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PART XI.

Bills introduced into the Legislative Assembly of Orissa. Reports of Select Committees presented or to be presented to that Assembly and Bills published before introduction in that Assembly.

LAW, COMMERCE AND LABOUR DEPARTMENT.

NOTIFICATION.

The 3rd January 1939.

No. 1-L.A.—The following report of the Select Committee on the Orissa Money-Lenders Bill, 1938, together with the Bill as amended by that Committee, is hereby published for general information.

Report of the Select Committee on the Orissa Money Lenders Bill, 1938.

We, the undersigned members of the Select Committee, to which the Orissa Money Lenders Bill, 1938, was referred, have the honour to submit this, our report, with a copy of the Bill, as amended by us, annexed.

The Committee held its first meeting on the 11th September 1938. The Committee decided to consider the opinions and representations already received by the Government on the subject of legislation to regulate money lending transactions and to grant relief to debtors. The Committee also decided that it should consider the reports of the proceedings of the conferences convened by the Government for examining the nature and scope of the legislation on the subject. Copies of these opinions, representations and reports were accordingly circulated to the members of the Committee. The Committee subsequently met on the 17th, 18th and 19th October 1938 at Berhampur, and on the 10th, 11th and 12th November 1938 at Cuttack. The Committee considered the opinions, representations and reports referred to above and examined the provisions of the Bill, clause by clause. The Committee approved the Bill subject to the alterations made in it which are set out in the sub-joined notes with the reasons therefor.

Clause 2 (f).—The definition of "court" has been amplified so as to include executing courts also; otherwise, in the case of decrees passed by courts in other provinces, judgement debtor will not be entitled to get the protection conferred by this Bill.

Clause 2 (g).—The definition of "decree" has been amplified so as to include an award enforceable as a decree of a court under the Indian Arbitration Act, 1899, within its scope. Such awards and decrees stand on the same footing, and it is only reasonable that they should be brought under the same category. To avoid the possibility of any doubt as to whether both the preliminary decrees and final decrees passed in suits relating to secured loans are "decrees" for the purposes of this Bill, the definition has been amended so as to include them within its purview.

Clause 2 (i).—The Committee considered that supply of goods on *khata* carrying interest up to 6¼ per cent simple per annum is not a loan, and therefore *explanation (2)* has been amended to clarify this position.

Clause 2 (j).—Clauses 9 to 16, and not merely clauses 9 to 15, apply to persons who advance loans in the regular course of business of money lending, irrespective of the amount invested in the business. The reference to "sections 9 to 15" has accordingly been altered to sections 9 to 16.

Clause 2 (q).—In the definition of "loan", loans advanced by a co-operative society are excluded. It follows that the proceedings taken for the recovery of a loan before the Registrar or a liquidator or an arbitrator under the Bihar and Orissa Co operative Societies Act, 1935, should be excluded from the definition of "suit" for the purposes of this Bill. The reference to such proceedings in the definition of "suit" has accordingly been omitted.

Clause 5.—The words "Provincial Government" have been substituted for the word "Governor" in the proviso to sub-clause (3) as the power to make rules under that sub-clause vests in the Provincial Government.

Clause 8.—The proviso has been slightly amended to make it clear that the loan, in respect of which the institution of a suit is permitted, may have been advanced at any time in the course of a year after the coming into force of the Section.

Clause 9.—The amendment is designed to bring the language of the clause into line with that of sub-clauses (*i*) and (*ii*) of clause 11 (1) and to make it clear that the rate of interest fixed is simple and not compound.

Clause 10.—The Committee considered that the amount of the loan to which reference should be had in fixing the amount of interest should be the amount of the loan as it stood when it was originally advanced and not as it would be subject to subsequent additions and alterations, whether covered by document or not. This is made clear by the insertion of the word "originally" between the words "loan" and "advanced" and by the deletion of the words "or, if the loan is based on a document, the amount of the loan mentioned in the document on which the suit is based".

The Committee were authorised by the Assembly to consider and allow amendments so as to provide for the appropriation of the excess interest realised (which may remain after the application of the principle laid down in this clause and clause 11) towards the principal amount of the loan. The Committee considered that, as the principle of Damdupat had been recognised and given effect to in the Bill, it followed as a logical consequence that the money lender should not be enabled to realise at any time anything in excess of double the sum advanced. In other words, the Committee decided that, with a view to give full effect to the principle of Damdupat adopted in the Bill, in case the interest already paid exceeded the principal amount of the loan, the excess amount should be adjusted towards the satisfaction of the principal. A new sub-clause has accordingly been added to carry out this decision, numbering the present clause 10 as sub-clause (1) of clause 10.

Clause 11.—To make it clear that in a proper case the court should exercise all or any of the powers set out in sub-clause (1), the words "the court shall exercise all or any of the following powers as may be applicable to it" have been substituted for the words "the court may exercise all or any of the following powers".

For the reasons given under clause 10, the court should also have power to appropriate the excess interest collected from the debtor [of which he should be relieved from liability under sub clauses (*i*) and (*ii*)] towards the principal amount due under the loan. A new sub-clause has been inserted conferring this power on the court as sub-clause (*iii*)] renumbering the existing sub-clause (*iii*) as sub-clause (*iv*).

The Committee considered that the prohibition against re-opening agreements purporting to close previous dealings and creating new obligations entered into at a date more than 12 years from the date of transaction, which is embodied in the first proviso, was unjust and unreasonable and therefore decided to delete the proviso altogether. The word "further" in the second proviso was deleted as a consequential amendment, and the words "in this sub-section" substituted for the words "in sub-section (1)" in that proviso.

To avoid ambiguity, the words "on 1st April 1936 or after it" have been transferred from their place and inserted after the words "passed by a court" in sub-clause (2). The reference to "sub-section (*i*)" in sub-clause (2) has been altered to "sub-section (1)" wherein the powers are specified.

Clause 14.—Sub-clause (2) has been omitted as the Committee considered it unnecessary to provide for a right of appeal in such cases.

Clause 16.—As the intention is to make the provisions of clauses 10 to 15 applicable to all appeals and proceedings in execution arising in respect of decrees passed on the 1st April 1936 or thereafter on the basis of loans, sub-clause (*ii*) has been suitably amended.

Clause 17.—The words "is executed" have been substituted for "comes into existence" to avoid difficulties in interpretation as to when a usufructuary mortgage may exactly come into existence.

Clause 18.—The expression "is otherwise unfit to carry on the business of money-lending" was considered to be extremely vague and as likely to give rise to difficulties in interpretation and in the actual working of the provision. It has, therefore, been deleted.

The Committee considered it desirable that the enquiry as to fraud should be judicial in character and that the power to hold it should be vested in courts and not in the Collector. It was also of opinion that the finding of a trial court that the money lender has been guilty of fraud should be subject to one appeal within the prescribed time and that the decision of the appellate court should be final. The final order finding a money lender guilty of fraud should be communicated to the Collector and action should thereupon be taken for cancellation of the registration certificate granted to the money lender for the period mentioned in it. Sub-clause (1) has, therefore, been suitably amended and two new sub-clauses inserted, renumbering the existing sub-clause (2) as sub-clause (4).

Clause 19.—The intention is that any money lender or his agent who wilfully contravenes any of the provisions of Section 7 shall be punishable with fine not exceeding Rs. 500. It has been given effect to by omitting the words "clause (*a*) of" in sub-clause (1). Sub-clause (2) is redundant and has accordingly been omitted.

Clause 22.—There is no reason for invalidating the entire contract in respect of a loan which provides for the payment of the amount due thereunder in any place outside the province of Orissa. The object is merely to invalidate the provision for payment outside the province. The clause has been suitably amended to restrict the invalidity of the contract to the provision for payment outside the province of Orissa.

Clause 26.—The Committee considered it unnecessary to have any such provision for payment in cash before the Sub-Registrar in the case of loans under registered documents, as it would serve no useful purpose. The clause has, therefore, been deleted and the subsequent clauses renumbered.

Clause 27.—A provision has been inserted as sub-clause (*j*) enabling the Provincial Government to make rules prescribing the period for appeal under sub-clause (2) of clause 18.

The Committee decided that the rule making power of the Provincial Government should be subject to the control of the Assembly. Sub-clause (3) has accordingly been inserted to give effect to this decision.

The Bill was published in the *Orissa Gazette* dated 23rd August 1938, and we do not consider its re-publication necessary. We recommend that the Bill, as amended by us, be passed.

BICHITRANANDA DAS
BISWANATH DAS
*GODAVARIS MISRA
SADHU CHARAN DAS
E. M. EVANS
RADHAMOHAN SAHU
*B. N. SAMANTHROY
*M. G. PATNAIK
NABAKRUSHNA CHOUDHURY
*VYSWARAJU KASHI VISWANADHAM RAJU

*Subject to the note of dissent annexed.

Note of dissent by Babu Godavaris Misra, M. L. A.

The rates of interest specified in clause 9 should be reduced. The figure 9 in the clause should be substituted by 6 and the figure 12 by 9. In an agricultural province like Orissa there should be as much parity as is practicable between the yield of land and the yield of money advanced on loan upon the credit of land; otherwise the vicious circle of poverty in which the province is moving will continue and bring about ruination.

Note of dissent by Babu B. N. Samanthroy, M. L. A.

As the Select Committee removed the twelve years time limit for reopening agreements, it is better that all unsatisfied decrees be reopened and the relief given to the debtors. If the Bill is passed into law the person that rushed to court before 1st April 1936 would get a right which is denied to the lenient creditor. I sign the report subject to this note of dissent.

Note of dissent by Sriman Mandhata Gorachand Patnaik Mahasya, M. L. A.

1. *Registration of money lenders and maintenance of accounts.*—In view of the fact that the percentage of professional money lenders is very small and that in most cases either cash or paddy is lent to villagers by their neighbours at the importunity of the former when the latter have a little surplus, it is not desirable or expedient that registration should be insisted upon. The chronic indebtedness of people is due to the fact that the income they derive from land or other sources is not enough for their maintenance. The yield from land is very little due to the lethargy of the people themselves mainly and to the apathy of Government to take effective steps to see that a larger return either in money or in quantity is secured from land and that a secondary avocation is provided for people. Now people supplement their income by borrowing and in course of a few years sell their lands or other property to discharge the debts incurred by them. Registration will make it exteremely difficult for people to borrow money easily as they are now doing so that after the Bill becomes law they can raise money only by selling their lands or other property at a price much lower than the price which they fetch now. Unless Government are prepared to take steps to place more ready money in the market than is available now to ordinary borrower the legislation will do more harm to people whom Government profess to benefit than good though in a comparatively few cases the debtors may be benefited.

Government admittedly seek increase in revenue by way of registration. That is why periodical registration is insisted upon. The revenue so derived would not be much and can be secured only at a great loss to the borrowers the declared beneficiaries of this Bill.

Capital now available to people will become shy. So insistence of registration is unwise and would aggravate the economic condition of the people.

2. It is not the big *sahukars* who resort to dishonest or questionable means to realise more from the debtor than the contract warrants. Such *sahukars* are generally income-tax assessees and they maintain accounts and produce them in court the genuineness of which is, at all events, nowadays not successfully questioned. Such accounts are not exempt from production in court. But the money lenders most of whom are not required to register themselves by the Bill are found to adopt dishonest means to take more money from the debtor than the contract justifies. Insistence of maintaining accounts would be an effective method to minimise resort to such dishonest or questionable means. But Government opposed and defeated amendments proposed by the opposition with a view to rendering it compulsory that all persons who lend money should maintain accounts.

Thus an effective remedy proposed as a check upon resort to dishonesty by money lenders was defeated.

3. *Application of the rule of Damdupat.*—The application of the rule was considerably extended by the Select Committee. In the original Bill the rule was intended to apply to claim for interest due under the contract in the suit without seeking to reduce the principal by reason of the fact that interest in excess of what is payable by the adoption of rule of Damdupat that at no time more than double the principal can be realised and by the contract being opened with reference to the rates of interest adopted by this Bill should go in reduction of the principal. Amendments to restrict the application of the Damdupat rule so as to affect only the interest claimed in the suit without reference to what had been paid before the Act came into force were rejected. That is to say, retrospective effect to the rule of Damdupat in its widest sense is given and is extended beyond its legitimate scope. The application would affect money lenders who are mere depositors with business men with a view to realising a decent return on the deposit which is their entire property with a view to making a living out of it. In such cases the deposit is evidenced by a promissory note and the ostensible borrower is a rich man than the lender who is a comparatively poor person. So, the borrower does not deserve any relief and will have an advantage under the legislation of which he may unfairly avail himself. There are cases in which the lender is a poorer man than the borrower who has considerable property out of which he can easily pay the debt according to the contract but he will find ways to take unfair advantage of the legislation to reduce the claim against him. Such borrowers do not deserve any relief. But the provisions of the Bill as adopted by the majority of the Select Committee amount in effect to distribution of charity indiscriminately at the expense of others.

4. The amendments adopted by the majority led by the Government provide for reopening contracts entered into between the parties more than twelve years before the Act comes into operation and thereby remove the restriction of time provided in the two Bills introduced by the Government.

5. The amendments stated above would seriously affect persons who on the strength of such contracts have conducted themselves in a particular way and may ruin some people. Retrospective effect given in such circumstances is unjust to say the least.

6. An invidious distinction is made in the application of the provisions of sections 10 and 11 to decrees obtained on or before 1st Apri 1936 and debts including decrees due to co-operative societies. Decrees were obtained either ex-parte on compromise or after contest with reference to the law then prevailing. The provisions of the legislation are intended to have retrospective operation. In such circumstances, there is no principle on which a distinction can be made between a decree debt and an ordinary debt. On the other hand, the distinction in effect rewards a rapacious money lender and a considerate money lender is punished.

7. In regard to the debts of co-operative societies, Government in both the Bills sought only to exclude debts governed by the Bihar and Orissa Co-operative Societies Act and not by the Madras Co-operative Societies Act. In the later Bill debts due to societies are excluded.

There is no valid reason for such exclusion. Government in 1937 issued orders without jurisdiction suspending realisation of such debts for a certain period. The rates of interest charged by co-operative societies in effect and ex-facie in North Orissa exceed the rates fixed in the Bill as the maxima and adopted by common consent. It would be impossible for several debtors to pay the sums now outstanding against them. It seems large payments have been made by them already. It is but right that relief should be given to such debtors. Unfortunately the indiscriminate charity of the Congress majority under this bill is not intended to reach them though they richly deserve relief more than anybody else. Government promise to introduce another bill in regard to co-operative societies, is no ground for excluding such debtors from the benefits of the present legislation. No definite promise is made to give relief to such debtors. As they richly deserve relief as is clear from the illegal action taken by Government in 1937 the present attitude of Government is nothing short of change of front for which no valid reason is forthcoming.

8. *Procedure*.—The Chairman on the ground that at previous stages of the proceedings the names of the members of the Select Committee who voted for or against a particular amendment were not noted did not order the names to be noted in spite of my request to do so. The ground stated is not correct in fact or sound. At previous stages names have been noted. Assuming that at previous stages names were not noted that is no reason why the demand of a member to note the names at a subsequent stage should not be complied with. The Chairman is a member of the ministerial party and did not respect the ordinary right of a member of the Select Committee. This is a clear case of the violation of the right of a member and that of the opposition.

9. *Republication of the Bill*.—The proposal of the opposition to examine persons representing different interests to be affected by the legislation was opposed by the members of the ministerial party on the Chairman expressing his disapproval of such a course though most of such members including the mover of the Bill expressed their willingness to examine expressly before the Chairman arrived. Very important changes were made especially in clauses 10 and 11. In these circumstances republication is necessary as the people who are likely to be affected by the Bill should know before the Bill comes up before the Assembly, the important changes made by the Select Committee. The Bill is not published in Oriya, English being unknown to most of the people who will be affected by the legislation. Republication is, therefore, necessary and that also in Oriya.

10. I do not propose to deal with all the objectionable features of the Bill. I have dealt with some in this Minute. In my opinion, the Bill as adopted by the majority of the Select Committee is, on the whole, unsatisfactory and should not be placed on the Statute Book except after the drastic changes. The Bill as it is, I fear, will produce results quite opposite to what Government profess would result from the operation of the legislation. The operation of the legislation will worsen the economic condition of the people and make them landless cultivators much sooner than if the legislation had not been undertaken.

Note of dissent by M. R. Ry. V. K. V. Raju, M.L.A.

Registration and maintenance of accounts.—Orissa is a poor province and if the system of registration is enforced it would lead to considerable hardships. Many of the money lenders would think of closing their business rather than follow the system of registration. There are women money lenders who are in the habit of lending money without having recourse to any documents. Therefore this clause on registration has got to be deleted as to shield this class of money lenders When there is no practical benefit to any class of people by registration where is the necessity to adopt such a course ? Evidently, the Government wish to enforce registration solely to enhance the income due to the Government from this source. Hence periodical registration is insisted. But calm reflection will show that the Government will not derive any profit by enacting such a measure. Again, the system of maintaining accounts is equally a hard task. Generally the major money lenders are accustomed to maintain accounts. But there are those illiterates and pardanshin ladies who do not always maintain accounts. Hence it is to harass these people that this measure is being enacted. These two measures will eventually lead to economic depression. For, many would think of closing their business and consequently no money would be available to the poor people in times of need. Those who are little better off they would soon fall into the clutches of the powerful money lenders who would take advantage of their helplessness and dictate terms to them as a condition precedent to their lending money. Thus many surreptitious dealings and contracts will come to being.

Section 10, i.e., the rules of Damdupat.—There is some difficulty in clause 10. The intention for inserting this measure seems to be that the amount of interest paid already should also be taken into consideration; but in case of documents, a clever creditor would easily escape the provision by having documents executed for sums including interest. Cases are not wanting to show in which documents are taken successively for sums including interest due on previous document. In such a case whether the principal of the original loan be taken as the principal of the last document which has been taken in discharge of the previous dues. If the rate of interest already realised was also to be taken into consideration, then it would be a hardship on indulgent creditors, for it would be only they who would be seriously affected by this while the hard-hearted creditor would have already realised a major portion of his interest due on more than the principal.

Again in Bihar, Money Lenders Act, section 11 has been the subject of discussion by a Full Bench of the Patna High Court. It was now declared unanimously by their Lordships that this section is ultra vires of the legislature. In Orissa the same Bill is followed. Therefore this section should be amended as it is repugnant to the Government of India Act. It conflicts with the contractual freedom of parties. The distinction which is made in the application of provisions of sections 10 to 11 to decrees obtained before 1st April 1936 is opposed to sound common sense. If at all decrees should be opened there should not be any such distinction. Either they should affect all the decrees passed before this Act comes into force or not at all.

Lastly, sufficient opportunity was not given to examine the Bill by people who would be adversely affected when the Bill passes into law. Most of the money lenders are ignorant of English language. The provisions of the Bill are not published in different vernaculars of the province, so as to give people a chance to read for themselves and understand the Bill fully. By withholding publication in the different vernaculars, people are lulled into a false sense of security and protection. Moreover, important changes were effected in the Bill in an *ex parte* nature. Republication is therefore an absolute necessity.

On the whole the Bill is quite unsatisfactory and will do more harm than good to the people for whose relief and protection this is primarily designed. Such an ill-considered ill-digested measure should on no account be placed in the Statute book. I therefore submit this minute of dissent.

THE ORISSA MONEY-LENDERS BILL, 1938.

(*As amended by the Select Committe*).

NOTE.—Matter omitted is shown in italics within square brackets. New matter is underlined.

A
BILL

TO REGULATE MONEY-LENDING TRANSACTIONS AND TO GRANT RELIEF TO DEBTORS IN THE PROVINCE OF ORISSA.

Preamble.

WHEREAS it is expedient to regulate money-lending transactions and to grant relief to debtors in the Province of Orissa;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Orissa Money-Lenders Act, 1938.

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

(3) All or any of the provisions of this Act shall come into force throughout the whole or any part of the Province on such date or dates as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions and different areas.

Definitions.

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

(*a*) "bank" means a company carrying on the business of banking and—

(*i*) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(*ii*) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature;

(*b*) "business of money-lending" means the business of advancing loans;

(*c*) "capital" means that which a money-lender invests in the business of money-lending whether in money or in kind;

(*d*) "Company" means a company—

(*i*) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(*ii*) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by an Act of the Indian Legislature,

and includes a life insurance company to which the Insurance Act, 1938, will apply;

(*e*) "co-operative society" means a society registered or deemed to have been registered under the Bihar and Orissa Co-operative Societies Act, 1935, the

Madras Co-operative Societies Act, 1932, or any Act of any other Provincial Legislature relating to such societies;

(*f*) " Court " includes a court acting in the exercise of insolvency jurisdiction and also a court or other authority to which a decree is sent for execution;

(*g*) " decree " means a decree as defined by the Code of Civil Procedure, 1908 and includes an award enforceable as a decree of a court under the Indian Arbitration Act, 1899 and also preliminary decrees and final decrees in the case of secured loans;

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

(*i*) " loan " means an advance whether of money or in kind on interest made by a money-lender and shall include a transaction on a document bearing interest executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—

(1) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government or by a co-operative society,

(2) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other Bank or in a company or with a co-operative society; B. & O. Act VI of 1935.

Explanation.—(1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

[*(2) A supply of goods on credit is not a loan.*]

(2) A supply of goods—

(*i*) on khata carrying interest up to six and a quarter per centum simple per annum, or

(*ii*) on credit,

is not a loan.

(*j*) "money-lender" means—

(1) except in sections 9 to [*15*], 16, a person who advances a loan in the regular course of business of money-lending with a capital of more than a sum of rupees one thousand, and

(2) in sections 9 to [*15*], 16, a person who advances a loan in the regular course of business of money-lending irrespective of the amount of capital invested in the said business;

and in both cases of (1) and (2) shall include a Hindu undivided family and the legal representatives and successors and successors-in-interest, whether by inheritance, assignment or otherwise, of such a person who advances a loan;

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

(l) "principal" means in relation to a loan the amount actually lent to the debtor;

(m) "registered money-lender" means a person to whom a registration certificate has been granted under section 5, and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender;

(n) "rules" means rules made under this Act;

(o) "secured loan" means a loan for which the money-lender holds a mortgage, charge, lien, or pledge on the property of the debtor or any part thereof as a security for that loan;

(p) "Sub-Registrar" means a Sub-Registrar appointed under the Indian Registration Act, 1908; XVI of 1908

(q) "suit" includes [*any proceeding taken for the recovery of a loan before the Registrar, or any person exercising the powers of the Registrar or deciding a dispute, or a liquidator or an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes*] an appeal; and [*Bihar and Orissa Act VI of 1935.*]

(r) "unsecured loan" means any loan other than a secured loan.

Power of Provincial Government to exempt any money-lender or class of money-lenders or any class of loans from provisions of this Act.

3. The Provincial Government may, by notification for any special reason or reasons to be stated in such notification, exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the province of Orissa from the operation of all or any of the provisions of this Act.

CHAPTER II.

REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS.

Register of money-lenders.

4. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. X of 1872.

Registration of money-lenders and registration fee.

5. (1) Any person may make an application to be registered as a money-lender. Every such application shall be in writing and shall state—

(*a*) the name and address of the applicant;

(*b*) the name and style under which he carried on or desires to carry on business as a money-lender;

(*c*) the principal place of his business and the branches thereof, if any;

(*d*) whether any certificate of registration previously granted to him under this Act has been cancelled; and

(*e*) such other particulars as may be prescribed.

(2) (*a*) Every application made under sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in clause (*c*) of sub-section (1) is situate.

(*b*) Any such application, which is not accompanied by the prescribed registration fee or does not cantain the particulars specified in sub-section (1), shall be summarily rejected.

(3) The Provincial Government may by rules prescribe for different classes of money-lenders and for different areas a registration fee not exceeding twenty-five rupees to be paid by an applicant for registration:

Provided that the [*Governor*] Provincial Government may, by notification, exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under clause (*a*) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under section 18 and the order of cancellation is in force, grant a registration certificate in the prescribed form to the applicant.

Duration of registration certificate.

6. A registration certificate granted under section 5 shall, unless sooner cancelled under section 18, be in force for ten years from the date on which it is granted.

Duty of registered money-lender to maintain accounts and to give receipts.

7. Every registered money-lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act—

(*a*) regularly record and maintain, or cause to be recorded or maintained, an account showing for each debtor—

(*i*) the date of the loan, the amount of the principal of the loan and the rate per cent per annum of interest charged on the loan;

(*ii*) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment; and

(*iii*) any other terms which may be agreed on between the money-lender and the debtor;

(*b*) give to the debtor, or his agent, a receipt for every sum paid by, or on behalf of, the debtor, duly signed and, if necessary, stamped at the time of such payment; or, within a reasonable time after it. The money-lender shall also, on demand, permit the debtor or his agent to endorse such payment on the document, if any, evidencing the loan.

(*c*) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned, the rate of interest charged per cent per annum and other particulars as may be prescribed.

CHAPTER III.

PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND EXECUTION OF DECREES.

Suit for recovery of loan only maintainable by registered money-lenders.

8. A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date on which this section comes into force unless he was registered under this Act at the time when such loan was advanced:

Provided that a money-lender shall be entitled to institute a suit to recover a loan advanced by him at any time [*before the expiration*] in the course of a year after the date on which this section comes into force, if he is granted a certificate of registration under section 5 at any time before the expiration of the said year.

Maximum rates at which interest may be decreed.

9. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum simple per annum in the case of a secured loan and 12 per centum simple per annum in the case of an unsecured loan.

Maximum amount of interest which may be decreed.

10. (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise, is greater than the amount of the loan

originally advanced [*or if the loan is based on a document, the amount of loan mentioned in the document on which the suit is based.*]

Appropriation of excess interest towards the loan.

(2) Where, in any suit, as is referred to in sub-section (*1*), it is found that the amount already realised as interest through Court or otherwise, for the period preceding the institution of the suit, is greater than the amount of the loan originally advanced, so much of the said amount of interest as is in excess of the loan shall be appropriated towards the satisfaction of the loan and the court shall pass a decree for the payment of the balance of the loan, if any.

Power of Court to reopen certain transactions.

11. (1) In any suit brought by a money-lender in respect of a loan advanced before the commencement of this Act, the Court [*may*] shall exercise all or any of the following powers as may be applicable to it, namely :—

(*i*) reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan ;

(*ii*) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan;

(*iii*) appropriate excess interest, referred to in clauses (*i*) and (*ii*), realised through Court or otherwise, towards the satisfaction of the loan.

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

[*Provided that, in the exercise of these powers, the court shall not—*

* * * *

reopen any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction.]

Provided [*further*] that nothing contained in this sub-section [(1)] shall be deemed to require the creditor to refund any sum which has been paid to him.

(2) Where a decree passed by a Court [*on the basis of a loan*] on 1st April 1936 or [*after and not before it*] thereafter, on the basis of a loan, remains unsatisfied in whole or in part on the date on which this Act comes into force, the Court which passed the decree may, on the application of the judgment-debtor, exercise all or any of the powers specified in sub-section [(*i*).] (1).

Decree may order payment of amount due on mortgage by instalments.

12. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may at the time of passing the decree in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall, subject to such conditions as the Court may impose be made by instalments:

Provided that before fixing the instalments the Court shall take into consideration the repaying capacity of judgment-debtor and shall satisfy itself that the judgment-debtor is in a position to pay the instalments on the due dates.

Power to direct payment of amount due in respect of a loan or on mortgage by instalments.

13. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may, at any time, on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which a loan is secured, shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree it considers fit.

Court to estimate the value of judgment-debtor's property.

14. [(*1*)] When an application is made for the execution of a decree passed in respect of a loan or the interest on a loan by the sale of the judgment-debtor's property, the Court executing the decree shall notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate as prescribed the value of such property and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree :

Provided that the Court may order the whole property of the judgment-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably or conveniently be sold in part.

[(2) *Any person aggrieved by an order passed under sub-section (1) may appeal to the court to which appeals from the court executing the decree ordinarily lie.*]

Only sufficient portion of judgment-debtor's property to be sold.

15. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor, the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation :

Provided that if the property to be sold is immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

16. The provisions of sections 10 to 15 shall apply—

(*i*) to suits brought by money-lenders in respect of loans advanced before the commencement of this Act, and pending on the date on which the said sections come into force ; and

(*ii*) to appeals and proceedings in execution arising [*out of suits brought by money-lenders in respect of loans advanced before the commencement of the said Act,*] in respect of decrees passed on 1st April, 1936 or thereafter on the basis of loans whether such appeals or proceedings in execution were pending on, or instituted after, the date on which the said sections come into force.

17. Notwithstanding anything to the contrary contained in any other law or anything having the force of law or in any contract, a usufructuary mortgage, which [*comes into existence*] is executed after the commencement of this Act, shall, unless discharged previously, be deemed to stand discharged after the expiration of fifteen years from the date of the mortgage and the mortgagee shall deliver up to the mortgagor all documents in his possession or power relating to the mortgaged property and shall, if so required, retransfer the property to the mortgagor at his cost free from the mortgage and from all encumbrances created by him or those claiming under him and shall also put the mortgagor in possession of the property.

CHAPTER IV.

PENALTIES AND PROCEDURE.

Power of Collector to cancel registration certificate.

18. (1) Where in any suit brought in respect of a loan by a registered money-lender, or in respect of any security taken for a loan by a registered money-lender, the Court is of opinion that the registered money-lender has been guilty of fraud, [*or is otherwise unfit to carry on the business of money-lending, the Court shall make a report to the Collector, and the Collector may, on receipt of such report and after a due and proper enquiry, cancel for such period, not exceeding five years as he thinks fit the registration certificate granted to the money-lender.*] the Court shall make an order recording a finding to that effect and fixing a period not exceeding five years as it thinks fit during which the registration certificate granted to the money-lender shall remain cancelled.

(2) Where an order under sub-section (1) is made by a Court exercising original jurisdiction, an appeal shall lie from it, within such period as may be prescribed, to the Court to which appeals from the decrees passed by such Court ordinarily lie, and the decision of the appellate Court shall be final; but no appeal shall lie from an order made under sub-section (1) by an appellate Court in an appeal from a decree of a Court exercising original jurisdiction.

(3) A copy of every order made under sub-section (1) or sub-section (2) shall be sent to the Collector by the Court concerned and the Collector shall, after the order has become final, cancel the registration certificate granted to the money-lender for the period mentioned in the order.

[(2)] (4) When the certificate of a registered money-lender has been cancelled under sub-section (1) such money-lender shall not be entitled to make any application under section 5 during the period in which such order of cancellation remains in force; but such cancellation shall not preclude the money-lender from instituting suits in respect of loans advanced by him before the date of the order of such cancellation.

Penalty for contravention of the provisions of section 7.

19. [(*1*)] If any money-lender or his agent wilfully contravenes any of the provisions of [*clause* (*a*) *of*] section 7, such money-lender or agent, as the case may be, shall be punishable with fine not exceeding five hundred rupees.

[(*2*) *Any money-lender who contravenes any of the provisions of clause* (*a*) *or clause* (*b*) *of section 7 shall be punishable with fine not exceeding five hundred rupees.*]

Penalty for taking premium.

20. If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any premium or other exactions of a similar nature by whatever name called or known, such money-lender or his agent, as the case may be, shall be punishable with fine, not exceeding twice the amount of such premium or exaction.

CHAPTER V.

MISCELLANEOUS.

Powers of Court under the Usurious Loans Act, 1918, not affected by this Act.

21. Save as otherwise provided in section 11 nothing in this Act shall affect the powers of a Court under the Usurious Loans Act, 1918. X of 1918.

Contract for payment outside the province void.

22. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of this Act providing for the payment of the amount due on such loan at any place outside the province of Orissa shall to that extent be void.

Power to deposit in Court money due on loan.

23. (1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or on account of a principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted a suit for the recovery of such interest or such loan, to the account of the money-lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may at any time within three years after the date of the service upon him of the notice mentioned in sub-section (2) make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under sub-section (3) within the period mentioned in the said sub-section, the amount deposited shall be disposed of in the prescribed manner.

(5) Upon receipt of an application under sub-section (3) the Court may order such amount to be paid to the applicant upon such terms and subject to such conditions as may be specified in the order.

Court's receipt to operate as acquittance.

24. A receipt given by the Court under sub-section (2) of section 23 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and to the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

Restriction on repayment void.

25. A debtor may repay the whole or any part of the principal or interest due under a loan to the money-lender at any time and in any manner and any agreement between a money-lender and a debtor to the contrary imposing restrictions on the freedom of repayment shall be illegal and void.

Explanation.—An agreement entered into by a debtor prohibiting, either absolutely or conditionally, repayment of the principal or interest due under a loan until after the expiry of a certain period of time shall be void.

[Payment of loan advanced on a registered document in the presence of the Sub-Registrar.]

[26. Where a loan is advanced on a registered document, the entire amount of the loan, or as much of it as may be payable in cash, shall be paid to the debtor or his duly authorised agent in the presence of the Sub-Registar who will register the document and the said Sub-Registrar shall make an endorsement to that effect on the document.]

Power to make rules.

[27.] 26 (1) The Provincial Government may make rules for the purpose of carrying out all or any of the purposes of this Act.

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

(*a*) prescribing the form of the register mentioned in sub-section (1) of section 4 and the particulars to be contained in such a register;

(*b*) prescribing the form of the registration certificate mentioned in sub-section (1) of section 5;

(*c*) prescribing the particulars to be contained in an application made under sub-section (1) of section 5;

(*d*) prescribing the registration fee to be paid on the applications made under sub-section (1) of section 5;

(*e*) regulating the levy of compound interest in respect of loans and the rates thereof;

(*f*) providing for and regulating the supply of copies of the account mentioned in clause (*a*) of section 7;

(*g*) providing for and regulating the grant of periodical statements of account to a debtor signed by the money-lender or his agent showing the balance or amount that might be outstanding against such debtor on account of the principal and interest at the time of furnishing the said statement and the amount of every payment received by the money-lender in respect of the loan and the date of such payment during the period to which the statement relates;

(*h*) prescribing the particulars to be contained in a plaint in a suit by a money-lender as defined in clause (1) or clause (2) of sub-section (*j*) of section 2;

(*i*) for estimating the value of the property under section 14; [*and*]

(*j*) prescribing the period for appeal under sub-section (2) of section 18; and

[(*j*)] (*k*) prescribing the manner in which deposits made under sub-section(4(of section 23 shall be disposed of.

(3) A draft of the rules proposed to be made under this section shall be laid on the table of the Orissa Legislative Assembly and the rules shall not be made unless the Assembly by Resolution, approves the draft either without modification or addition or with modifications or additions; but, upon such approval being given, the rules may be made in the form in which they have been approved and such rules shall have force and effect after previous publication in the official gazette.

[*28*.] 27 The Madras Debtors' Protection Act, 1934, the Usurious Loans (Central Provinces Amendment) Act, 1934, and the Central Provinces Money-lenders Act, 1934, and section 3 of the Agency Tracts Interest and Land Transfer Act, 1917, in their application to the Province of Orissa, are hereby repealed.

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