited by its bye-laws to the amount, if any, unpaid on the shares respectively held by them or to such amount as they may respectively thereby undertake to contribute towards the deficiency, if any, in the assets of the society in the event of its being wound up ;

(r) "society with unlimited liability" means a Co-operative Society, having subject to its bye-laws, an unlimited liability of its members to contribute jointly and severally towards any deficiency in the assets of the society in the event of its being wound up ;

(s) "Sale Officer" means a person subordinate to the Registrar and authorised by him or by a person exercising the powers of the Registrar by a general or special order to recover the dues of a society or a liquidator or of the State Government, by attachment and sale or by sale without attachment under section 105 or by distraint and sale under section 118 ;

(t) "Trustee" means the person appointed to be a Trustee under sub-section (1) of section 86 ;

(u) "organiser" means a person selected by the applicants for registration of a society under sub-section (4) of section 11.

Repeal

3. The enactments specified in columns 2, 3 and 4 of the First Schedule are hereby repealed, in so far as they apply to the State of Orissa, to the extent specified in column 5 of the said Schedule.

Savings of existing societies

4. (1) Every society or Financing Bank or Land Mortgage Bank existing in the State of Orissa at the commencement of this Act, which has been registered under the Co-operative Credit Societies Act, 1904, or X of 1904 under the Co-operative Societies Act, 1912, or II of 1912

under the Bihar and Orissa Co-operative Societies Act, 1935, or under the Madras Co-operative Societies Act, 1932, or under the Orissa Co-operative Land Mortgage Bank Act, 1938 or any other local Act for the time being in force, shall be deemed to be registered under this Act, and its bye-laws shall, so far as they are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to have been registered under the corresponding provisions of this Act.

(2) All appointments, rules and orders made, notifications and notices issued, all transactions entered into and suits and other proceedings instituted under the said Acts, shall be deemed, so far as may be, to have been respectively made, issued, entered into and instituted under the corresponding provisions of this Act.

Construction of references to Co-operative Societies Act 1912, or the Bihar and Orissa Co-operative Societies Act, 1935 or the Madras Co-operative Societies Act, 1932 or the Orissa Co-operative Land Mortgage Bank Act, 1938 in enactments.

5. All references to the Co-operative Societies Act, 1912 or the Madras Co-operative Societies Act, 1932 or the Bihar and Orissa Co-operative Societies Act, 1935 or the Orissa Co-operative Land Mortgage Bank Act, 1938 occurring in any enactment made by any authority in Part A States or Part C States and for the time being in force in the State of Orissa, shall, in the application of any such enactment to the said State, be construed as references to this Act and anything done or any proceeding commenced in pursuance of any such enactment on or after the commencement of this Act shall be deemed to have been done or to have commenced and to have had effect as if the reference in such enactment to the Co-operative Societies Act, 1912, or the Madras Co-operative Societies Act, 1932 or the Bihar and Orissa Co-operative Societies Act, 1935 or the Orissa Co-operative Land Mortgage Bank Act, 1938 or any other Act for the time being in force in any local area had been a reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

Indian Companies Act, 3191 not to apply.

6. The provisions of the Indian Companies Act, 1913 shall not apply to Co-operative Societies registered under this Act.

Powers of
exempt co-
operative
societies
from the
provisions
of this Act.

7. The State Government may, by rules—

(a) exempt any society or class of societies from the application of any of the provisions of this Act or of any rules made thereunder ; or

(b) direct that any of such provisions shall apply to such society or class of societies to such extent or with such modifications, if any, as may be specified in the rules :

Provided that no rules shall be made under this section to the prejudice of a society without giving such society an opportunity to represent its cases.

CHAPTER II

REGISTRATION

Appoint-
ment of
Registrar
and of
persons to
assist him.

8. (1) The State Government may appoint a person to be Registrar of Co-operative Societies for the State of Orissa and may appoint persons to assist him.

(2) Subject to restrictions imposed by the rules, the State Government may, by general or special order in this behalf published in the Gazette, confer all or any of the powers entrusted to the Registrar, by or under this Act, on any person appointed under sub-section (1) to assist the Registrar.

Societies
which may
be regis-
tered.

9. (1) Subject to the provisions of this Act and of any rules, a society which has as its object the promotion of the common needs and interests of its members by thrift, self-help and mutual aid to the end that thereby better conditions of living, better methods of production and business may result, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with limited or unlimited liability.

(2) The word 'limited' or its equivalent in any Indian language shall be the last word or words in the name of any society registered under this Act with limited liability.

Conditions
of Registra-
tion.

10. Unless the State Government by general or special order otherwise direct, no society shall be registered after the commencement of this Act—

(a) with unlimited liability, if—

(i) it has any society as its member ; or

(ii) it includes among its objects the creation of funds to be lent out to its members and it has less than ten members who are above the age of eighteen years and competent to contract ; or

(b) with limited liability, if it has any withdrawable share capital :

Provided that a society which includes among its objects the creation of funds to be lent out to members, who are not less than ten in number above the age of eighteen years and competent to contract, and who live in the same town, village or group of villages, may be registered with unlimited or limited liability as the Registrar may by a general or special order direct.

Application
for registra-
tion.

11. (1) An application for the registration of a society shall be made to the Registrar in the prescribed manner and shall be accompanied by three copies of the proposed bye-laws.

(2) The application and the copies of the proposed bye-laws shall be signed by each applicant for registration in the presence of at least one witness. If the applicant is a joint Hindu family, the application and the bye-laws shall be signed by the manager or a representative of the family and if the applicant is a society they shall be signed by a member of its Committee duly authorised in this behalf.

(3) If none of the applicants is a society, the application and the bye-laws shall be signed by at least ten applicants.

(4) Applicants for the registration of a society shall select an organiser for communicating with the Registrar in regard to registration and such organiser shall furnish such information in regard to the society as the Registrar may from time to time require.

Registration

12. (1) If the Registrar is satisfied that the objects of the society are in accordance with section 9 and that the application for registration complies with the provisions of this Act and the rules and that the proposed bye-laws are not contrary thereto and are suitable for the carrying out the objects of the society and that there are reasonable chances of the society working successfully, he may register the society and its bye-laws.

(2) If the Registrar refuses to register a society he shall record his reasons for such refusal. The

order of the Registrar refusing to register a society shall be communicated by registered post, to the organiser of the society.

(3) In case of refusal by the Registrar an appeal shall lie to the State Government, within sixty days from the date of the issue of the order of refusal by registered post.

Evidence of registration.

13. A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the society therein mentioned is a society duly registered under this Act and that its bye-laws as attached to the certificate have been duly registered, unless it is proved that the registration of the society has been cancelled or that the bye-laws have been amended in accordance with section 14 or section 15 of this Act.

Registration of amendment of the bye-laws of a society.

14. (1) A proposal by the society for amendment of its bye-laws shall be framed in accordance with rules and shall be forwarded to the Registrar. If the Registrar is satisfied that the proposed amendment to the bye-laws is not contrary to the provisions of this Act and the rules and is in the best interest of the society he may register the amendment.

(2) When the Registrar registers an amendment of the bye-laws of a society, he shall issue to the society a copy of the amendment thus registered together with a certificate signed by him, which shall be conclusive evidence that the amendment has been duly registered.

(3) No amendment of the bye-laws of a society whether by way of addition, cancellation or alteration shall be valid until such amendment has been registered under this Act.

(4) When the Registrar refuses to register an amendment to the bye-laws proposed by a society, he shall record his reasons in writing and communicate his orders to the society by registered post.

(5) In cases where the Registrar rejects an amendment under sub-section (4) an appeal shall lie to the State Government within sixty days from the date of the receipt of the order.

Power of Registrar to direct amendment of the bye-laws of a society.

15. (1) If at any time, it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such society, he may, after consulting the Financing Bank, if any, by order in writing to be issued to the

society by registered post, require the society to make the amendment within such time as he may specify in such order.

(2) If any society fails to make any such amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard, register such amendment.

(3) The Registrar may issue to the society by registered post a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered, and such amendment shall be binding on the members of such society.

Effect of
registration.

16. (1) The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire and hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

(2) The bye-laws of a society and any amendments thereof whether by way of addition, cancellation or alteration shall be valid, effective and binding on the members of the society only after they have been registered under section 12, section 14 or section 15 as the case may be.

CHAPTER III

MANAGEMENT OF SOCIETIES

General
meeting.

17. (1) The final authority of a society shall vest in the general body of members assembled in the general meeting :

Provided that the final authority may vest in the delegates of such members or of certain class of members and delegates of other classes of members elected in the prescribed manner and assembled in the general meeting.

(2) The Committee may at any time call a general meeting of the society and shall call such a meeting once at least in every co-operative year for the purpose of—

(a) electing, if necessary, members of the Committee and such other officers as may be provided in the bye-laws ;

(b) considering the report of the Committee on the working of the society during the last co-operative year ;

(c) considering the audited statements of accounts and the Auditor's report of the society referred to in section 63 ;

(d) distributing the net profits of the society of the previous co-operative year certified by the Registrar as distributable together with undistributed profits, if any, of past years which shall be within three months of the receipt of the audit report and audited statements of accounts by the society ; and

(e) considering any other matter which may be brought forward in accordance with the bye-laws.

(3) The Committee shall call a general meeting of the society—

(a) at the instance of the Registrar ;

(b) on the requisition in writing from the Financing Bank of which the society is a member or from such a number of members or proportion of the total number of members as may be specified in the bye-laws of the society and within one month of the receipt of the requisition to consider such matters as may be mentioned in the requisition.

(4) A person authorised by the Registrar to hold an enquiry under section 67 may by a special order in writing require the Committee or the officers of the society to call a general meeting of the society at any time.

(5) The Registrar, or any person authorised by him by a special order in writing in this behalf may call a general meeting of the society at any time, and shall call such meeting on the failure of the Committee or officers to call a meeting at the instance of the Registrar, or on the requisition of members under sub-section (3), or on the requisition under sub-section (4) within the time specified in the requisition under sub-section (3), or requisition under sub-section (4), or within one month of the requisition under sub-section (3).

(6) Notwithstanding any rule or bye-laws prescribing the period of notice for, and the method of, summoning a general meeting, the Registrar in the case of a meeting called at his instance under sub-section (3), or the person calling the meeting in the

case of a meeting called under sub-section (4), or the Registrar or the person in the case of a meeting called under sub-section (5), may specify the time and the place for the meeting, the manner in which it shall be summoned and the matter which shall be discussed thereat and such meeting shall have all the powers of the general meeting called under the bye-laws of the society.

Society to
have a
Committee.

18. (1) Save as provided in section 19, the management of a society shall vest in a Committee, constituted in accordance with the rules and its bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws.

(2) In the case of a society registered after the commencement of this Act, the applicants for the registration of the society may elect a preliminary Committee to conduct the affairs of the society for a period of three months from the date of the registration or for such further period as the Registrar may consider desirable :

Provided that the preliminary Committee shall cease to function as soon as a Committee is constituted in accordance with the rules and the bye-laws of the society.

Dissolution
of the
Committee
of the
society and
its reconsti-
tution or its
replacement
by an agent
of the
Registrar.

19. (1) If the Registrar after an audit, inspection or enquiry under Chapter VIII of this Act is satisfied for reasons to be recorded by him in writing that the Committee of any society is mismanaging its affairs, he may, by order in writing after giving the Committee an opportunity to state its objections, if any, dissolve the Committee the members of which shall forthwith vacate office. The Registrar may thereafter call a general meeting of the society under sub-section (5) of section 17 to reconstitute the Committee in such manner as may be directed by him under sub-section (7).

(2) If the Registrar while dissolving the Committee under sub-section (1) is of the opinion that the Committee should not be reconstituted immediately but should be replaced by a person for the better management of the society or if the general meeting of the society dissolves the Committee and resolves to transfer the management of the society to the Registrar until such time as the society in the opinion of the Registrar is rehabilitated, the Registrar shall appoint a suitable person to manage the affairs of the

society for a specified period not exceeding three years. The period specified in such order may at the discretion of the Registrar be extended from time to time, provided that such order shall not remain in force for more than twelve years in the aggregate.

(3) Notwithstanding an appeal by a member of dissolved Committee under sections 128 and 129 against the orders passed by the Registrar for dissolution of the Committee under sub-section (1), the reconstituted committee formed under sub-section (1), or the person appointed under sub-section (2) shall immediately on election or appointment, as the case may be, take over the management of the affairs of the society.

(4) The person appointed under sub-section (2) shall, subject to the control of the Registrar, and to such instructions as he may from time to time give, exercise all the powers and perform all the duties which may, under this Act, the rules and the bye-laws, be exercised or performed by the Committee or any officer of the society, and shall take such action as may be required in the interest of the society.

(5) The Registrar may fix the remuneration payable to the person appointed under sub-section (2). The amount of such remuneration and the other costs, if any, incurred in the management of the society, shall be payable from its funds.

(6) During the tenure of office of the person appointed under sub-section (2) all properties of the society shall vest in the Registrar.

(7) The person appointed under sub-section (2) shall, before the expiry of the period of his appointment, arrange for the constitution of a new Committee in accordance with the rules and the bye-laws of the society :

Provided that the Registrar may for reasons to be recorded by him in writing order that all or any members of the Committee dissolved under sub-section (1) shall be disqualified from being elected by the general meeting called by him under sub-section (1) or under this sub-section, to the Committee of the society for a period to be specified in the order not exceeding three years.

(8) Before taking any action under sub-section (1) in respect of any society, the Registrar shall consult its Financing Bank, if any, of which the society is a member regarding such action.

(9) Nothing in this section shall be deemed to affect the powers of the Registrar to order the winding up of a society under section 76.

CHAPTER IV

DUTIES AND OBLIGATIONS OF SOCIETIES

Address of
a society.

20. Every society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice, in writing, to the Registrar and to the Financing Bank, if any, of which it is a shareholder of any change in the said address within fifteen days of such change.

Copy of Act,
rules and
bye-laws,
etc., to be
open to
inspection.

21. Every society shall keep open to inspection free of charge at all reasonable times at its registered address—

- (a) a copy of this Act ;
- (b) a copy of the rules governing the society ;
- (c) a copy of the bye-laws of the society as amended up to date ;
- (d) a register of members ;
- (e) a list of officers for the time being ; and
- (f) a copy of the latest audited balance-sheet of the society.

Maintenance
of books and
accounts
and sub-
mission and
publication
of state-
ments and
returns by
the society.

22. (1) Every society shall maintain such books, registers and accounts as may be prescribed by the Registrar and in such forms as the Registrar may direct.

(2) Every society shall submit such reports, statements and returns to the Registrar for each co-operative year and for such other period as may be prescribed or directed by the Registrar.

(3) Every society shall furnish to the Financing Bank of which it is a member such reports, statements, returns and information as the Financing Bank may require.

(4) Every society shall publish its balance-sheet for each co-operative year as certified by the Registrar together with his audit certificate and such of the prescribed statements as he may direct in the prescribed manner.

(5) If the society fails to submit to the Registrar or to the Financing Bank any statement, report or

return under sub-sections (2) and (3) within the time directed by the Registrar or the Financing Bank, as the case may be, or if the accounts of the society are not complete at the time of audit, the Registrar or any person authorised by him in this behalf by a general or special order may get the report, statement or return prepared, or the accounts written up, as the case may be, at the expense of the society.

Access of inspecting officers to society's records, registers, etc.

23. Every officer, agent, servant or member of a society shall be bound to afford, to the Registrar, and subject to any restrictions prescribed to an Auditor, arbitrator or any person making an inspection under section 66 or section 68 or holding an enquiry under section 67, free access at all reasonable times to all the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and furnish all information in his possession with regard to any transaction of the society or the management of its affairs as may in the opinion of the Registrar, Auditor, Arbitrator and Inspecting Officer be necessary to enable them to discharge their duties under this Act.

CHAPTER V

PRIVILEGES OF SOCIETIES

Exclusive right of society to use the word 'Co-operative.'

24. (1) A society registered under this Act shall use the word 'Co-operative' or its equivalent in Oriya or in any Indian language in its name or title.

(2) No person or society other than a society registered under a Co-operative Societies Act shall trade or carry on business under any name or title of which the word 'Co-operative' or its equivalent in Oriya or in any other Indian language is a part :

Provided that nothing in this section shall apply to the use by any person or by his successor in interest of any name or title under which he lawfully traded or carried on business at the commencement of this Act.

Change of name and its effect.

25. (1) With the previous approval of the Registrar, a society may change its name by amending its bye-laws by a resolution passed at a general meeting.

(2) Such change of name shall not affect any right or obligation of the society or of any of its

members, or past members, or of the estate of any of its deceased members; and any legal proceedings pending on the date of such change in which such society is a party may be continued by or against the society under its new name.

Change of
liability.

26. (1) Subject to the provisions of this Act and of the rules made thereunder a society with the previous approval of the Registrar and of the Financing Bank, if any, may change its form or extent of liability by a resolution passed at a general meeting for making suitable amendment to its bye-laws.

(2) When a resolution for making necessary amendments to the bye-laws has been passed in the general meeting specially convened for the purpose for which at least seven days' clear notice has been given, the society shall give notice thereof in writing by registered post to all its creditors and, notwithstanding any bye-law or contract to the contrary, any member within ninety days of the date of the general meeting and any creditor within thirty days of the service of the notice upon him, shall have the option of withdrawing his shares, deposits or loans as the case may be. Any member or creditor who does not exercise his option within the period aforesaid shall be deemed to have assented to the change and his subsequent objection, if any, shall be invalid.

(3) The change shall not take effect until either—

(a) the express or implied assent thereto of all the members and creditors has been secured; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (2) have been met in full; or

(c) the necessary amendments to the bye-laws have been registered.

Amalgama-
tion of
societies

27. (1) With the previous approval of the Registrar, two or more societies belonging to the same class and within the same or neighbouring areas of operation may amalgamate themselves into a single society, by resolutions passed in the general meeting of each such society specially convened for the purpose of which at least seven clear days' notice has been given of such resolution having been supported by votes of not less than two-thirds of the registered

members. A copy of the resolution of each society shall be sent to all the members and creditors thereof.

(2) The Registrar, after an inspection is made under section 66 and section 68 or an enquiry is held under section 67 and after consulting the Financing Bank, if any, may order that two or more societies belonging to the same class and with the same or neighbouring areas of operation shall amalgamate into a single society.

(3) When the amalgamation under sub-section (1) or sub-section (2) involves the transfer of liability of any amalgamating society to the amalgamated society, it shall be made only with the consent of the creditors of the amalgamating society concerned to whom notices of amalgamation shall be sent by registered post by the society.

(4) If within a month of the issue of notice under sub-section (3) a creditor or shareholder objects to the transfer of liabilities due to him to the amalgamated society, the amalgamation shall not take place until the liabilities are paid off.

(5) If no objection is raised by any creditor or a shareholder within one month of the issue of notice under sub-section (3), his consent to the transfer of the liabilities due to him to the amalgamated society shall be assumed and his subsequent objection, if any, shall be deemed to be invalid.

(6) The resolutions of general meetings of amalgamating of society under sub-section (1) or the order of the Registrar under sub-section (2) and the registration of the amalgamated society shall be a sufficient conveyance to vest all the assets and liabilities of the amalgamating societies in the amalgamated society.

(7) On the registration of the amalgamated society, the registration of amalgamating societies shall be deemed to be cancelled.

Division of
societies.

28. (1) With previous approval of the Registrar and of the Financing Bank, if any, a society may, by a resolution passed in a general meeting specially convened for the purpose and supported by votes of not less than two-thirds of the members for which at least seven days' clear notice has been given, split up into two or more societies.

(2) The Registrar after an inspection is made under section 66 or under section 68 or an enquiry is held under section 67 and after consulting the Financing Bank, if any, may order a society to be split up into two or more societies.

(3) The resolution passed under sub-section (1) of the order under sub-section (2) shall include the scheme of division specifying the area of operation and the members of each split up society together with the division of the assets and liabilities of the society. A copy of the resolution shall be sent to each creditor of the society by registered post.

(4) If within thirty days of the service of notice under sub-section (3), no objection to the scheme of division is received from any of the creditors, his consent to the transfer of liabilities due to him as given in the scheme shall be assumed and his subsequent objection, if any, shall be deemed to be invalid.

(5) If any creditor objects in writing to the scheme within the period of one month of the service of notice under sub-section (3), the division of the society shall not take place, till the liabilities due to him are paid off or his consent to the transfer of these liabilities is obtained.

(6) The resolution of the society under sub-section (1) and the registration of the split up society shall be a sufficient conveyance of the assets and liabilities of the society in the split up societies.

Charge and set off in respect of shares or interest of member.

29. A society shall have a charge upon the share or interest in the capital and the deposits or contribution of a member, past member or deceased member and upon any amount payable out of its profits to a member or past member or to the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society, and may set off any sum credited or payable to a member, past member or estate of a deceased member in or towards payment of any such debt.

Debts due to societies to be a first charge.

30. (1) Notwithstanding anything contained in sections 60 and 61 of the Code of the Civil Procedure, 1908 but subject to any claim of the State Government in respect of land revenue, or any sum recoverable as land revenue or as a public demand, or any claim of a landlord in respect of rent or any money recoverable as rent, any debt or outstanding

demand due to a society by any member, or past member or the estate of a deceased member and in the case of a society which has been authorised under clause (a) of sub-section (1) of section 42 also by a non-member or the estate of a deceased non-member shall be a first charge—

(a) if such debt or demand is due in respect of the supply of or any loan to provide the means of paying for seed, manure, labour, subsistence, fodder for cattle, or any other thing incidental to the conduct of agricultural operations, upon the crops or agricultural produce of such member, past member, non-member or belonging to the estate of such deceased member or deceased non-member, as the case may be, at any time within two years from the date on which the last instalment of such supply or loan became repayable ;

(b) if such debt or demand is due in respect of the supply of, or of any loan to provide the means of paying for irrigation facilities, upon the crops or agricultural produce of such member, past member, non-member or belonging to the estate of such deceased member or deceased non-member, as the case may be, at any time within two years from the date on which the last instalment of such supply or loan became repayable, or upon the crops of agricultural produce of the land so provided with irrigation facilities ;

(c) if such debt or demand is due in respect of the supply of, or any loan for the purchase of cattle, agricultural implements or warehouses for the storage of agricultural produce in the manner and to the extent aforesaid upon the crops or agricultural produce of such member or past member or non-member or belonging to the estate of such deceased member or deceased non-member, as the case may be, and also upon cattle, agricultural implements or warehouses so supplied or purchased wholly or in part from any such loan ;

(d) if such debt or demand is due in respect of the supply of, or any loan for the purchase of raw materials, industrial implements, machinery, workshops, warehouses, or business premises, upon the raw materials or other things supplied or purchased by such member, past member, non-member or deceased member or deceased non-member, as the case may be, wholly or in part from any such loan and also upon any articles manufactured from raw materials or with implements or machinery so supplied or purchased wholly or in part from any such loan ;

(e) if such debt or demand is due in respect of any loan for the purchase, redemption or improvement of land, upon the land purchased, redeemed or improved by such member, past member, non-member or deceased member or deceased non-member, as the case may be, from any such loan ; and

(f) if such debt or demand is due in respect of any loan for the purchase or construction of any house or building or any portion thereof or in respect of the supply of materials for such construction upon the house or building so purchased or constructed by such member, past member, non-member or deceased member or deceased non-member, as the case may be, from any such loan or materials.

(2) Notwithstanding anything contained in sub-section (1), the first charge created under that sub-section in favour of a society shall have priority over any claim of the State Government in the following cases, namely:—

(a) arising out of a loan under the Agriculturists' Loans Act, 1884, granted after the supply of or grant of a loan by the society to provide the means of paying for things mentioned in clauses (a), (b) or (c) of sub-section (1) ; XII of 1884

(b) arising out of a loan granted under the Bihar and Orissa State Aid to Industries Act, 1923, after the supply of or grant of a loan by the society for the purchase of things mentioned in clause (d) of sub-section (1) ; B & O. Act VI of 1923

(c) arising out of a loan under the Land Improvement Loans Act, 1883, granted after grant of any loan by the society for purposes mentioned in clause (e) of sub-section (1) or the execution of a mortgage in favour of the society. XIX of 1883

(3) Nothing in clause (a), (c), (d), (e) or (f) of sub-section (1) shall affect the claims of any bona fide purchaser or transferee for value without notice of any such crops or other agricultural produce, fodder, cattle, agricultural or industrial implements, machinery, raw materials, workshops, warehouses, premises, manufactured articles, houses, buildings or land.

31. (1) A society which includes among its objects the provision for irrigation facilities to or the construction of protective embankment for, the lands of its members may apply to the Collector in the prescribed form for demarcating the area proposed to be irrigated or protected by it, as the case may be, together with a map of and statements of lands included in such area.

Levy of rates by society for affording facilities for irrigation and protection to lands of non-members.

(2) On receipt of the application, the Collector, after giving notice in the prescribed manner to all owners and occupiers of land within the area proposed to be demarcated and after giving them an opportunity of being heard and if he is satisfied that the proposed source of irrigation or the protective embankment will benefit the lands included in the area proposed to be demarcated and that not less than sixty per cent of the area is in the occupation of the members of the society, shall declare such area with such modifications, if any, to be 'demarcated area'.

(3) Along with the declaration under subsection (2) the Collector shall publish the map of the demarcated area together with the statement of lands included in it.

(4) The owners and occupiers of land within the demarcated area whether members of the society or not shall pay such water rates as the society may, subject to rules made in this behalf, levy on them for the construction or the maintenance of the irrigation source of the protective embankment, as the case may be.

(5) The society shall pay such fees to the Collector for the service of notice and the preparation of map and the statements of the demarcated area as may be fixed by him.

(6) Such water rate shall be recoverable in the manner provided in this Act for the recovery of sums due to the society by the members, past members and deceased members thereof.

Deduction
of dues of
society
from
salaries of
members.

32. (1) If a member of a society, who is in the employment of the Central or the State Government or any Local authority or of any other person, takes a loan from a society in terms of a written contract to repay such loan with interest by instalments and authorises the society in writing to recover such instalments by deduction from his salary, the person who disburses any amount payable to such member as salary in respect of such employment shall, on demand from the society, deduct the amount of such instalment from the amount disbursed to such member as salary and shall forthwith remit to the society the amount so deducted.

(2) If any person other than the State Government or a Local authority who is required to deduct the instalments of the loan from the salary of a member

and to remit it to the society under sub-section (1) fails to do so, the Registrar may, on the application of the society and after giving such person an opportunity to be heard direct him to pay to the society, a sum not exceeding fifty rupees, as the Registrar may think fit.

Right of society as mortgagee to deposit arrears revenue to prevent sale of estate or tenure held in mortgage.

33. (1) Notwithstanding anything contained in the Bengal Land Revenue Sales Act, 1859 or the XI of 1857 Bengal Land Revenue Sales Act, 1868 (hereinafter VII of 1868 referred to in this section as the said Act of 1859 or the said Act of 1868), a society, which includes among its objects the creation of funds to be lent out to its members while taking security by way of mortgage for the loan advanced to its member, a revenue-paying estate to which the said Act of 1859 applies or a revenue paying tenure to which the said Act of 1868 applies, may notify the execution of the mortgage to the Collector in the prescribed manner and may pay to the Collector such fee in such manner, as may be prescribed, for purpose of receiving notice of the sale of such estate or tenure and shall thereafter be deemed to be a notified mortgagee in respect of such estate or tenure, as the case may be.

(2) The Collector, before putting to sale any revenue-paying estate or tenure under the said Act of 1859 or the said Act of 1868, as the case may be, shall send notice by registered post of the proposed sale to the society or societies deemed to be notified mortgagee in respect of such estate or tenure under sub-section (1) if such societies have deposited with the Collector such fees for the purpose as may be prescribed in this behalf and in the manner prescribed and such society or societies shall be entitled to stay such sale by depositing with the Collector the balance of the arrears of land revenue due in respect of such estate or tenure as the case may be.

Right of society holding a notified and registered encumbrance under the Orissa Tenancy Act.

34. (1) Notwithstanding anything contained in the Orissa Tenancy Act, 1913 a landlord of a tenure B. & O. Act II of 1913. or holding, to which the said Orissa Tenancy Act, 1913 applies, who has been notified of an encumbrance on such tenure or holding or on any portion or share of such tenure or holding under section 230 of the said Act in favour of a society, shall implead such society as a party in any suit that he may bring for recovery of arrear of rent due on such tenure or holding under the said Act.

(2) If, for any reason, the landlord fails to implead the society in any rent suit as prescribed in

sub-section (1), and the tenure or holding or any portion of such tenure or holding on which a notified and registered encumbrance exists in favour of a society is sold for arrears of rent under the provisions of the said Act, such sale shall not affect the right and interest of the society in the said tenure or holding or the share or portion of such tenure and holding and the sale shall be subject to such notified and registered encumbrance in favour of the society.

(3) The additional cost incurred by the landlord on account of impleading the society—mortgagee as a party to the suit under sub-section (1) shall be recoverable from the tenant of the tenure or holding creating the registered and notified encumbrance or his successor-in-interest who may be parties to the suit.

Mortgage not to be questioned on insolvency of mortgagor.

35. Notwithstanding anything in the Provincial Insolvency Act, 1920, the provisions of this section shall not apply to any question on the ground that the mortgagor was not in good faith for valuable consideration at the time when the mortgage was made.

SOCIETIES

36. (1) Save as provided in the rules and subject to the conditions, restrictions or prohibitions as may be prescribed in this behalf, a society shall not—

Exemption from compulsory registration.

(1) Save as provided in the rules and subject to the conditions, restrictions or prohibitions as may be prescribed in this behalf, a society shall not—

society.

Notwithstanding anything in this Act, a society shall not— (1) consist wholly or in part of immovable property; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting, or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to Trustees upon trust for the benefit of the holders of such debentures; or

(3) any endorsement upon or transfer of any debenture issued by any such society.

Power to remit duties etc.

37. (1) The State Government may by a general or special order, in the case of any society or class of societies, remit any tax, cess, fee or rate payable under

for the time being in force or the rules thereunder in respect of which the State Government, is competent to remit any such tax, cess, or rate.

(2) The State Government may by notification in respect of any society or class of societies—

(a) the stamp duty (other than the stamps falling within item 91 or item 96 in list I of the Seventh Schedule to the Constitution) in respect of any instrument executed by or on behalf of, or in favour of, a society or by an officer, or by or on behalf of the member thereof and relating to the business of such society, in cases where but for such remission, the officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force in respect

(ii) with ~~and~~ and

in the business of banking carried on by a society under any law for the time being in force in respect of the registration of

Provided that—

(a) the total investment of a society shall not in any case be less than its latest contained in any statement of assets and liabilities to be submitted to the Reserve Fund and Bad Debt Fund of the State Government, to take

(b) the investment of the above mentioned funds shall always be made in the manner prescribed by the Registrar :

Provided further that the books of a society in a book, or

books, regularly kept in the course of business and in the prescribed manner shall, if certified in the prescribed manner be received in any suit or legal proceedings 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 admissible.

(2) No officer or liquidator of a society and no officer in whose office the books of a society are deposited after its liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court or the arbitrator.

Acts of societies, etc., not to be invalidated by certain defects.

40. (1) No act of a society or of a Committee or of any officer or liquidator done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some defect subsequently discovered in the organisation of the society or in the constitution of Committee, or in the appointment of election of the officer or liquidator or on the ground that such officer or liquidator was disqualified for his election or appointment.

(2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled by or in consequence of any order subsequently passed under this Act.

(3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

CHAPTER VI SOCIETIES

TRANSACTIONS AND FUNDS Deposits and loans

Restrictions on borrowings.

41. A society shall receive only to such extent from members and non-members as may be prescribed by the rules and under such conditions and shall in respect of such deposits or liquid resources as may be prescribed. maintenance save as provided in the rules and subject to such prohibitions as may be prescribed.

Restrictions on loans and advances

42. A member except to a depositor on the security of this deposit ;

(b) lend money on the security of movable property except with the previous general or special order of the Registrar or an officer specially empowered by him in this behalf ;

(c) have transactions with persons other than members :

Provided that a society, with the general or special sanction of the Registrar, may have transaction with non-members on strictly ready-money basis.

(2) The State Government may by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any society or class of societies except the Land Mortgage Bank.

to be set aside for the purpose of its funds not required for its business.

(b) in a Government Savings Bank; or
in the State Provincial Cooperative Bank
or in its Financing Bank; or

(c) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 other than those specified in clause (e) of that section; or

(d) with the general or special sanction of the Registrar and on such conditions as he may impose—

(i) in the shares, or debentures or (on the security of any other society with limited liability; or

(ii) with any scheduled Bank carrying in the business of banking approved for this purpose by the Registrar :

Provided that—

(a) the total investment of any society shall not in any case be less than its latest accumulation in the Reserve Fund and Bad Debt Fund;

(b) the investment of the above mentioned funds shall always be made in the manner prescribed by the Registrar :

Provided further that the Registrar for record to be recorded in writing may from time to time exempt any society or a class of societies temporarily for a period not exceeding a year at a time from the due observance of the conditions of the above proviso.

44. (1) Every society which does or can derive a profit from its transactions shall maintain a Reserve Fund which shall be indivisible among members.

(2) Not less than fifty per cent of the net profits of a society with unlimited liability and twenty-five per cent of net profits of a society with limited liability certified by the Registrar as distributable for any co-operative year, shall be carried to the Reserve Fund :

Provided that these proportions for any society or class of societies may be increased or decreased as may be prescribed.

(3) In the event of a society being liquidated the Reserve Fund may be utilised towards the net outstanding liabilities of the society and the balance, if any, may be spent for any public purpose for the common benefits of the members and past members of the society in a manner specifically ordered by the Registrar as provided for in section 80.

Contribution to public, co-operative and charitable purpose

45. Any society in its general meeting, after the amount out of the net profits, certified by the Registrar as distributable as required under section 44 or by any rule, has been carried to the Reserve Fund, may contribute an amount not exceeding fifteen per cent of its net distributable profits to any charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890 or to any co-operative or public purpose. VI of 1898

Restrictions on distributions of profits of a society among members.

46. After the portion of net profits certified by the Registrar for any co-operative year as distributable has been carried to the Reserve Fund as required by sub-section (2) of section 44 or by any rule and after setting aside the sum, if any, under section 45, the balance of net profits together with any undistributed net profits of the past co-operative year may be distributed by the society in a general meeting as a dividend or bonus among members or paid as bonus or remuneration to a member of the society for any specific service rendered to the society or as contribution to Provident Funds for members or employees or to any other Fund, if any, such fund has been established by the society to such extent and under such conditions as may be prescribed by the rules or the bye-laws :

Provided that the amount distributed to a member in the shape of dividend or bonus or both (excepting bonus for specific service rendered to the society) shall not exceed nine per cent of the paid up value of the share held by him in the capital of the society.

Restrictions on payment to a member out of funds of a society except out of profits.

47. No part of the funds of a society shall be distributed among its members by way of bonus, dividend or otherwise except out of net profits in accordance with the provisions of section 46 :

Provided that payment may be made to a member out of the funds of—

(a) a society as salary, wages, travelling allowance or sitting fees for specific service rendered including work done as an officer or an employee of the society on a scale approved by the Registrar by a general or special order for each society or class of societies ;

(b) a producer's society as wages or remuneration for producing goods for the society or the price of agricultural or industrial produce of the member supplied to the society.

Provident
Fund.

48. (1) A society may establish a Provident Fund for its members or servants from the contributions of such members or servants as the case may be. In addition to contributions to such funds out of net profits in accordance with provisions of section 46 a society may contribute at such rates to the Provident Fund for its servants out of its own as may be prescribed.

(2) The management of the Provident Fund shall be governed by the rules. Such Provident Fund shall not be used in the business of the society but shall be invested or deposited in one or more of the ways specified in clauses (a), (b) and (c) of section 43.

CHAPTER VII

RIGHTS, LIABILITIES AND OBLIGATIONS OF MEMBERS OF SOCIETIES

Exercise of
rights of
membership.

49. No member of a society shall, save as otherwise provided in sub-section (2) of section 18, exercise the rights of a member until he has made such payment to the society in respect of membership or acquired such interest in the society as may be provided for in the rules and bye-laws under this Act.

Votes of
members.

50. (1) No member of a society shall have more than one vote in its affairs irrespective of the value of his interest in the capital of the society :

Provided that in the case of an equality of votes the Chairman of the meeting shall have a second or a casting vote :

Provided further that in a society with large membership or extensive area of operation, members may be divided into separate constituencies on a numerical or regional basis as provided in the bye-laws and delegates elected by such constituencies shall have one vote each in the affairs of the society.

(2) A society which is a member of any other society may appoint any of its members not disqualified for such appointment under any rules or bye-laws to vote in the affairs of such other society.

(3) Save as provided in sub-sections (1) and (2), voting by proxy shall not be allowed except where it is expressly provided for in the bye-laws.

Members to furnish information as to their financial position and alienation of their immovable properties and creditors of members to furnish statements of their claims.

51. (1) A full, true and accurate statement of his assets and liabilities shall be furnished by—

(a) an applicant for membership of a society with unlimited liability together with his application ;

(b) a member of a society which includes among its objects the advance of loan to its members when applying for a loan or when required to do so by the Registrar or a person authorised by the Registrar in this behalf by a general or special order or by the Financing Bank of which the society is a member ;

(c) a person joining as a surety in the application of a member for a loan from a society.

(2) On receipt of the statement of assets and liabilities of a member under sub-section (1), the society, the Financing Bank, the Registrar or the person duly authorised may serve a notice in the prescribed manner on any or all creditors of the member named therein or ascertained after further enquiry and may issue a notice on such creditor or creditors to furnish a written statement of his or their claims in the prescribed form and within the time specified in such notice.

(3) A member of a society which includes among its objects advance of loans to its members shall, before the completion of each such transaction, furnish to the society full, true and accurate information regarding any sale, mortgage or transfer in any form whatsoever of his immovable property or any portion or share thereof and regarding any loan proposed to be incurred from any person other than the society on the security of such property or otherwise including the amount and the object of such loan.

Loans to be used for the object for which advanced.

52. A loan advanced by a society to a member thereof shall be utilised fully by him for the purpose or purposes for which it was advanced and if not utilised, the loan shall become immediately repayable in the prescribed manner on its recall by the society notwithstanding any contract to the contrary as regards the period and instalments of repayment.

Restriction
on interest
of members
of society
with limited
liability and
share
capital.

53. No member of a society with limited liability registered after the commencement of this Act other than the State Government or another society shall—

(a) hold more than such portion of share in the capital of the society to a maximum of one-tenth as may be prescribed ; or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees :

Provided that the State Government may, by a general or special order, permit a member (other than another society) of a society or a class of societies to have or claim interest in the shares of such society or class of societies exceeding rupees one thousand but subject to such maximum as may be fixed in the order.

Share or
interest not
liable to
attachment

54. Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of section 29, the share or interest of a member in the capital of or contribution to a society or in any Provident Fund established under section 48, shall not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by such member, and neither the official assignee under the Presidency-towns Insolvency Act, 1909, nor a receiver under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, such share, interest or contribution.

III of 1909
V of 1920

Restrictions
on transfer
of share or
interest.

55. (1) The transfer or charge of the share or interest of a member in the capital of a society shall be subject to the provisions of this Act and to such conditions as to maximum holdings as may be prescribed and the orders of the State Government, if any, in this behalf and in the case of a member of a society with limited liability, shall require the approval of the society.

(2) A member shall not transfer or charge any share held by him or his interest in the capital or property of any society or any part thereof unless—

(a) he has held such share or interest for not less than one year except in the case of his expulsion from the society or death ; and

(b) the transfer or charge is made to a member of the society or to a person whose application for membership has been accepted by the society.

in accordance with this Act, rules and its bye-laws or in the case of a society with unlimited liability to the society itself.

Liability of a past member and of the estate of a deceased member.

56. The liability of a past member or of the estate of a deceased member for the debts of a society as they existed on the date of his ceasing to be a member or of his decease, as the case may be, shall continue for a period of two years from the said date :

Provided that if within two years from the date on which a member died or ceased to be a member, the society is wound up under section 76, the liability of the past member or of the estate of the deceased member for the debts of the society as they existed on the date of his death or cessation of membership, as the case may be, shall continue till the debts of the society are fully discharged or the winding up of the society is completed.

Register of members kept by a society.

57. Any register or list of members or shares kept by a society in the prescribed manner shall be *prima facie* evidence of any of the following particulars entered therein, namely :—

(a) the date on which the name of any person was entered in such register or list of members as a member ; and

(b) the date on which any such person ceased to be a member.

Transfer of interest on the death of a member.

58. (1) When any member of a society dies, his share or interest in the society or his possession of or interest in any land held by him under the society shall, subject to the provisions of section 29 and section 55 and to further provision of this section and within a period of one year of his death be transferred—

(a) to the person, if any, nominated by him in accordance with rules or the bye-laws of the society ; or

(b) if there be no such nominee, then to such person as may appear to the Committee, after due enquiry, to be the heir or legal representative of the deceased member and entitled to possession of such share or interest in land as part of the estate of the deceased member ; or

(c) on the application of persons referred to in clauses (a) and (b) within three months of the death of the deceased member, to any person specified in the application :

Provided that the nominee mentioned in clause (a), or the heir or legal representative mentioned in clause (b), or the person specified in the application under clause (c), shall be eligible for membership of the society in accordance with its bye-laws and his application for membership accepted by the society.

(2) If such nominee, heir or legal representative, as the case may be, is not willing to become a member of the society or if the society is unwilling to admit to membership such nominee, heir or legal representative, as the case may be, or a person specified in the application referred to in clause (c) of sub-section (1), the society shall pay a sum representing the value of the share, interest or of his possession of or interest in any land held by the deceased member under the society, determined in accordance with rules and bye-laws to such nominee, heir or legal representative, as the case may be, after deducting any sum payable to it under this Act out of the estate of the deceased member :

Provided that in the case of a society with unlimited liability the payment of value of the share, interest or land of the deceased member shall be made only after the receipt thereof from some person who is qualified to be the transferee of the share or interest or land in accordance with provision of section 55 and the bye-laws of the society.

(3) No transfer or payment of value of share, interest or land of a deceased member of a sum in excess of rupees one hundred shall be made to any heir or legal representative who has not been nominated in accordance with the rules or bye-laws, until the expiry of six months from the date of death of the member or until after decision under section 73 of any claim, which may, within that period, be made by any other person.

(4) Subject as aforesaid, all other money due to a deceased member from the society shall be paid to such nominee, heir or legal representative, as the case may be.

(5) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Disposal of share or interest of resigned or expelled member and of a society-member which has been ordered to be wound up.

59. When a member of a society resigns or is expelled in accordance with its bye-laws or when a society-member is ordered to be wound up under section 76, the value of his or its share or interest in the society or his possession of or interest in any land held by him under the society determined in accordance with rules and bye-laws shall be paid to such resigned or expelled member or the liquidator of the society-member ordered to be wound up, as the case may be, after deducting any sum due to the society under this Act, provided that such payment by a society with limited liability shall be made only after the receipt of value of share or interest from some person who is qualified to be a transferee of the share in accordance with provision of section 55 and the bye-laws of the society.

Restriction on transfer of possession of and interest in land held under a society.

60. (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, a member of a society, the object of which is the reclamation and colonisation of land or the acquisition of land and the leasing thereof to its members, shall not be entitled to transfer his possession of or interest in any land held by him under the society, except to the society or with the previous approval of the society given in accordance with the bye-laws to a member thereof or to a person whose application for membership has been accepted by the society.

(2) No land held under a society specified in sub-section (1) by a member thereof shall be attachable in any suit or proceeding for the recovery of any debt other than a debt due to the society or a member thereof.

CHAPTER VIII

AUDIT, INQUIRY AND INSPECTION

Registrar to be responsible for audit.

61. The Registrar shall audit, or cause to be audited by an Auditor duly authorised by him in this behalf the accounts of every society once at least in every co-operative year and by such date as may be prescribed.

Scope of audit.

62. (1) The audit under section 61 shall be conducted according to the rules, and shall include—

(a) a verification of cash balances and securities ;

(b) a verification of the balances at the credit of the depositors and creditors and of the amounts due from the debtors of the society ;

(c) an examination of overdue debts, if any ;

(d) a valuation of the assets and liabilities of the society ;

(e) an examination of the transactions, including the monetary transactions of the society within such limits as may be prescribed ;

(f) an examination of the statement of accounts, including the statement of receipts of charges, the balance-sheet, the profits and loss account and the statement of net profits available for distribution in accordance with this Act and the rules for the last co-operative year, to be prepared by the Committee in such form as may be prescribed ; and

(g) any other matter that may be prescribed or directed by the Registrar.

(2) The statements of accounts including the balance-sheet, the statement of profit and loss and the statement of net profits thus audited together with the modifications, if any, made therein by the Registrar and certified by him shall be final and binding on the society.

Auditor's
report.

63. The Auditor shall submit to the society and to the Registrar an audit report together with the statements of accounts audited. The audit report shall include a statement of—

(a) every transaction which appears to the Auditor to be contrary to law or to the rules or bye-laws of the society ;

(b) every sum which ought to have been but has not been brought into account ;

(c) the amount of any deficiency or loss, which appears to have been incurred by the culpable negligence or misconduct of any person ;

(d) any transaction which appears to him to require further investigation ;

(e) any money or property belonging to the society, which appears to have been misappropriated or fraudulently retained by any person ;

(f) any of the assets, which appears to be bad or doubtful of recovery ; and

(g) any other matter prescribed or directed by the Registrar.

Rectification
of defects.

64. A society shall be afforded by the Registrar an opportunity of explaining any defect or irregularity pointed out by the Auditor, and thereafter the society shall, within such time and in such manner as the Registrar may direct, remedy such defects and irregularities and report to the Registrar the action taken by it thereon.

Cost of audit

65. (1) Every society shall pay to the State Government a charge for the audit of its accounts for each co-operative year in accordance with the scale fixed by the Registrar with the previous approval of the State Government :

Provided that the State Government may, by a special or general order, exempt a society or a class of societies wholly or partially from the payment of such charge :

Provided further that the Registrar may remit for reasons to be recorded in writing the whole or any part of the charge payable by a particular society or a particular class of societies for any co-operative year or for other specific period.

(2) The charge shall be payable by the society within such period after the completion of its audit as the Registrar may direct.

Inspection
by the Regis-
trar.

66. The Registrar may, from time to time, inspect a society himself or cause it to be inspected by some person authorised by him in this behalf by general or special order.

Enquiry by
the Regis-
trar.

67. (1) The Registrar may, at any time, of his own motion, by himself or by a person authorised by him by order in writing in this behalf, hold an inquiry into the constitution, the working and the financial condition of a society.

(2) Such an enquiry shall be held on the application of—

(a) the Financing Bank of which the society is a member ;

(b) a majority of the members of the Committee of the society ;

(c) one-third of the members of the society and

(d) creditors representing not less than one-third of the borrowed capital of the society :

Provided that in the case of (c) and (d), the applicants shall have deposited such sum as security for costs, if any, as the Registrar may direct.

(3) The Registrar shall communicate the results of the enquiry under this section to the society, to the Financing Bank, if any, of which the society is a member and to the persons on whose application the enquiry has been held and any sum deposited as security for costs under the proviso to sub-section (2) shall be refunded to the applicant whose complaints are found to be tried.

Inspection
by a Finan-
cing Bank.

68. (1) A Financing Bank may at any time inspect a society which is its member.

(2) An inspection under sub-section (1) shall be made by an officer of the Financing Bank or by any member of its paid staff certified by the Registrar, as competent to conduct an inspection.

(3) The Financing Bank shall communicate the result of the inspection to the society concerned and to the Registrar, if so required by him.

Cost of in-
quiry.

69. (1) Where an inquiry is held under sub-section (2) of section 67, the Registrar may, after giving the parties an opportunity of being heard, and after recording the reasons, order apportionment of the costs of such inquiry or of such portion of the costs, if any, as he may think fit, between the society, the members thereof or the Financing Bank who applied for such inquiry, as the case may be, and officers, former officers, members and past members of the society and such society, members, past members, Financing Bank, creditors, officers and former officers shall pay the cost apportioned to them within such period as the Registrar may direct.

(2) No expenditure from the funds of any society shall be incurred for the purpose of defraying any costs in support of an appeal preferred by any person other than the society against an order under sub-section (1).

Surcharge.

70. (1) Where as the result of an audit, inspection or enquiry under this Chapter or of a report made in the course of the winding up of a society by the liquidator, it appears to the Registrar that any person who has taken part in the organisation or the management of the society or any past or present officer or any post or present agent or any past or present servant of the society has within a period of four years prior

to the date of such audit, inspection, enquiry or report as the case may be—

(a) intentionally made or authorised any payment which is contrary to the provisions of any law or to the rules and the bye-laws of the society for the time being in force or is against the direction of the Financing Bank for which the society is acting as an agent ; or

(b) by reason of his culpable negligence or misconduct, involved the society or the Financing Bank for which the society is acting as an agent, in any loss or deficiency ; or

(c) failed to bring into account any sum which ought to have been brought into account ; or

(d) misappropriated or fraudulently retained any property of the society, or of the Financing Bank for which the society is acting as an agent ;

the Registrar may inquire in the prescribed manner into the conduct of such person or officer, or past officer, agent, past agent, servant or past servant, and, after giving such person or officer or past officer, agent, past agent, servant, or past servant an opportunity of being heard, make an order requiring him to pay such sum to the assets of the society or of the Financing Bank, as the case may be, by way of compensation in respect of such payment or loss or sum, or to restore such property as the Registrar thinks fit, together with such sum as the Registrar may fix to meet the cost of the proceedings under this section :

Provided that, before any order requiring such person or officer or past officer, agent, past agent, servant or past servant of the society to contribute is passed in respect of a payment referred to in clause (a), reasonable time shall be given to such person or officer or past officer, agent, past agent, servant or past servant to recover the amount of such payment from the payee and credit it to the funds of the society or of the Financing Bank, as the case may be.

(2) This section shall apply notwithstanding that such person or officer or past officer, agent or past agent, servant or past servant may by his act or omission have incurred criminal liability under this Act, or under any other law for the time being in force.

CHAPTER IX

DISPUTES

Disputes

71. (1) Any dispute touching the business of a society (other than a dispute regarding disciplinary action taken by a society or its Committee against a paid servant of the society, whether a member or a non-member) shall be referred to the Registrar if the parties thereto are among the following, namely:—

(a) the society, its Committee, any past Committee, any past or present officer, any past or present agent, any past or present servant or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society; or

(b) a member, past member, or a person claiming through a member, past member or a deceased member of the society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted loan by the society or with whom the society has or had transactions under the provision of sub-section (1) of section 42 or on whom water or embankment rate has been levied under sub-section (4) of section 31 and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member or of a person other than a member who has been granted a loan by the society under the provisions of section 51, whether such surety is or is not a member of the society; or

(e) any other society or the liquidator of such society.

Explanation I—A claim in respect of any sum payable to or by a society by or to a person or society or a liquidator mentioned in clauses (a) to (e) of this sub-section shall be a dispute touching the business of the society within the meaning of this section even in case such claim is admitted and the only point in issue is the ability to pay and manner of enforcement of payment.

Explanation I I—A claim by a Financing Bank against a member of a society which is a member of the Financing Bank and indebted to it for the recovery of dues payable by such member to the society shall be a dispute touching the business of the Financing Bank within the meaning of this section.

Explanation I I I—The question whether a person is or was a member of a society or not shall be a dispute within the meaning of this section.

(2) A person or a society or a liquidator referring a dispute to the Registrar under sub-section (1) shall deposit in advance such fees as may be prescribed.

(3) No dispute referred to in this section shall be entertained in any Civil Court and the decision of the Registrar in this respect shall, subject to the provision of section 73, be final.

Limitation.

72. (1) Notwithstanding any of the provisions in the Indian Limitation Act, 1908, the period of limitation in the case of a dispute referred to the Registrar under section 71 shall—

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(a) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society ;

(b) when the dispute is between a society or its Committee and any past Committee, any past officer, past agent or past servant or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society and when the dispute relates to any act or omission on the part of either party to the dispute, be four years from the date on which the act or omission with reference to which the dispute arose, took place.

(2) The period of limitation in the case of any other dispute except those mentioned in sub-section (1) which are required to be referred to the Registrar under section 71 shall be regulated by the provisions of the Indian Limitation Act, 1908, as if the dispute were a suit and the Registrar a Civil Court.

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Settlement
of dispute.

73. (1) On receipt of a reference under section 71, the Registrar may--

(a) decide the dispute himself ; or

(b) transfer it for disposal to any person authorised by the State Government to exercise the powers of a Registrar in this behalf ; or

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators appointed in this behalf by the State Government.

(2) Subject to any rules, the Registrar may withdraw any reference transferred or referred under clauses (b) and (c) of sub-section (1) and decide it himself under clause (a) of that sub-section or transfer or refer it again under clause (b) or (c) of that sub-section to another person exercising the powers of Registrar, or to an arbitrator or arbitrators other than those to whom the reference was originally transferred or referred.

(3) The Registrar, a person exercising the powers of the Registrar under this section, or an arbitrator or arbitrators deciding a dispute under this section, shall have power to order the expenses incurred in determining such dispute to be paid out of the funds of the society or by such party or parties to the dispute as he or they may think fit.

Force and
effect of
mortgage
awards.

74. Where a dispute involves property pledged as collateral security, the person deciding the dispute may issue an award, which shall have the same force and effect as a final mortgage decree of a Civil Court having jurisdiction to make such a decree.

Loan taken
or mortgage
executed by
members of
joint Hindu
families.

75. (1) Where in the course of settlement of a dispute under section 73 or any proceedings under this Act, or in any suit, a loan taken from or a mortgage executed in favour of a society, whether before or after the commencement of this Act, is called in question on the ground that it is taken or executed by the manager of a joint Hindu family for a purpose not binding on the members thereof, whether major or minor, the burden of proof shall, notwithstanding anything contained in any other law for the time being in force, rest upon the party which calls such loan or mortgage in question.

(2) For the purpose of this section, the purposes of incurring debts as specified in clauses (a) to (f) of sub-section (1) of section 30 shall be regarded as purposes binding on the members of a joint Hindu family.

CHAPTER X

WINDING UP AND DISSOLUTION OF SOCIETIES

Order for winding up.

76. (1) The Registrar may, by an order in writing, direct that a society shall be wound up if—

(a) after an enquiry has been held under section 67 or an inspection has been made under sections 66 or section 68 ; or

(b) on an application made upon a resolution carried by three-fourths of the members of the society present at a general meeting specially called for the purpose ; or

(c) on his own motion in the case of a society which—

(i) has not commenced working within twelve months of the date of registration ; or

(ii) has ceased working for the last eighteen months ; or

(iii) has ceased to comply with any condition as to registration in this Act, or in the rules or in the bye-laws ;

he is of the opinion that the society ought to be dissolved.

(2) A copy of such order shall be communicated in the prescribed manner to the society and to the Financing Bank, if any, of which the society is a member.

(3) The order under sub-section (1) shall take effect from the date of such order and shall continue to be in force until cancelled as a result of appeal under section 128 or by an order of the Registrar under section 82.

Appoint-
ment of
liquidator.

77. (1) When an order is passed under section 76 for the winding up of a society, the Registrar may, in accordance with the rules, appoint a person to be liquidator of the society and may remove such person and appoint another in his place.

(2) The order under sub-section (1) of section 76 and the appointment of a liquidator, if any, or his removal under sub-section (1) shall be published in the Gazette and shall, in the prescribed manner, be communicated to the society and to the Financing Bank, if any, of which the society is a member.

(3) The Registrar may fix the remuneration, if any, payable to a liquidator. The amount of such remuneration and other costs of liquidation shall be payable from the funds of the society.

Powers of liquidator.

78. (1) All the rights, duties, assets and liabilities of the society shall be vested in and shall devolve on the liquidator with effect from the date of his appointment and he shall have power with effect from that date to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books, records and other documents pertaining to the business of the society.

(2) The liquidator shall, subject to the rules and the Registrar's power of control and revision, have power, so far as is necessary for the winding up of the society to carry on the business thereof and to do all acts and execute all documents necessary for such winding up and in particular shall exercise such of the following powers as the Registrar may from time to time by special or general order direct, namely :—

(a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office ;

(b) to determine and realise all sums due to the society from any person ;

(c) to determine from time to time subject to the provisions of section 56, the contribution to be made or remaining to be made to the assets of the society by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, and from time to time, to revise any order of contribution until the winding up is completed, and to realise such contributions ;

(d) to investigate all claims against the society and, subject to the provisions of this act, to decide questions of priority arising between claimants after giving an opportunity of being heard to all the creditors ;

(e) to pay claims against the society (including interest up to the date of the order for the winding up thereof) according to their respective priorities, if any, in full or ratably as the assets of the society permit ; and to apply the surplus, if any, remaining

after payment of the claims in full, in payment of interest from the said date at a rate fixed by him but not exceeding in any case the rate agreed to be paid by the society ;

(f) to make any compromise or arrangement with any person or society, between whom and the society there exists any dispute, or to refer any such dispute to arbitration ;

(g) to calculate the costs of liquidation and to determine by what persons and in what proportions the costs of the liquidation are to be borne ;

(h) to give such directions in regard to the realisation, collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society :

Provided that the liquidator shall not determine the contribution, debt or assets to be recovered from any person unless an opportunity of being heard has been given to such person.

(3) The liquidator shall make over to the Registrar for disposal in accordance with the provisions of section 80, the surplus, if any, remaining after paying the claims against the society including paid up share capital and interest under clause (c) of sub-section (2).

(4) If an appeal from the order of winding up by the Registrar is allowed by the State Government under section 128, or if the order of winding up is cancelled by an order of the Registrar under section 82, the liquidator shall give up possession of the assets, properties, books, records and other documents of the society to the Committee, and shall cease to carry on the business of the society, provided that all the acts done in his capacity as liquidator shall continue to have legal validity as if they had been done by the Committee or the society.

Priority of
contribu-
tions as-
sessed
by
liquidator.

79. Notwithstanding anything contained in the Provincial Insolvency Act, 1920, the debts due to a society under orders of being wound up and the contribution assessed by liquidator shall rank next to debts due to the Government or to any Local authority in order of priority in insolvency proceedings.

V of 1920

Disposal of surplus assets of a society which is being wound up.

80. The surplus assets of a society made over by the liquidator to the Registrar under sub-section (8) of section 78 shall not be divided among its members, but shall be applied by the Registrar in whole or in part to any or all of the following, namely:—

(a) any object or objects specified in the by-laws of the society;

(b) an object of local public utility;

(c) a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890;

VI of, 1890

(d) any union of Co-operative Societies, the object of which is the development of the co-operative movement; and

(e) Reserve Fund of a new society, if and when established with the same object and the same area of operation as the society being wound up.

Deposit of books and submission of final report by the liquidator.

81. (1) When the affairs of the society have been wound up, the liquidator shall deposit all books, registers and accounts of the society and all books, accounts and papers relating to the liquidation proceedings which are in his possession with the Registrar or with such financing bank or person as the Registrar may direct and shall make a final report to the Registrar.

(2) After the expiry of three years from the date of the final report under sub-section (1), no responsibility shall rest on the liquidator, or the Registrar or the financing bank or the person to whom the custody of the documents may have been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of Registrar to cancel the order of winding up or of registration of a society.

82. (1) The Registrar may cancel an order for the winding up of a society at any time, in any case where, in his opinion, the society should continue to exist.

(2) In any other case, the Registrar shall after considering the final report of the liquidator, order the cancellation of the registration of the society which shall thereupon cease to be a corporate body.

(3) The orders of the Registrar under sub-sections (1) and (2) as well as the order of the State Government on appeal cancelling the order of winding up of the society, if any, shall be published in the Gazette and shall be communicated to the society and the financing bank, if any, in the prescribed manner.

CHAPTER XI

SPECIAL PROVISIONS FOR THE LAND MORTGAGE BANK

Area of operation of the Land Mortgage Bank.

83. (1) The State Government may, by notification from time to time, define any local area in the State of Orissa in which the Land Mortgage Bank may operate with effect from such date as may be specified in the notification and may cancel or modify such notification.

(2) The Land Mortgage Bank shall not operate in any area which has not been notified under sub-section (1).

Issue of debentures.

84. (1) With the previous sanction of the Trustee and subject to such conditions as he may impose, the Land Mortgage Bank may, for the purpose of investment in land mortgage business and for no other purpose, issue debentures of such denominations, for such periods and at such rates of interest as it may deem expedient on the security of the mortgages and other assets of the land mortgage business.

(2) Every debenture may contain a term fixing a period not exceeding ten years from the date of issue during which it shall be irredeemable or reserving to the Land Mortgage Bank the right to call it at any time in advance of the date fixed for redemption, after giving to the holder of the debenture not less than three months' notice in writing.

(3) The total amount due on debentures issued by the Land Mortgage Bank and outstanding at any time shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the Land Mortgage Bank or of the Trustee at such time and the value of all other assets of the land mortgage business held by the Land Mortgage Bank and subsisting at that time.

Guarantee by Government of principal of, and interest on, debentures issued under section 84.

85. (1) The principal of, and the interest on, the debentures issued under section 84 shall carry the guarantee of the State Government to such maximum amount as may be fixed under sub-section (2) and subject to such conditions as may be imposed by the State Government.

(2) Subject to the provisions of sub-sections (3), (4) and (5), the State Government may, after consulting

the Legislative Assembly, fix from time to time the maximum amount of the guarantee referred to in sub-section (1).

(3) The State Government may, after consulting the Land Mortgage Bank and the Trustee, by notification and by notice, published for not less than fourteen days in such of the principal newspapers in and outside the State of Orissa as they may select, discontinue the guarantee given under sub-section (1) or restrict the maximum amount thereof or modify the conditions subject to which it is given effect from a date specified in such notice not being earlier than six calendar months from the date of the first publication of the notification in the Gazette.

(4) In cases where the maximum amount of the guarantee is to be restricted or any of the conditions subject to which it is given is to be modified, the notice shall set forth, with sufficient clearness, the scope and effect of the restriction or modification as the case may be.

(5) Any discontinuance, restriction or modification notified under sub-section (3) shall not affect in any way the guarantee carried by any debentures issued prior to the date on which such discontinuance, restriction or modification takes effect.

(6) Notwithstanding anything contained in the Indian Trusts Act, 1882, the State Government shall II of 1882 declare that debentures guaranteed by Government under sub-section (1) shall be deemed to be included among the securities enumerated under section 20 of the said Act.

Appoint-
ment and
power of
Trustee.

86. (1) When the Land Mortgage Bank is authorised under sub-section (1) of section 84 to raise funds by the issue of debentures, the principal of and interest on which are guaranteed by the State Government under sub-section (1) of section 85, the State Government shall appoint the Registrar or some other person to be the Trustee for the purpose of securing the fulfilment of the obligations of the Land Mortgage Bank to the holder of the debentures.

(2) The Trustee appointed under sub section (1) shall be a corporation sole by the name of the Trustee for the debentures in respect of which he is appointed, and as such shall have perpetual succession and a common seal and in his corporate name shall sue and be sued.

(3) The powers and functions of the Trustee shall be governed by the provisions of this Act and the instrument of trust executed between the Land Mortgage Bank and the Trustee. The form of such instrument and any modification thereof, which the parties thereto may mutually agree to make in any of its terms after its execution, shall be subject to the previous approval of the State Government.

Vesting of property in Trustee and debenture-holders' charge on assets.

87. Upon the issue of debentures under the provision of sub-section (1) of section 84, the mortgages and other assets held by the Land Mortgage Bank shall vest in the Trustee and the holders of debentures shall have a floating charge on all such mortgages and assets and on the amounts paid under such mortgages and remaining in the hands of the Land Mortgage Bank or of the Trustee.

Right of Land Mortgage Bank to pay prior debts of mortgagor

88. (1) When a mortgage is executed in favour of the Land Mortgage Bank for payment of a prior debt or part thereof of the mortgagor, the Bank shall, notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by issuing IV of 1882 notice in writing in the prescribed manner, require any person to whom any such debt is due to receive payment of such debt or part thereof from the Bank at its registered office within such period as may be specified in the notice.

(2) The person on whom such notice is served shall be bound to receive payment of the amount offered by the Land Mortgage Bank, but where there is a disagreement between the mortgagor and such person as regards the amount of the debt, or where the Land Mortgage Bank tenders less than the agreed amount of the debt, the receipt of the sum offered by the Bank shall not prejudice the right, if any, of such person to recover the balance claimed by him.

(3) If any person fails to accept such notice, or to receive such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiry of the period specified in the notice.

Restriction on mortgagor's lease of or charge on equity of redemption.

89. Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other enact- IV of 1882 ment for the time being in force, no mortgagor of property mortgaged to the Land Mortgage Bank shall be entitled, after the execution of the mortgage—

(a) to transfer or mortgage his equity of redemption, or

(b) to lease such property for a period exceeding five years.

Power of
sale—where
and
how to be
exercised.

90. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Trustees' IV of 1882 and Mortgagees' Powers Act, 1866, the Land Mortgage XXVIII of 1866. Bank or any person authorised by it in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have the power in addition to any other remedy available to the Bank, to bring the mortgaged property to sale without the intervention of the Court.

(2) No such power shall be exercised unless and until—

(a) the Land Mortgage Bank has previously authorised the exercise thereof after hearing the objections, if any, of the mortgagor or mortgagors;

(b) notice in writing requiring payment of such mortgage money or part thereof has been served upon—

(i) the mortgagor or each of the mortgagors,

(ii) any person who has any interest or charge upon the mortgage property or in or upon the right to the Land Mortgage Bank,

(iii) any surety for the payment of the mortgage debt or any part thereof, and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(c) default has been made in payment of such mortgage money or part thereof for three months after the service of the notice.

Application
for sale and
manner
sale

91. Upon the expiry of three months from the date of service of notice under clause (b) of sub-section (2) of section 90, if the sum due under the mortgage has not been paid, the Land Mortgage Bank or any person authorised by it in this behalf may, after considering any objection made within that period by any person entitled to such notice, apply to the principal officer of the Co-operative Department in the district to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in sub-section (2) of section 90 and the Collector of the district in which the property is situated, if the property consists of an estate or share of an estate of a village or share of a village, direct the Sale Officer authorised in this behalf to sell such property by public auction in the manner prescribed and report the result thereof to the Bank.

Government's right of pre-emption.

92. When the mortgaged property brought to sale under section 91 consists of an estate or share in an estate, or a village or share in a village, the State Government acting through the Collector may, within thirty days from the date of sale, claim to take it at the sum last bid on their depositing with the Sale Officer for payment to the Land Mortgage Bank the full amount of the last bid :

Provided that the Collector shall not exercise his discretion in the case if the co-sharer owning the largest share in such village or estate desires to purchase the property brought to sale.

Land Mortgage Bank to sell the property purchased.

93. Where the Land Mortgage Bank purchases the mortgaged property, sold under section 91, the property so purchased shall be disposed of by such Bank by sale within such period as may be fixed by the Trustee.

Appointment and powers of receiver

94. (1) Notwithstanding anything contained in section 87, the Land Mortgage Bank may, in circumstances in which the power of sale conferred by section 90 may be exercised, appoint, in writing, a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled, either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him his expenses of management including his remuneration, if any, as fixed by the said Bank, and to apply the balance in accordance with the provisions of sub-section (8) of section 69-A of the Transfer of Property Act, 1882.

(2) A receiver appointed under sub section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Land Mortgage Bank.

(3) A vacancy in the office of the receiver may be filled up by the Land Mortgage Bank.

(4) Nothing in this section shall empower the Land Mortgage Bank to appoint a receiver where the mortgaged property is already in possession of a receiver appointed by a Civil Court.

Requirement when property mortgaged is destroyed or security is rendered insufficient, etc.

95. If any property mortgaged to the Land Mortgage Bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, having been given a reasonable opportunity by the said Bank of providing further security,

enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the said Bank, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the said Bank shall be entitled to take action against the mortgagor under sections 90, 91 or 118 for the recovery thereof.

Explanation—A security shall be deemed insufficient within the meaning of this section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the rules or the bye-laws of the Land Mortgage Bank.

Power of the Land Mortgage Bank and Trustee to direct distraint and sale.

96. (1) If the Land Mortgage Bank fails to take action against a defaulter under section 118, section 90, section 94, or section 95, the Trustee may take such action.

(2) If such action is taken by the Trustee the provisions of this Chapter and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the Land Mortgage Bank in the said provisions were references to the Trustee.

Exemption of officers of Land Mortgage Bank from personal appearance before registering officers.

97. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any Director, Secretary or other officer of the Land Mortgage Bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act. XVI of 1908

(2) If any instrument so executed is presented to a registering officer for registration, such officer, may, if he thinks fit, refer to such Director, Secretary or other officer for any information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

Service of notice.

98. Whenever under the provisions of this Chapter a notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post.

Applications
of provisions
of Transfer
of Property
Act, 1882 to
notices.

99. The provisions of sections 102 and 103 of the Transfer of Property Act, 1882 and of any rules ^{IV of 1937} made under section 104 thereof for carrying out the purposes of the said sections, shall apply so far as may be, in respect of all notices to be served under this Chapter.

Land Mort-
gage Bank's
power of
making
regulations.

100. (1) The Land Mortgage Bank subject to the approval of the Trustee, may make regulations, consistent with the provisions of this Chapter and the rules—

(a) for fixing the period of debentures and the rate of interest payable thereon ;

(b) for calling in debentures in advance of the date fixed for redemption after giving notice to the holders thereof ;

(c) for the issue of new debentures in place of debentures damaged or destroyed and fixing the fee for such issue ;

(d) for converting one class of debentures into another class bearing a different rate of interest ;

(e) for the form in which applications for loans should be made and for the valuation of the properties offered as security for such loans ;

(f) for the investment of moneys realised from the mortgagor ;

(g) for supervising and seeing to the application of the loan for the purpose of the mortgage ; and

(h) generally for the purpose of safeguarding the interest of the parties concerned and for carrying out the purposes of this Chapter.

(2) The regulation shall have the same force and effect as the rules made under this Act.

Delegation
of powers
and duties
of the
Land Mort-
gage Bank
to the Com-
mittee and
to the Execu-
tive Com-
mittee or
Sub-Com-
mittee.

101. The powers, duties and obligations conferred or imposed by this Chapter on the Land Mortgage Bank shall devolve on and be vested in the Committee of the said bank, which may if it thinks fit, delegate all or any of its powers, duties or obligations to an Executive Committee or Sub-Committee consisting of three or more of its members of whom one shall be the Registrar or his nominee not being below the rank of an Assistant Registrar.

CHAPTER XII

ENFORCEMENT OF ORDERS, PROCEDURE AND
RECOVERY OF SUMS DUE

Registrar
and certain
other per-
sons acting
under this
Act to have
certain
powers of
Civil Court.

102. (1) The Registrar and, subject to restrictions, limitations and conditions, if any, as may be prescribed, a person exercising the powers of Registrar, an Auditor, an arbitrator, a liquidator, a Sale Officer, or a person authorised by the Registrar to hold an enquiry or make an inspection under Chapter VIII, or an officer of the Land Mortgage Bank, or of any Financing Bank, or a person subordinate to the Registrar when such officer or person is authorised by the Registrar, by general or special order in writing in this behalf shall, in so far as is necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of any person and to examine him on oath or affirmation and to compel the production of any books, accounts, documents, securities, cash and other properties and to issue commission for the examination of witnesses by the same means and so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

V of 1908

(2) Any of the officers or persons authorised by or under sub-section (1) may require any person present before him to furnish any information or to produce any document then and there in his possession or power.

(3) Any officer or person before whom any document is produced under sub-section (1) or sub-section (2) shall have power to take, or to authorise the taking of, such copies of the document or of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or the entries therein, as the case may be.

Attachment
of property.

103. (1) Where the Registrar is satisfied on the application of a society or of a liquidator or of a person who is a party to a dispute referred to him under section 71 or otherwise that any person or society with intent to defeat or delay the execution of any order, decision or award that may be passed against him or it under this Act or Rules—

(a) is about to dispose of the whole or any part of his or its property, or the property which is

the subject matter of dispute referred to the Registrar; or

(b) is about to remove the whole or any part of his or its property or of the property which is the subject matter of the dispute referred to the Registrar from the local limits of the jurisdiction of the Registrar,

he may, unless adequate security is furnished to his satisfaction, direct the attachment or the said property or such part thereof, as he thinks necessary.

(2) The attachment under sub-section (1) shall have the same force and effect as if it had been made by a competent Civil Court and shall continue in force unless withdrawn or cancelled by the Registrar.

(3) An order of attachment passed under sub-section (1) shall be executed by—

(a) the Registrar or a person authorised by him in this behalf; or

(b) (i) the Collector

(ii) the Civil Court

in whose jurisdiction the property lies in the same manner as an order of the competent Revenue and the Civil Court respectively.

(4) Any order of attachment passed under sub-section (1) may be discharged or varied or set aside by the Registrar on his own motion or on the application made to him by any party affected by such order, after giving the party or parties concerned an opportunity of being heard.

Injunctions and enforcement of injunctions and decisions or awards in respect of non-monetary claim.

104. (1) The Registrar may, on the application of a society, a liquidator or a person who has referred a dispute to him under section 71, issue temporary injunctions in accordance with the provisions of sections 52 and 53 of the Specific Relief Act, 1877.

I of 1877

(2) The injunction passed under sub-section (1) shall have the same force and effect as if it had been made by a competent Civil Court having local jurisdiction and shall continue in force for the period mentioned in the order or until further order of the Registrar.

(3) An injunction passed under sub-section (1) or a decision or award under section 74 in respect of a non-monetary claim shall be enforced on

application by the Registrar in the manner prescribed or by any Civil Court having local jurisdiction in the same manner as if it were a decree or injunction of such Court.

Recovery
of sums
due.

105. (1) Any sum payable to the State Government or to a Society or to a liquidator in accordance with any order, decision, or award under this Act or the rules, together with the interest, if any, due on such sum and the costs of process shall be recoverable by one or all of the modes specified below, namely:—

(a) subject to the rules, by the Registrar or by a Sale Officer authorised by the Registrar in this behalf by the attachment and sale or by sale without attachment of the property of the person by whom or the society by which such sum is payable,

(b) as an arrear of land revenue throughout the State of Orissa; or

(c) in the case of any decision or award under section 74 upon application for execution by any Civil Court having local jurisdiction in the same manner as if the decision or award are a decree of such Court.

(2) The provisions of clause (a) of sub-section (1) and the rules shall apply with such modifications, if any, as may be directed by the State Government, in regard to the recovery of like sums due to Co-operative Societies registered or deemed to be registered in any other State of India under any law relating to Co-operative Societies for the time being in force in that State as if such Co-operative Societies had been registered in the State of Orissa under this Act.

(3) In the case of recovery under clause (b) of sub-section (1), the Registrar or any person authorised by him in this behalf by general or special order shall be deemed to be the person to whom the arrear of land revenue, as the case may be, is due or payable.

Registrar
or person
empowered
by him to
be Civil
Court for
certain
purposes.

106. The Registrar, or any person empowered by him in that behalf, shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery or to take some step-in-aid

of such recovery, to be a Civil Court for the purposes of article 182 of the First Schedule to the Indian Limitation Act, 1908.

IX of 1901

Property from which sums due from a Society can be recovered.

107. All sums recoverable from a society in accordance with an order, decision or award under this Act or the Rules, may be recovered—

(i) from the property of the society ;

(ii) from the members, past members or the estates of deceased members of the society or their sureties ; or from non-members who have been advanced loans or with whom the society had transactions under sub-section (1) of section 42, or from whom water and embankment rates are due under sub-section (4) of section 31 and their sureties, to such extent and in such proportion as may be determined by the Registrar subject to the extent of the indebtedness of such members, past members, deceased members and non-members to the society and to the provisions of section 72.

Right of transfer of land of a society in certain areas and the society's right to bring it to sale.

108. (1) Notwithstanding anything contained in the Central Provinces Tenancy Act, 1898 or the Central Provinces Tenancy Act, 1920, or the Angul Laws Regulation, 1936 or the Khondmals Laws Regulation, 1936 or any other law for the time being in force, defining the rights of tenants on the land and the relation between Government and tenant, or the landlord and tenant, it shall be lawful in an area in the State of Orissa, where any of the above enactments is in force, for—

C. P. Act XI of 1898
C. P. Act I of 1920
Orissa Regulations V of 1936
Orissa Regulations IV of 1936

(a) a member of a society, or a person, other than a member to whom loan has been made in accordance with provisions of clause (a) of sub-section (1) of section 42, whether such member or person is an occupancy tenant or otherwise, to mortgage to the society his rights in his holding as a security for the loan advanced to him or to sell such right for the purpose of repaying such loan or advance ; or

(b) the Registrar or a person subordinate to him and authorised by him in this behalf to recover the sum due under an award, decision or order under this Act from any person in accordance with the provisions of clause (a) of sub-section (1) of section 105 ; or

(c) the Collector to recover the sum under all award, decision or order under this Act from any person in the same way as if it were an arrear of land revenue; or

(d) the Land Mortgage Bank to bring to sale under section 90 the property mortgaged to it.

(2) The purchaser of property sold under sub-section (1) shall enjoy all the rights and privileges of the transferee as soon as he gets certificate of sale under section 114 and delivery of its possession under section 115 or under any revenue law in force under which the property has been sold under clause (b) of sub-section (1).

Application
to set aside
sale.

109. (1) When immovable property has been sold by the Sale Officer, under section 91, or under clause (a) of sub-section (1) of section 105, or under clauses (a) and (b) of sub-section (1) of section 108, any person owning such property or holding an interest therein or when the property sold has been mortgaged to Land Mortgage Bank, any person entitled to a notice under section 90, may, within thirty days of the date of the sale, apply to the principal officer to have the sale set aside on his depositing with such officer—

(a) for payment to the purchaser as compensation a sum equal to five per centum of the purchase money;

(b) for payment to the State Government, the Society, the Land Mortgage Bank or the liquidator in consequence of whose application the sale was held, the amount specified in the proclamation of sale for the recovery of which the sale was ordered to be held together with interest thereon and the expenses of attachment, if any, and sale and other costs due, in respect of such amount, less any amount which may since the date of such proclamation have been received by the State Government, the society, the Land Mortgage Bank or the liquidator, as the case may be.

(2) At any time within thirty days from the date of sale of immovable property, under section 91 or section 105 or section 108, the society, the Land Mortgage Bank, or the liquidator at whose instance the sale was held, or any person entitled to share in ratable distribution of assets or whose interests are affected by the sale, may apply to the principal

officer to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it :

Provided that no sale shall be set aside on the ground of irregularity, mistake or fraud, unless, upon the facts proved, the principal officer is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

(3) The purchaser at any such sale may also, within the period of thirty days from the date of sale, apply to the principal officer to set aside the sale, on the ground that the person from whom the sum is recoverable under the award, decision or order in execution of which the sale was held, had no saleable interest in the property sold.

(4) When the principal officer has reason to think that the sale ought to be set aside on the ground of irregularity, mistake or fraud, notwithstanding that no application to set aside the sale has been made or on grounds other than those mentioned in any application made and rejected, he may, after giving an opportunity to all parties concerned of being heard and after recording his reasons in writing, set aside the sale at any time before it is confirmed.

(5) When a person applies under sub-section (2) to set aside the sale of immovable property in which he is interested, he shall not, unless he withdraws his application, be entitled to make an application under sub section (1).

(6) On receipt of application and deposit under sub-section (1), the principal officer shall set aside the sale and shall pay back to the purchaser the purchase money so far it has been deposited together with the five per cent of such money deposited by the applicant.

(7) If the sale is set aside under sub-section (2) or sub-section (3) or sub-section (4), the principal officer shall return the purchase money to the purchaser with or without interest as he may decide and may direct a fresh sale.

Distrait
and
attachment
of property
shall not be
excessive.

110. Subject to the provisions of section 118 in the case of distrait of agricultural produce under that section, it shall be lawful for the Sale Officer to distrain or attach and sell the whole or any portion of the movable or immovable property of

the person from whom money is due under this Act, whether under an award, decision or order or under a mortgage in favour of the Land Mortgage Bank, in discharge of money due :

Provided that so far as may be practicable no larger portion of movable property shall be distrained or immovable property be attached and sold than may be sufficient to discharge the amount due with interest, and expenses of distraint, custody attachment, if any, and sale.

Confir-
mation of
sale.

111. On the expiration of thirty days from the date of the sale, if no application to have the sale set aside has been made under section 109 or if such application has been made and rejected and if the principal officer has not taken action under subsection (4) of that section, he shall make an order confirming the sale which shall thereupon become absolute.

Title of
purchaser
not to be
questioned.

112. When a sale has been made under section 91 or section 105 or section 108, and has been confirmed and made absolute under section 111, the title of the purchaser shall not be questioned in any Court by any person, whose interest has been sold, or his successor-in-interest, on any ground whatsoever.

Distribution
of proceeds
of sale or
dstraint.

113. (1) The proceeds of sale under section 91 or under section 105 or section 108 or section 119 shall be applied as follows :--

Firstly, in payment of all costs charges and expenses properly incurred as incident to the distraint, attachment, if any, custody, sale or attempted sale ;

Secondly, in payment of all interest due on account of debt or outstanding demand for which distraint was made under section 118 or on account of the principal sum under the award, decision or order, as the case may be, or on account of the mortgage held by the Land Mortgage Bank in consequence of which the property was sold ;

Thirdly, in payment of the arrear instalment or part of such instalment on account of which distraint was made under section 118 or of the principal money due under the award, decision or order, as the case may be, or of the principal money due on account of the mortgage held by the Land Mortgage Bank ; and lastly, the residue, if any, thereafter

remaining, shall be paid to the person whose property was distributed or sold to his successor-in-interest.

(2) All payments of such residue made in accordance with sub-section (1) shall be valid and effectual against any demand relating thereto, made by any person upon the Sale Officer or the society, the Land Mortgage Bank or the liquidator, as the case may be, in consequence of whose application the sale was held.

Certificate
of sale.

114. (1) When the sale is confirmed under section 111, the principal officer shall on application grant a certificate in the prescribed form specifying who, at the time of the sale, is declared to be purchaser. Such certificate shall bear the date on which the sale was made absolute.

(2) The principal officer shall send a copy of every certificate granted under sub-section (1) to the registering officer appointed under the Indian Registration Act, 1908, within the local limits of XVI of 1908 whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situated, and notwithstanding anything contained in the said Act of 1908, such registering officer shall enter the contents of such copy in his register of non-testamentary documents relating to immovable property.

(3) Notwithstanding anything contained in the Orissa Tenancy Act, 1913, the purchaser of any immovable property, sold under section 91, or clause (a) of sub-section (1) of section 105 shall, if the property sold or any portion of it is an occupancy holding or part of an occupancy holding to which the said Act of 1913 applies, file along with his application for grant of certificate under sub-section (1) a notice giving particulars of the transfer in the forms prescribed under the said Act of 1913 and deposit the fee as prescribed therein for the service of it. The principal officer shall transmit the notice to the Collector who shall cause it to be served on the landlord in the manner prescribed under the said Act of 1913.

Bihar and
Orissa Act II
of 1913.

Delivery of
property to
purchaser.

115. (1) When the immovable property sold is in the occupancy of the persons, whose right, title and interest in the property have been sold, or of some person on behalf of such person or mortgagor, or of some person claiming under a title created by such

person subsequently to the attachment of such property other than a lease for a period not exceeding five years created by the mortgagor subsequent to the mortgage in favour of the Land Mortgage Bank, and a certificate in respect thereof has been granted under section 114, the principal officer granting the certificates shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person, whom he may appoint to receive delivery on his behalf, in possession of the property and if need be, by removing any person who refuses to vacate the same.

(2) Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 114, the officer granting the certificate shall, on the application of the purchaser, and after notice to such tenant or other person, order delivery to be made, by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the person from whom the sum under the award, decision or order, as the case may be, was recoverable, or the mortgagor, in the case of a mortgage-money due to the Land Mortgage Bank, has been transferred to the purchaser.

(3) In regard to the cases dealt with in subsections (1) and (2) the provisions of rules 97 to 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall *mutatis mutandis* and ^{V of 1908} so far as may be, apply.

Recovery of
sums due
from a
salary-
eener.

116. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for ^{V of 1908} the time being in force, any sum payable in accordance with an award or decision made under section 74 in respect of default in the payment of a loan taken under section 32 or of any instalment of such a loan, shall be recoverable if the salary (including other emoluments) of the member exceeds rupees one hundred per mensem, by the attachment of such salary to the extent of instalment in respect of which the default has been made or one-half of the difference between such salary and hundred rupees whichever is less.

Right to set off where a society purchases immovable property at a sale under Madras Act I of 1864 or any sum due to it.

117. Where, any sum due to a society from any person is recoverable as an arrear of land revenue under clause (b) of sub-section (1) of section 105, and the immovable property of such person is brought to sale under the provisions of the Madras Revenue Recovery Act, 1864, and the society is the purchaser, at such sale, the provisions of section 36 of the said Act shall apply thereto as if for the third and fourth clauses thereof the following clauses were substituted, namely :—

Madras Act. II of 1864

Third—The sum due to the purchaser shall be set off in whole or in part against the purchase money and the remainder, if any, of the purchase money shall be paid to the Collector or other officer empowered by the Collector in that behalf within thirty days of the date of sale.

Fourth—Where the purchaser refuses, or omits to complete the payment of the remainder, if any, of the purchase money, the property shall be resold at the expense and the hazard of such purchaser, and the amount of all loss or expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as an arrear of land revenue. Where the property, on the second sale, sells for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Power to distrain.

118. (1) Where any instalment or part of an instalment of a debt or an outstanding demand payable to a society by a member, past member, the estate of a deceased member, or by a non-member who has been advanced a loan under sub-section (1) of section 42 by the society, or by the estate of such deceased non-member, or by a person other than a member on account of water or embankment rate under sub-section (4) of section 31, has remained unpaid for more than a month from the date on which it falls due, the society may, in addition to any other remedy available to it under this Act, apply in the manner prescribed, to the Registrar for the recovery of such instalment, part of instalment or outstanding demand by distraint and sale of not more than half the produce of the land—

(a) mortgaged to the society as security for the debt or the demand, or

(b) on which the society holds a first charge in accordance with the provisions of section 30, or

(c) which is included in the "demarcated" area and on which the water or the embankment rate is due under sub-section (4) of section 31.

Explanation—The produce of the land includes any crops or other products of the earth standing or ungathered on the land or which have been reaped or gathered and are deposited in another place.

(2) Upon receipt of such application, the Registrar may, notwithstanding anything contained in the Transfer of Property Act, 1882 but subject to the provisions of this Act and the rules, direct a Sale Officer to take such action as is necessary to distrain and sell such produce :

Provided that no distraint shall be made under this section after the expiry of twelve months from the date on which the instalment or outstanding demand fell due.

(3) The distraint shall not be excessive and the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the cost of sale.

(4) Any mistake, defect or irregularity in this respect shall not invalidate a distraint or sale made under this Act.

Distraint of
property
which is
under
attachment.

119. When any conflict arises between an order for distraint issued under section 118 and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but if the property is sold under that order the surplus proceeds of the sale shall not be paid to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Officers of
Societies,
Financing
Banks and
sale officers
not to bid at
sales.

120. At any sale of movable or immovable property held under the provisions of this Act or the rules, no officer or servant of the society on the application of which the sale is held, and no officer, if any of the Financing Bank of which the society is a member (except on behalf of the society or the Financing Bank as the case may be) and no Sale Officer or other person, having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

Coast
and
Civil
Court
Division
etc.

Registrar's
power to en-
force perfor-
mance of
obligations.

121. Notwithstanding anything contained in this Act, where any society is required to take any action under this Act, the rules or the bye-laws and such action is not taken :—

(a) within the time provided in this Act, the rules or the bye-laws ; or

(b) where no time is so provided within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by a notice in writing,

the Registrar may call upon the Secretary of the Society or the Committee, as the case may be, or any officer other than the Secretary who according to the terms of the bye-laws or any resolution of the General Meeting of the Committee has been entrusted with the particular duty for the carrying out of his directions, and, after giving the Secretary or such officer an opportunity to be heard, may require him to pay personally to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

CHAPTER XIII

SPECIAL PROVISIONS FOR THE PROVINCIAL CO-OPERATIVE BANK

Provincial
Co-operative
Bank to
insist on
investment
of reserves
of members.

122. Every Financing Bank or registered Co-operative Societies that are directly affiliated to the Provincial Co-operative Bank shall invest all their Reserve Funds and Bad Debt Funds as herein before provided in section 43 :

Provided that the Registrar may exempt any such bank or society either in part or in full from the operation of this section temporarily for a period not exceeding one year at a time. Such period may be extended from time to time for reasons to be recorded by the Registrar in writing.

123. The Provincial Co-operative Bank may issue loans to individual agriculturists against the security of their lands, standing crops or industrial or agricultural produce.

to
individual
agricu-

124. If in the opinion of the Provincial Co-operative Bank, any Financing Bank or affiliated society is unable to manage its affairs in such a manner as to discharge its obligations to the Provincial Co-operative Bank, the said Provincial Co-operative Bank may move the Registrar to take action under section 19.

Inspection,
etc., of
societies by
the
Provincial
Co-operative
Bank.

125. Every member of society, Financing Bank and other borrowers of a Provincial Co-operative Bank shall submit such statements, returns and periodical information as may be prescribed by the said Provincial Co-operative Bank and shall also produce such books, documents, registers and papers relating to its business before any person duly authorised by the Provincial Co-operative Bank in this behalf for purposes of carrying out any inspection of such society or bank or enquiry into its affairs.

Investment
of Reserve
Fund.

126. The Reserve Fund of the Provincial Co-operative Bank shall be invested in any of the securities specified in section 20 of the Indian Trusts Act, 1882 and shall not be drawn upon without ^{II of 1902} the prior consent of the Registrar and the Registrar shall not give his consent unless he is satisfied that the affairs of the Provincial Co-operative Bank cannot otherwise be managed. Such withdrawal shall always be for a period not exceeding one year.

Issue of
debentures.

127. (1) With the previous sanction of the State Government and subject to such conditions as the State Government may impose, the Provincial Co-operative Bank for the purpose of its lending operations may issue debentures for such periods and at such rates of interest as it may deem expedient on the security of its assets.

(2) Such debentures may be issued for a period not exceeding ten years from the date of issue during which period it shall be irredeemable or reserving the right to the Provincial Co-operative Bank to call in at any time in advance of the date fixed for redemption after giving to the holder of the debentures not less than two months' notice in writing.

CHAPTER XIV

APPEAL, REVIEW, REVISION, PROCEDURE AND JURISDICTION

Appeal

128. (1) An appeal shall lie against an order, decision or award under this Act, shown in column 2 of the Second Schedule, within two months of the date of publication or communication thereof to the Registrar, if passed by an officer exercising the powers of or under the authority of Registrar, or by

an arbitrator or a liquidator or by a society under sub-section (4) of section 31, or if passed by the Registrar, to the State Government.

(2) An entry or omission from the map or the statement prepared under section 31 shall be appealable to the Collector, if such entry or omission has been done by the order of a person subordinate to the Collector or if done by the Collector, to the Board of Revenue.

(3) There shall be no second appeal.

(4) Save as provided in this Act, no appeal shall lie against any order, decision or award passed in accordance with this Act and every such order, decision or award shall be final.

(5) Every appellant or every applicant for review or revision of an order, decision or award under this Act, shall deposit such fees in advance as may be prescribed.

Delegation
of power
to hear
appeals.

129. The State Government may, by general or special order, delegate their power of hearing appeals under the provisions of this Act, except the power of hearing appeals against orders of the Registrar passed under sections 15, 19 and 70 to any authority specified in such order.

130. The Registrar shall have the power of review vested in a Civil Court under section 114 and under order XLVII, Rule 1 of the Code of Civil Procedure, 1908, in respect of order passed or decisions or awards made by him or by an arbitrator or arbitrators under this Act or the Rules. V of 1909

Power of
revision by
Registrar.

131. (1) The Registrar may, on the application of any person considering himself aggrieved or of his own motion, after giving the parties concerned an opportunity of being heard, revise any order passed, in any case in which no appeal lies to him, by a person exercising the powers of Registrar or acting on the authority of the Registrar or by a person subordinate to him or by a liquidator.

(2) An application for revision shall be made within a reasonable period not exceeding one year from the date of the order sought to be revised.

Power of
revision by
state
Government.

132. (1) The State Government may, in any case in which no appeal lies to them, under this Act or the rules, call for and examine the record of any

enquiry or inspection held or made under this Act, or the proceedings of the Registrar, or of any person exercising the powers of Registrar or subordinate to him or acting on his authority or of an arbitrator or arbitrators or of a liquidator and may pass thereon such orders as they think fit, after giving the person or the society concerned an opportunity of being heard.

(2) An application for review to the State Government shall be made within a reasonable time not exceeding one year from the date of the order sought to be revised.

Legal practitioners not to appear in proceedings under this Act.

133. Legal practitioners shall not be entitled to represent parties in proceedings under this Act or the rules before any person other than the Registrar exercising the powers of Registrar, or any person subordinate to him or acting on his authority, an arbitrator or body of arbitrators or a liquidator.

Bar of jurisdiction of Courts.

134. (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of—

(a) the registration of a society or its bye-laws or of any amendment of its bye-laws ; or

(b) the dissolution of the committee of a society and the management of the society on dissolution thereof ; or

(c) any dispute required under section 71 to be referred to the Registrar ; or

(d) any matter concerned with the winding up and the dissolution of a society.

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) All orders, decisions or awards passed in accordance with this Act or the rules shall be final subject to the provision of this Chapter and no such order, decision or award shall be liable to be challenged, set aside, modified, revised, or declared void in any Court, upon merits or upon any ground whatsoever except want of jurisdiction.

Indemnity

135. No suit, prosecution or legal proceedings whatever shall lie against the Registrar or any person subordinate to him or acting on his authority or against a liquidator or against a Trustee appointed under section 86 in respect of anything in good faith done or purporting to be done under this Act.

Registrar and certain other persons acting under this Act to be public servants.

136. The Registrar, a person exercising the powers of a Registrar, a person authorised to make an enquiry or inspection under Chapter VIII, an Auditor, a liquidator, an arbitrator, a Sale Officer and a person employed to serve notices or processes under this Act or the rules, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

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CHAPTER XV

OFFENCES AND PENALTIES

Offence

137. (1) It shall be an offence under this Act, if any person or an officer or member of society—

(a) intentionally neglects or refuses to do any act or make any return, statement or report or furnish any information required to be done, made or furnished under this Act or the rules made thereunder;

(b) wilfully makes a false return or furnish false information required to be made or furnished under this Act or the rules ;

(c) removes or otherwise disposes of, or suffers to be removed or otherwise disposed of, any property on which a society holds a first charge under section 30, with intent to defraud the society or with such intent does any other act to the prejudice of the society's first charge ;

(d) in contravention of provision of section 24 uses the word "Co-operative" or its equivalent in an Indian language in any name or title under which he or it trades or carries on business ;

(e) wilfully or without reasonable excuse disobeys any summons, requisition or order issued under sub-sections (1) and (2) of section 102 ;

(f) does any act or omission declared by the rules to be an offence.

(2) Notwithstanding anything contained in this Act, or any other law for the time being in force, a person shall, on conviction, be punishable—

(i) for offences under clauses (a), (d), (e) and (f) of sub-section (1) with a fine which may extend

to one hundred rupees and in the case of a continuing offence to a further fine of ten rupees for each day on which the offence is continued after conviction thereof ;

(ii) for an offence under clause (b) of subsection (1) with fine which may extend to two hundred rupees ;

(iii) for an offence under clause (c) of subsection (1) along with the person on whose behalf the property is removed or disposed of, with a fine which may extend to five hundred rupees.

Cognizance
of offences

138. (1) No Court inferior to that of a Magistrate of the first class shall try an offence under this Act.

(2) Every offence under this Act, shall for the purposes of the Code of Criminal Procedure, 1898, be deemed to be non-cognizable.

(3) No prosecution for an offence under this Act shall be instituted without the previous sanction of the Registrar and the Registrar shall not sanction the prosecution of any person, unless he has given such person an opportunity of being heard.

CHAPTER XVI

MISCELLANEOUS

Co-operative;
Council

139. The State Government shall constitute a State Co-operative Council for the State of Orissa, whose functions will be to formulate plans and policies for the development of Co-operative movement in the said State and which will consist of—

(a) the Minister of Co-operation who shall be the President thereof,

(b) the Secretary to the State Government in the Department of Co-operation,

(c) the Registrar of Co-operative Societies,

(d) two members of the Orissa Legislative Assembly to be elected for the purpose,

(e) the President of the Orissa Provincial Co-operative Bank,

(f) the President of the Orissa Co-operative Union,

(g) the President of the Orissa Land Mortgage Bank,

(h) five non-official Co-operators to be nominated by the State Government from Co-operative Banks and Societies,

(i) such additional members not exceeding three as the Council, with the approval of the State Government may co-opt.

Power to
make rules.

140. (1) The State Government may for (the whole or any part of the State of Orissa, and for any society or class of societies) make rules to carry out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(i) the period which shall be a Co-operative year ;

(ii) the sums which in addition to those referred to in clause (k) of section 2 shall be deducted from profits to arrive at net profits ;

(iii) the exemption of any society or class of societies from, and the extent of application to, any society or class of societies of any of the provisions of this Act ;

(iv) the extent and manner of delegation of powers entrusted to the Registrar under this Act or to any person appointed to assist him under sub-section (2) of section 8 ;

(v) the conditions for registration of any society or class of societies ;

(vi) the forms to be used and the conditions to be complied with in the making of an application for the registration of a society and the procedure in the matter of such application ;

(vii) the extent to which a society may limit the number of its members ;

(viii) the matters in respect of which a society shall or may make bye-laws and the procedure to be followed in amending the bye-laws and the conditions to be satisfied prior to such amendment ;

(ix) the procedure for calling and holding general meetings of the members and the powers to be exercised by such meetings ;

(x) the manner of electing delegates for any of the purposes of this Act and the manner in which the delegates so elected shall vote ;

(xi) the manner of constituting the committees and sub-committees thereof (including the appointment of persons to represent appropriate interest)

(xii) the appointment, qualifications, disqualifications, terms of office, suspension and removal of the members of committees and officers of different classes of societies ;

(xiii) the procedure at meetings of the committee and the powers to be exercised and the duties to be performed by the committees and officers of a society ;

(xiv) the procedure for registering the address of a society and any change of its address ;

(xv) the minimum number and the qualifications of the paid staff to be employed by different classes of societies ;

(xvi) the accounts, books and registers to be kept and the reports, statements and returns to be submitted by a society, the form in which such accounts, books and registers shall be kept and such reports, statements and returns shall be submitted, the method in which such books, accounts and registers shall be kept in custody or destroyed and the charges which may be assessed and levied for the preparation of any statement, report or return or the writing up of accounts, books and registers not submitted according to the provision of this Act or the rules or not ready at the time of audit, as the case may be ;

(xvii) the manner in which the balance sheet shall be published ;

(xviii) the procedure and conditions under which books, etc., to be made available to persons other than Registrar ;

(xix) the procedure and conditions for change of the form of liability of society under section 26 ;

(xx) except in any case as otherwise provided in the Act, in which a notice or process is issued under this Act or the Rules—

(a) the form of the notice or process and the manner of its authentication,

(b) the period of notice to be given and the person on or against whom the notice or process shall be served,

(c) the procedure for service of notice and process ; the conditions to be fulfilled in order to establish proof of the service of such notice or process ;

(xxi) the principles to be followed in dividing the assets and liabilities of a society, when it is split up into two or more societies under section 28 ;

(xxii) the form of application under, the form of map and statement and the manner of their publication required by and the manner of levying rates provided in, section 31;

(xxiii) the fee payable to the Collector under section 33 for service of notice by him and the manner in which it is to be paid ;

(xxiv) the period for which and the terms under which financial assistance or guarantee for repayment of principal or interest or both on debentures may be given under section 38 by the State Government ;

(xxv) the method of certification of copies of entries in records and registers of societies under section 39; the procedure and conditions for the charges to be levied for the supply of such copies ;

(xxvi) the conditions and terms under which, the manner in which and the extent to which funds may be raised by a society by means of shares ; deposits or debentures or otherwise, and the manner in which provision shall be made for the maintenance of fluid resource ;

(xxvii) the payments to be made and the conditions to be complied with by members applying for loans from a society, the period for which loans may be made, and the amount which may be lent to an individual member, the security for the loan and the manner of its repayment ;

(xxviii) the procedure for and the conditions, prohibitions and restrictions subject to which a society may—

(a) make a loan or an advance in cash or in kind to a person or society which is not its member, or

(b) transact business or trade with persons who are not members, or

(c) make a loan or advance against movable property ;

(xxix) the proportion which shall be annually carried under section 44 to the Reserve Fund from the net profits of a society or class of societies, the object to which such funds may be applied and the extent

to which a society may use its Reserve Fund in its business ; and the method in which the Reserve Fund shall be invested ;

(xxx) purposes which shall be deemed co-operative or public for which a society may utilise the sum set aside under section 45 ;

(xxxi) the amount or proportion of contribution which a society may make to Provident Funds established under section 48 out of its profits or otherwise and the rules governing such funds ;

(xxxii) the conditions to be complied with by a person applying for admission or re-admission or admitted as a member and the payment to be made and the interest to be acquired before the exercise of the rights of membership ;

(xxxiii) the conditions in which a member of a society shall be disqualified from exercising his right of membership in the society or to represent it in another society under sub-section (2) of section 50 ;

(xxxiv) the form of claim prescribed under sub-section (2) of section 51 ;

(xxxv) the manner of re-calling a loan under section 52 ;

(xxxvi) the maximum number of shares or portion of the capital of a society which may be held by a member under section 53 ;

(xxxvii) the conditions for the maximum holdings of a member under section 55 ;

(xxxviii) the procedure and conditions for and the method of nomination by a member of a transferee under section 58 ;

(xxxix) the procedure for determining the heir or legal representative of a deceased member, in case where there is no nominee under section 58 and for calculating the value of share or interest or of land of a member or the sums due to him or to the nominee of a deceased member for purposes of sections 53, 59 and 60 ;

(xl) the conditions, circumstances and the manner in which a member may be permitted to resign or expelled from a society and the payments, if any, to be made to members who withdraw or are expelled ;

(xli) the procedure for conducting audit, the matters which shall be included in the audit report under clause (g) of section 63, the forms in which audit and audited statements of accounts shall be prepared and the limit within which the Auditor may examine the monetary transactions of the society ;

(xlii) the principles and procedure for calculating doubtful and bad debts and for writing off the latter ;

(xliii) the principles and the procedure for the conduct of the enquiry by the Registrar under section 70 ;

(xliv) the fees to be deposited in advance under section 71, the qualifications and method of appointing an arbitrator or arbitrators, the circumstances in which disputes are to be transferred to or withdrawn from the arbitrator or arbitrators or person exercising the powers of Registrar, the procedure to be followed in proceedings under Chapter IX including the appointment of a guardian for a party to the dispute who is a minor or who by reason of unsoundness of mind or mental infirmity is incapable of protecting his interest and the method of calculating and levy of the expenses in connection with these proceedings ; the form of award or decision and the disposal of records ;

(xlv) the procedure to be followed by the liquidator in proceeding under section 78 ;

(xlvi) the procedure and conditions for the exercise of powers conferred by section 102 and the manner of certification of copies of documents or entries therein produced under sub-section (3) thereof ;

(xlvii) the procedure for the conditional attachment of property under section 103 ;

(xlviii) the manner in which the orders passed under section 104 and decision or awards in respect of non-monetary claims are to be enforced ;

(xlix) the procedure for recovering sums due to State Government, a society or a liquidator by execution of order, decision, award or contribution order of a liquidator, as the case may be, by attachment and sale or by sale without attachment of property ;

(l) the custody of property attached under this Act ;

(li) the procedure for attachment of portion of salary and recovery of dues from the attached portion ;

(lii) the procedure for attachment, investigation and disposal of claims and objections that may be preferred against attachment that may be effected by the Registrar or any officer empowered by him ;

(liii) the procedure for sale by sale officers ;

(liv) the procedure for application for distraint ; the manner of effecting distraint and the calculation of expenses thereof ; and the custody ; preservation and sale of the distrained property (including immediate sale of such as is perishable), the investigation of claims of persons other than the defaulter to any right or interest in the distrained property and for the postponement of the sale pending such investigation ;

(lv) the procedure and conditions for varying an instrument of trust between the Trustee and the Land Mortgage Bank ;

(lvi) the procedure under Chapter XII—(a) for proclamation and the conduct of the sale and for recovery of expenses thereof, (b) for deposit of purchase money, (c) for the resale of property, if the purchase money is not deposited ;

(lvii) the procedure to be followed in presenting appeals and applications for review or for revision under Chapter XIV and disposal of such appeals and applications ;

(lviii) the fees to be deposited in advance under section 128 ;

(lix) restriction on the use of premises of societies ;

(lx) co-operative conferences and contribution to expenses thereof by societies ;

(lxi) the procedure and conditions for inspecting and getting copies of documents and records in the office of the Registrar or any person subordinate to him including the arbitrator or arbitrators and a liquidator and the charges to be levied for such inspection and for obtaining certified or uncertified copies ;

(lxii) the procedure for and method of calculating any costs, charges or expenses required to be levied under this Act or rules ;

(lxiii) the procedure for and method or recovery of any sums due under this Act or the rules ;

(lxiv) the method of communicating or publishing any order, decision or award required to be communicated or published under this Act or rules ;

(lxv) the term of office of members, the conduct of business and duties and the powers of the Co-operative Council ;

(lxvi) all matters expressly required or allowed by this Act to be prescribed by rules ;

(3) In making any rule under this Act, the State Government may direct that any breach thereof shall be an offence.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) All rules made under this section shall be published in the Gazette and on such publication shall have effect as if enacted in this Act.

FIRST SCHEDULE

ENACTMENTS REPEALED

(See Section 3)

Serial No.	Year.	No.	Short title.	Extent of repeal
1	2	3	4	5
1	1935	VI	The Bihar and Orissa Co-operative Societies Act, 1935.	The whole with the exception of sub-section (1) of section 64, sub-section (2) of section 64 so far as it relates to the stamp duties specified in the second paragraph thereof and section 67 and the Schedule.
2	1935	VIII	The Bihar and Orissa Co-operative Societies (Amendment) Act, 1935.	The whole.
3	1947	XII	The Bihar and Orissa Co-operative Societies (Orissa Amendment) Act, 1947.	The whole.
4	1932	VI	The Madras Co-operative Societies Act, 1932.	The whole with the exception of sub-section (1) of section 30 sub-section (2) of section 30 so far as it relates to the stamp duties specified in the second paragraph thereof and section 66 and the Schedule.
5	1933	VIII	The Madras Co-operative Societies (Amendment) Act, 1933.	The whole.
6	1934	VI	The Madras Co-operative Societies (Amendment) Act, 1934.	The whole.
7	1936	II	The Madras Co-operative Societies (Amendment) Act, 1936.	The whole.
8	1942	V	The Madras Co-operative Societies (Orissa Amendment) Act, 1942.	The whole.
9	1938	III	The Orissa Co-operative Land Mortgage Bank Act, 1938.	The whole.

SECOND SCHEDULE

APPEALS

(See Section 128)

Serial No.	Order appealable	By whom appeal may be preferred
1	2	3
1	An order refusing to register a society under section 12.	Any applicant for registration.
2	An order refusing to register an amendment of a bye-law under section 14.	An officer authorised by the Committee on that behalf.
3	An order directing amendment of a bye-law under section 15.	An officer authorised by the Committee on that behalf.
4	An order under section 19 dissolving the Committee of a society and an order of disqualification under sub-section (7) thereof.	Any member of the dissolved Committee or any member of the Committee disqualified.
5	Any order directing amalgamation under section 27 and an order directing division or splitting up of a society under section 28.	Any Society or person aggrieved.
6	An order under section 52 when recovering a loan.	Any person aggrieved.
7	Assessment of water or protection embankment rate.	Any person aggrieved.
8	An order under section 69 apportioning costs.	By any person aggrieved.
9	An order of surcharge under section 70 ..	By any person aggrieved.
10	An award, decision, order under section 73 or 74.	By any person aggrieved.
11	An order for winding up a society under section 76.	By any member of the society.
12	An order, or decision of a liquidator under section 78.	Any person aggrieved.
13	Any order passed in the course of proceedings for recovery of dues under clause (a) of sub-section (1) of section 105.	Any person aggrieved.
14	An order for payment of compensation ..	Any person aggrieved.
15	Any order or decision declared by the rules to be appealable.	Any person aggrieved.