



The Bengal Money-Lenders Act, 1940

Act 10 of 1940

Keyword(s):

Bank, Borrower, Commercial Loan, Co-Operative Life Insurance Society, Insurance Company, Interest, Lender, Licence, Loan, Money-Lender, Money Landing Business, Provident Fund, Provident Insurance Society, Register, Suit, Scheduled Bank

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Bengal Act X of 1940
THE BENGAL MONEY-LENDERS ACT, 1940.

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THE SCHEDULE.

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Bengal Act X of 1940

[THE BENGAL MONEY-LENDERS ACT, 1940.]¹

AMENDED	West Ben. Act VII of 1948. West Ben. Act V of 1949. West Ben. Act XIII of 1950. West Ben. Act XXI of 1965. West Ben. Act XVIII of 1966. West Ben. Act XXX of 1975. West Ben. Act IV of 1981.
ADAPTED	The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. The Adaptation of Laws Order, 1950.

[1st August, 1940.]

An Act further to regulate transactions of money-lending in Bengal.

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending;

It is hereby enacted as follows:—

CHAPTER I

Introductory.

- (1) This Act may be called the Bengal Money-lenders Act, 1940.
- (2) It extends to the whole of ²[West Bengal] ³[but it shall not apply to the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934].
- (3) It shall come into force on such date⁴ as the ⁵State Government may, by notification in the *Official Gazette*, appoint.

Short title,
extent and
commence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 18th July, 1938, page 217; the Report of the Select Committee was presented to the Assembly on the 16th February, 1939; for Proceedings of the Assembly, see the Proceedings of the Meetings of the Bengal Legislative Assembly, held on the 5th August, 1938, 16th February, 3rd and 4th April, 11th, 17th, 18th, 19th, 22nd, 23rd, 24th, 25th, 26th, 29th and 30th May, 1st, 2nd, 14th, 15th, 16th, 20th, 21st, 22nd, 23rd, 26th and 27th June, 1939; for Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council, held on the 28th June, 23rd, 27th and 28th November, 6th, 11th, 15th and 21st December, 1939, and 3rd, 4th, 8th, 9th, 10th, 11th, 15th, 16th, 17th, 18th and 19th January, 1940.

²The words within square brackets were substituted for the word "Bengal" by para. (2) of Art. 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words and figures within square brackets were added with retrospective effect by s. 2 of the West Bengal Money-lenders (Amendment) Act, 1949 (West Ben. Act V of 1949).

⁴This Act came into force on the 1st day of September, 1940, vide notification No. 2674J, dated the 3rd August, 1940, published in the *Calcutta Gazette, Extraordinary*, dated the 3rd August, 1940, part I, page 275.

⁵The word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

(Chapter I.—Introductory.—Section 2.)

Definitions.

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

- ¹(1) "bank" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949, and includes—
- (i) a bank included in the Second Schedule to the Reserve Bank of India Act, 1934; 10 of 1949
2 of 1934.
 - (ii) "a corresponding new bank" as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; and 5 of 1970.
 - (iii) any other financial institution which may be notified in this behalf by the State Government;
- (2) "borrower" means a person to whom a loan is advanced and includes a successor-in-interest or surety;
- (3) "Calcutta" means the area within the limits of the ordinary original civil jurisdiction of the High Court in Calcutta;
- (4) "commercial loan" means a loan advanced to any person to be used by such person solely for the purposes of any business of concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor:
- Explanation.*—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.
- (5) "co-operative life insurance society", "mutual insurance company" and "provident society" have the same meanings as in the Insurance Act, 1938; IV of 1938
- (6) "co-operative society" means a society registered under the Co-operative Societies Act, 1912, or any ²[Provincial Act or Act of the State Legislature], for the time being in force, relating to such societies; II of 1912

¹Clause (1) was firstly substituted for the original clause by s. 2(1) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965). Thereafter the clause was substituted for the previous clause by s. 2 of the Bengal Money-lenders (Amendment) Act, 1966 (West Ben. Act XVIII of 1966). Finally, the present clause was substituted for its previous clause by s. 2 of the Bengal Money-lenders (Amendment) Act, 1975 (West Ben. Act XXX of 1975). Prior to these substitutions, there were following changes in original clause (1), namely:—

- (a) The Indian Companies Act, 1913 (VII of 1913) was repealed and re-enacted by the Companies Act, 1956 (I of 1956), and
- (b) The word "India" was substituted for the words "British India" by para. (1) of Art. 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words within square brackets were substituted for the words "Act of the Provincial Legislature" by para-graph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order,

of 1940.]

(Chapter I.—Introductory.—Section 2.)

- 2.
- IV of 1938.
- XX of 1928.
- VI of 1912.
- 31 of 1956.
- (7) "insurance company" means—
- (a) in relation to any loan advanced before the commencement of the Insurance Act, 1938, an insurance company within the meaning of the Indian Insurance Companies Act, 1928¹; and
- (b) in relation to any loan advanced after the commencement of the Insurance Act, 1938, an insurance company within the meaning of that Act;
- (8) "interest" includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses;
- (9) "lender" means a person who advances a loan and includes a money-lender;
- (10) "licence" means a licence granted under this Act;
- (11) "life assurance company" has the same meaning as in the Indian Life Assurance Companies Act, 1912²;
- ³(11A) "Life Insurance Corporation of India" means the Corporation established under sub-section (1) of section 3 of the Life Insurance Corporation Act, 1956;
- (12) "loan" means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—
- 4* * * * * *
- 1* * * * * *
- (c) a loan taken or advanced by ⁴[by⁵ the Central Government or any State Government] or by any local authority in ⁷[West Bengal];

¹The Indian Insurance Companies Act, 1928 (XX of 1928) was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

²The Indian Life Assurance Companies Act, 1912 (VI of 1912) was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

³This clause was inserted by s. 2(2) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

⁴Sub-clause (n), (b) and (g) were omitted s. 2(3)(i), *ibid.*

⁵The words "by the Central Government or any Provincial Government" were originally substituted for the words "any Government in British India" by para. (1) of Art. 3 and the Schedule to the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁶See this word "by" has been inserted by clerical error.

⁷See foot-note 2 on page 519 *ante*.

(Chapter I.—Introductory.—Section 2.)

- (d) a loan advanced before or after the commencement of this Act—
 (i) by a bank; or
 (ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, ²[Life Insurance Corporation of India.] mutual insurance company, provident insurance society or provident society or from a provident fund;
- (e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;
 * * * * *
 * * * * *
- (h) a loan made to or by the Administrator-General and Official Trustee of ⁴[West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta;
- (i) a loan or debenture in respect of which dealings are listed on any Stock Exchange;
- (13) "money-lender" means a person who carries on the business of money-lending in ⁵[West Bengal] or who has a place of such business in ⁵[West Bengal], and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872; IX of 1872.
- (14) "money-lending business" and "business of money-lending" mean the business of advancing loans either solely or in conjunction with any other business;
- (15) "prescribed" means prescribed by rules made under this Act;
- (16) "principal" means in relation to a loan the amount actually advanced to the borrower;
- (17) "provident fund" has the same meaning as in the Provident Funds Act, 1925; XIX of 1925.
- (18) "provident insurance society" means a society registered under the ⁶Provident Insurance Societies Act, 1912; V of 1912.
- (19) "register" means a register of money-lenders maintained under section 7;

¹Paragraph (i) was substituted for the original paragraph by s. 2(3)(ii)(a) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965). Prior to this substitution, there was a charge in the original paragraph (i), namely:—

The words "which is a scheduled bank" were substituted for the words and figures "which was a scheduled bank on the first day of January, 1939", by s. 2 of the West Bengal Money-lenders (Amendment) Act, 1950 (West Ben. Act XIII of 1950).

²These words were inserted by s. 2(3)(ii)(b) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

³Sub-clause (f) was omitted by s. 2 of the Bengal Money-lenders (Amendment) Act, 1981 (West Ben. Act IV of 1981).

⁴See foot-note 4 on page 521. *ante*.

⁵See foot-note 2 on page 519. *ante*.

⁶The Provident Insurance Societies Act, 1912 was repealed and re-enacted by the Insurance Act, 1938 (IV of 1938).

of 1940.]

(Chapter II.—Competent Courts and Procedure.—Sections 4, 5.)

11 of 1934.

(20) "scheduled bank" has the same meaning as in the Reserve Bank of India Act, 1934;

(21) "suit" includes an appeal;

(22) "suit to which this Act applies" means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—

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

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

(c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

* * * * *

CHAPTER II

Competent Courts and Procedure.

4. Notwithstanding anything contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending—

Competent Courts under this Act.

(a) in Calcutta, the Court of Small Causes of Calcutta;

(b) outside Calcutta, the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings.

Procedure in Competent Courts.

Act V of 1908.

¹Section 3 was omitted by s. 3 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 6, 6A.)

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

(3) An appeal from a decision made by the Court of Small Causes of Calcutta under this Act shall lie to the High Court as if it were an appeal under sub-section (2) to the High Court from a decision made by a District Court.

CHAPTER III

Registration and Licensing of Money-lenders.

Appointment
of State
and other
Registrars.

6. There shall be a ¹[State] Registrar for the purposes of this Act and as many Registrars and Sub-Registrars of money-lenders for assisting the Registrar as the ¹[State] Government may from time to time determine. The ¹[State] Government may define, by notification in the *Official Gazette*, the area within which each such officer shall exercise his powers and perform his duties and may prescribe the control which shall be exercised by the ¹[State] Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars:

Provided that no person who is not a servant of the ²{Government} * * shall be empowered to act as a ¹[State] Registrar, Registrar or Sub-Registrar under this Act.

Appointment
of Inspectors,
their powers
and duties.

⁴6A. (1) The State Government may, by notification in the *Official Gazette*, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and define the area within which each such Inspector shall exercise his powers and perform his duties.

(2) An Inspector appointed under sub-section (1) shall exercise such powers and perform such duties as may be prescribed and may also—

- (a) call for a copy of the statement of accounts referred to in section 25,
- (b) apply to the Sub-Registrar for cancellation of the licence of a money-lender if he has reasons to believe that such money-lender is guilty of contravention of any of the provisions of this Act,
- (c) intervene, with the permission of the Court, in any judicial proceeding under this Act against a money-lender in order to adduce such evidence which may be relevant in connection with such proceeding.

¹See foot-note 5 on page 519. *ante*.

²This word was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

³The words "in India" were omitted by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁴Section 6A was added by s. 4 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965)

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 7, 8.)

(3) The provisions of sections 16, 17 and 18 shall apply *mutatis mutandis* to the proceedings arising out of an application by an Inspector to the Sub-Registrar under the provisions of clause (b) of sub-section (2).

(4) An Inspector appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

¹(5) It shall be lawful for an Inspector appointed under sub-section (1)—

- (a) to enter into and search, at all reasonable times, any premises which he has reason to suspect is being used for any purpose connected with money-lending business in contravention of the provisions of this Act,
- (b) to examine any person having the control of, or employed in connection with, such money-lending business,
- (c) to order the production of any documents, books or records in the possession or power of any person having the control of, or employed in connection with, such money-lending business.
- (d) to inspect and seize any register, books of accounts, documents or any other literature found in the premises.

¹(6) Any search or seizure made under sub-section (5) shall be in accordance with the provisions of the Code of Criminal Procedure, 1973.

7. Each Sub-Registrar shall maintain in the prescribed form a register of money-lenders holding licences issued by him.

8. After such date not less than six months after the commencement of this Act as the ²[State] Government shall, by ¹notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.—An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

Register of money-lenders.

Money-lending business not to be carried on except under licence.

¹These sub-sections were added by s. 3 of the Bengal Money-lenders (Amendment) Act, 1981 (West Ben. Act IV of 1981).

²See foot-note 5 on page 519, *ante*.

¹For notification—

(a) appointing the 1st March, 1941, as the date after which no money-lender shall carry on the business of money-lending unless he holds an effective licence, see notification No. 2955J., dated 23.8.40, published in the *Calcutta Gazette* of 1940, part I, page 2364;

(b) appointing the 15th June, 1941, as the date after which no money-lender shall carry on the business of money-lending in the Darjeeling district unless he holds an effective licence, see notification No. 4032J., dated 7.12.40, published in the *Calcutta Gazette* of 1940, part I, page 3464.

of 1940.]

XLV of
1860.

2 of 1974.

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 9-13.)

Licences.

9. (1) A licence shall be valid throughout the whole of [West Bengal] for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the licence was granted or on the cancellation of a licence it shall be returned by the money-lender to the Sub-Registrar who issued it.

Licence fee.

10. There shall be paid to the [State] Government a fee of [twenty-five] rupees for a licence issued under this Act:

Provided that the [State] Government may, by notification in the *Official Gazette*, remit any part of such fee either generally or for any particular class of money-lenders.

Application for licences.

11. An application for the grant of a licence shall be made in the prescribed form and manner to the Sub-Registrar within the local limits of whose jurisdiction the money-lender has a place of money-lending business and shall contain such particulars as may be prescribed.

Entry in register and grant of licences.

12. On receipt of an application under section 11 and on payment in the prescribed manner of the licence fee specified in section 10, the Sub-Registrar shall, subject to the provisions of section 16, enter the name of the applicant in the register and grant the applicant a licence in such form as may be prescribed.

Stay of suit when money-lender does not hold licence.

13. (1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit: if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

¹See foot-note 2 on page 519, *ante*.

²See foot-note 5 on page 519, *ante*.

³This word was substituted for the word "fifteen" by s. 5 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 14-16.)

*(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.

14. (1) A person shall be disqualified for holding a licence—

- (a) if so ordered by a Court under section 20, for the period ordered;
- (b) if he has been convicted of any offence specified in the Schedule to this Act and if such conviction has not been set aside by any Court of appeal or revision under any law for the time being in force.

Disquali-
fication of
persons for
holding a
licence.

(2) The [State] Government may, at any time, on application in the prescribed form accompanied by the prescribed fee, remove a disqualification referred to in sub-section (1), having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

15. Where it is required to be proved for the purposes of this Act that any person has been convicted of an offence specified in the Schedule to this Act or has been disqualified by an order of a Court for holding a licence, such conviction or order may be proved, in addition to any other mode provided by any law for the time being in force—

Proof of
conviction
or order for
disquali-
fication.

- (a) by an extract certified under the signature of the officer having the custody of the records of the Court in which such conviction was had, or such order was passed to be a copy of the sentence or order, or
- (b) in the case of a conviction, by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was undergone, or by the production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the person so convicted or in respect of whom such order was passed.

16. (1) The grant of a licence shall not be refused except on one or more of the following grounds, namely:—

Refusal to
grant
licence.

- (a) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence;

*See foot-note 5 on page 519, ante.

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 17, 18.)

(b) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is under this Act disqualified for holding a licence.

(2) A Sub-Registrar refusing a licence—

(i) under clause (a) of sub-section (1) shall record his reasons for such refusal;

(ii) under clause (b) of sub-section (1) shall record the evidence of the disqualification.

(3) An appeal from the orders of a Sub-Registrar refusing a licence shall, if made within thirty days from the date of such order, lie to a Registrar authorised under section 6 to hear such appeal.

(4) A Registrar referred to in sub-section (3) may decide, if such appeal is allowed, as to the Sub-Registrar to whom application for a licence shall be made and his decision shall, subject to the provisions of sub-section (5), be final for all purposes, and shall be binding on such Sub-Registrar whether he be under the control of such Registrar or not.

(5) A Competent Court may, on application made within ninety days from the date of the decision of the Registrar in appeal under sub-section (3), revise such decision.

(6) The procedure to be followed by a Competent Court or by a Registrar in proceedings under this section shall be in accordance with rules prescribed under this Act.

(7) The provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall apply to all appeals and applications for revision made under this section, and for the purposes of the said sections a Registrar shall be deemed to be a Court.

IX of 1908.

Cancellation
of licence
by a Sub-
Registrar.

17. Any Sub-Registrar may, after giving the money-lender to whom a licence entered in the register maintained by such Sub-Registrar was issued an opportunity of being heard, cancel the licence if it is proved that such money-lender was disqualified for holding a licence at the time when such licence was issued; and thereupon the provisions of clause (ii) of sub-section (2) and of sub-sections (3), (4), (5), (6) and (7) of section 16 shall apply.

Power to
Registrar
and Sub-
Registrar to
examine any
person on
oath.

18. For the purposes of an inquiry under this Act relating to a disqualification for holding a licence a Registrar or a Sub-Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath.

Act V of
1908.

of 1940.]

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 19, 20.)

19. Any borrower may, in respect of any money-lender from whom he has taken a loan, make an application to a Competent Court for an order under section 20 on the ground that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as render him unfit to carry on the business of money-lending, and on receipt of such application, the said Court shall hold such inquiry as it deems necessary.

Application for cancellation of licence.

20. (1) A Competent Court on an application under section 19 or a Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money-lender for an offence under this Act, if satisfied that the money-lender has committed such contravention of the provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

Court's power to cancel a licence.

- (a) shall cause the particulars of the conviction, if any, and of any order passed by the Court under this sub-section to be endorsed on the licence held by the money-lender or by any other person affected by such order; and
- (b) may declare such money-lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence for such period as the Court may think fit and shall cancel and impound the licence held by the money-lender:

Provided that, except in the case of an order passed by a District Court, or by the Court of an Additional District Judge or by the Court of Small Causes of Calcutta, the period of disqualification shall not exceed one year.

(2) If a Court other than a District Court, or the Court of an Additional District Judge or the Court of Small Causes of Calcutta is of opinion that a period of disqualification exceeding one year should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

(3) The District Court to which such proceedings are submitted may, if it thinks fit, examine the parties and recall and examine any person who has already given evidence in the proceedings, and may call for and take any further evidence, and shall pass such order in the case as it thinks fit in accordance with the provisions of sub-section (1).

(4) Any person aggrieved by the decision of a Court under this section may appeal against such order, in the case of the Court of Small Causes of Calcutta to the High Court and in the case of any other Court to the Court to which an appeal ordinarily lies from the decision of the Court passing the order, and the Court to which an appeal is so made shall

(Chapter III.—Registration and Licensing of Money-lenders.—
Sections 21-23.)

appeal may, if it thinks fit, stay the operation of the order under this section pending the disposal of the appeal:

Provided that where the Court of appeal sets aside or varies an order passed under this section, it shall order that any endorsements made in pursuance thereof upon a licence held by a money-lender shall be erased or modified.

(5) The substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) shall be sent forthwith in the prescribed form by the Court passing the order to the [State] Registrar and also together with the cancelled licence to the Sub-Registrar who maintains the register in which the licence affected has been entered for entry in the said register and for such circulation of the substance of the said order to other Registrars as may be prescribed.

(6) Any licence required by a Court for endorsement under sub-section (1) shall be produced in such manner and at such time as the Court may direct by the person by whom it is held, and any person who without reasonable cause makes default herein shall be liable on conviction to a fine not exceeding fifty rupees for each day of the period during which the default continues.

(7) The powers conferred on a Court under sub-section (1) may be exercised by a Court in appeal or in revision.

No compensation for cancellation of licence.

21. A person whose licence has been cancelled shall not be entitled to any compensation on such account nor to the refund of any licence fee paid in respect of such licence.

Licence fees and penalties recoverable as public demands.

22. All licence fees and all penalties imposed under this Act shall be recoverable as public demands.

Offences in respect of licences.

23. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification, without disclosing the fact thereof, shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and any licence so obtained shall not be deemed to be an effective licence.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

of 1940.]

(Chapter VI.—Regulation of Accounts of Money-lenders.—
Sections 24, 25.)

CHAPTER IV

Regulation of Accounts of Money-lenders.

24. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed, and the same shall be written in Bengali or English in the regular course of business.

Duty of money-lender to keep accounts.

(2) Every money-lender shall—

- (a) deliver to the borrower at the time a loan is advanced a statement in Bengali or English as the borrower may desire, in such form as may be prescribed and showing such details of the conditions of the loan and such other information connected therewith as may be prescribed;
- (b) give to the borrower a plain and complete receipt for every payment made on account of any loan at the time of such payment;
- (c) upon repayment in full of a loan mark indelibly with words indicating full payment or cancellation every paper signed by the borrower, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in sub-section (1) shall, if certified in such manner as may be prescribed, be admissible as evidence of the contents of such account.

25. (1) Every money-lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts in Bengali or English as the borrower may desire signed by the money-lender or his agent and showing the amount outstanding against the borrower: such statement shall be in the prescribed form and shall show—

Money-lenders to furnish statements of accounts.

- (a) the amounts of principal and interest due to the money-lender at the commencement of the year;
- (b) the amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced;
- (c) the amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received;
- (d) the amount of every sum due from the borrower remaining unpaid and the date on which each such sum become due and the amount of interest accrued due and unpaid in respect of every such sum.

of 1872.

(Chapter VI.—Regulation of Accounts of Money-lenders.—
Sections 26, 27.)

- (e) the amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due; and
- (f) such other particulars as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, a money-lender shall, on demand being made in writing by the borrower at any time while the loan or any portion thereof remains outstanding, supply to the borrower or to any person specified in that behalf in the demand, within thirty days from the date of receipt of the written demand by the money-lender or his duly authorised agent, a statement in Bengali or English as the borrower may desire, signed by the money-lender or his agent and showing in the prescribed form any or all of the particulars specified in sub-section (1):

Provided that the money-lender shall not be bound to comply with such demand if he has complied with a demand made not more than six months prior to the date thereof, or if within such period of six months he has furnished the statement required by sub-section (1).

(3) A money-lender shall, on a demand in writing by the borrower, supply to the borrower or to any person specified in that behalf in the demand a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower:

Provided that a money-lender shall not be bound to comply with such a demand if he has previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

(4) In this section the expression "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Borrower not bound by money-lender's statement of accounts.

26. A borrower to whom a statement of accounts has been furnished under section 25 shall not be bound to acknowledge or deny its correctness, and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Procedure in suits relating to loans by money-lenders.

27. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

- (a) a Court shall, before deciding the claim on its merits, frame and decide the issue whether the money-lender has in respect of the claim in suit complied with the provisions of sections 24 and 25; and
- (b) if the Court finds that the provisions of either of the said sections have not been so complied with, it may, if the plaintiff's claim is established either wholly or in part, disallow the whole or such portion of the interest found due as may in the circumstance of the case, appear reasonable to

of 1940.]

(Chapter V.—Assignment of Loans.—Section 28.)

the Court, and may also disallow costs, or in computing the amount of interest due upon the loan, the Court may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections:

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form shall be held to have complied with the provisions of section 24 or section 25, as the case may be, in spite of any errors and omissions in such receipt or statement, if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V

Assignment of Loans.

28. (1) Where any debt in respect of—
- (i) a loan advanced by a lender, whether before or after the commencement of this Act, or
 - (ii) interest on any such debt, or
 - (iii) the benefit of any agreement made, or security taken, in respect of any such debt or interest,

is assigned to any person, the assignor (whether he is the lender by whom the loan was advanced or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

- (a) give to the assignee notice in writing that the debt, interest thereon, agreement or security is affected by the operation of this Act, and
- (b) where the debt is in respect of a loan advanced by a money-lender, supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of documents relating thereto.

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both

Notice and information to be given on assignment of loans by lenders.

(Chapter V.—Assignment of Loans.—Section 29.)

(3) In this section the expression "assigned" means assigned by an assignment *inter vivos* other than an assignment by operation of law; and the expressions "assignor" and "assignee" have corresponding meanings.

Application
of Act as
respects
assignees.

29. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him after the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid:

Provided that, notwithstanding anything contained in this Act—

- (a) any agreement with, or security taken by, a lender or money-lender in respect of a loan advanced by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and
- (b) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement of security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid;

but in every such case the lender or money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings instituted by, as assignee or holder for value who is himself a money-lender.

(2) The provisions of this Act shall apply and be deemed always to have applied and shall continue to apply as respect any debt due to a lender or money-lender in respect of loans advanced by him before the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such

of 1940.]

(Chapter VI.—Interest and other charges.—Sections 30, 30A.)

(3) Nothing in this section shall render valid for any purpose any agreement, security or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

CHAPTER VI

Interest and other charges.

30. Notwithstanding anything contained in any law for the time being in force, or any agreement,

Limitations as to amount and rate of interest recoverable.

- (1) [no borrower other than a borrower of commercial loan] shall be liable to pay after the commencement of this Act—
 - (a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,
 - (b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,
 - ²(c) any interest other than simple interest at a rate *per annum* not exceeding in the case of—
 - (i) unsecured loans—twelve and a half *per centum*,
 - (ii) secured loans—ten *per centum*,

whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act;

- (2) ³[no borrower other than a borrower of commercial loan] shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1);
- (3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

⁴30A. Notwithstanding anything contained in any law for the time being in force or in any agreement, no borrower of a commercial loan shall be liable to pay any interest other than simple interest at a rate *per annum* not exceeding in the case of—

Limitation as to rate of interest recoverable in case of commercial loan.

- (i) unsecured loan . . . twenty *per centum*
- (ii) secured loan . . . seventeen *per centum*.

¹The words within square brackets were substituted for the words "no borrower" by s. 4(a) of the Bengal Money-lenders (Amendment) Act, 1981 (West Ben. Act IV of 1981).

²Sub-clause (c) was substituted for the original sub-clause by s. 6 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

³The words within square brackets were substituted for the words "no borrower" by s. 4(b) of the Bengal Money-lenders (Amendment) Act, 1981 (West Ben. Act IV of 1981).

⁴Section 30A was added by s. 5. *ibid.*

(Chapter VI.—Interest and other charges.—Sections 31-33.—
Chapter VII.—Miscellaneous.—Section 34.)

Prohibition
of interest on
decreetal
amount.

31. Notwithstanding anything contained in any law for the time being in force or in any agreement, no Court shall, in any decree passed in any suit to which this Act applies or in any suit brought by a¹[borrower other than a borrower of commercial loan] for relief under section 36, allow any interest exceeding six *per cent. per annum* on the principal sum adjudged.

Computation
of interest on
loans in kind.

32. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this chapter, be decreed in respect of any loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Prohibition
of charges for
expenses on
loans.

33. Any agreement between a lender and a borrower or intending borrower for the payment to the lender of any sum on account of costs, charges or expenses incidental or relating to the negotiations for, or the granting of, the loan or proposed loan, shall be illegal, and if any sum is paid to a lender by the borrower or intending borrower as, for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly:

Provided that nothing in this section shall debar a lender from recovering the costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the agreement includes a stipulation that property is to be given as security or by way of mortgage, of the costs of stamp duty and registration of documents in the case of unsecured loans, if both parties have agreed to such expenditure and the reimbursement thereof, nor from recovering such costs, charges or expenses as are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of 1882.

CHAPTER VII

Miscellaneous.

Power of
Court to
direct
payment by
instalments.

34. (1) Notwithstanding anything contained in any law for the time being in force, or in any agreement, the Court shall—

- (a) in suits in respect of loans to which the provisions of Order XXXIV of the First Schedule to the Code of Civil

Act V of
1908.

¹Section 31 was substituted for the original section by s. 7 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

²The words within square brackets were substituted for the word "borrower" by s. 6 of the Bengal Money-lenders (Amendment) Act, 1981 (West Ben. Act IV of 1981).

of 1940.]

(Chapter VII.—Miscellaneous.—Section 34.)

Procedure, 1908, apply, on the application of the defendant and after hearing the plaintiff, notwithstanding the limit of six months provided therein, direct at the time of the passing of the preliminary decree under rule 2 or rule 4 of the said order to the effect mentioned in sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2,—

- (i) that the payment of the amount found or declared due under sub-rule (1) of rule 2 or sub-rule (1) of rule 4 of the said Order, as the case may be, is to be made, subject to such conditions as the Court may impose in such number of annual instalments and on such dates as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant and the amount of the decree: and
- (ii) that in default of payment of any such instalment the plaintiff shall, after giving to the defendant such notice as may be prescribed, be entitled to apply for a final decree under sub-clause (ii) of clause (c) of sub-rule (1) of the said rule 2 or under sub-rule (1) of the said rule 4, as the case may be, and the date of such default shall be deemed to be the date fixed under sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2 for payment of the whole amount found or declared due under or by the preliminary decree:

Provided that nothing in this clause shall affect the power of the Court to allow extension of time under sub-rule (2) of rule 2 or sub-rule (2) of rule 4 of the said Order:

Provided further that if the defendant after receiving the notice referred to in sub-clause (ii) and before a final decree is passed, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not pass a final decree:

- (b) in suits in respect of loans advanced before the commencement of this Act other than those referred to in clause (a)—
 - (i) on the application of a defendant and after hearing the plaintiff, order at the time of the passing of the decree, or
 - (ii) on the application of a judgment-debtor against whom a decree in such suit has been passed whether before or after the commencement of this Act and after notice to the decree-holder, order at any time after the decree has been passed,

(Chapter VII.—Miscellaneous.—Section 35.)

that the amount of the decree shall, subject to such conditions as the Court may impose, be payable without interest in such number of annual instalments, on such dates and within such period not exceeding twenty years as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant or the decree-holder and the judgment-debtor and the amount of the decree, and that, if default is made in making payment of any instalment, that instalment and not the whole of the decretal amount shall be recoverable:

- (c) during the pendency of any enquiry under sub-clause (ii) of clause (b) order, subject to such conditions as the Court may impose, the stay of execution of the decree.

(2) In default of payment of any instalment referred to in clause (b) of sub-section (1), the decree-holder shall, after giving to the judgment-debtor such notice as may be prescribed, be entitled to apply for execution of the decree in respect of such instalment together with interest thereon at the rate of not more than six *per centum per annum* from the date of such default:

Provided that nothing in this sub-section shall affect the power of the Court to allow, prior to an order for execution of the decree, an extension of time of not less than one year for the payment of any instalment, and that if such extension of time is allowed, the payment of such instalment shall not be deemed to be in default:

Provided further that if the judgment-debtor, after receiving the notice referred to in this sub-section and prior to an order for execution of the decree, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not order execution of the decree.

(3) Any order made under sub-clause (ii) of clause (b) of sub-section (1) shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.

Act V of
1908.

Sale of
property in
execution of
decrees in
respect of
loans.

35. Notwithstanding anything contained in any other law for the time being in force, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be saleable at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation:

Provided that, if the highest amount bid for the property so specified is less than the price so specified, the Court may sell such property for such 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 so specified.

of 1940.]

(Chapter VII.—Miscellaneous.—Section 36.)

36. (1) Notwithstanding anything contained in any law for the time being in force ¹[or in any agreement], if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any of the following powers as it may consider appropriate, namely, shall—

Reopening of transactions

- (a) reopen any transaction and take an account between the parties:
- ²(b) reopen any account already taken between the parties, purporting to close any previous dealings and to create new obligations:
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30;
- (d) if anything has been paid or allowed in account on or after the first day of January, 1939, in respect of the liability referred to in clause (c), order the lender to repay any sum which the Court considers to be repayable in respect of such payment or allowance in account as aforesaid:

Provided that in the case of a loan to which the provisions of sub-section (2) of section 29 apply the lender or money-lender and each of his assignees shall be liable to repay the sum which the Court considers to be repayable in respect of and in proportion to the sum received by such lender or money-lender and such assignee;

- (e) 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 lender has parted with the security, order him to indemnify the borrower in such manner and to such extent as it may deem just:

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

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date more than twelve years prior to the date of the suit by the parties or any person through whom they claim, or

¹The words within square brackets were inserted by s. 8(1)(i) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

²Clause (b) was substituted for the original clause by s. 8(1)(ii) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

(Chapter VII.—Miscellaneous.—Section 36.)

- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applies which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, ¹[1936].

Ben. Act VII
of 1936.

Explanation.—A decree shall not, for the purposes of this section, be deemed to have been fully satisfied so long as there remains undisposed of an application by the decree-holder for possession of property purchased by him in execution of the decree.

(2) If in exercise of the powers conferred by sub-section (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree-holder such costs in respect of the reopened decree as it thinks fit:

²Provided that where, in consequence of the execution of the decree which is reopened, the property of the judgment-debtor has been purchased *bona fide* by any person other than the decree-holder jointly with the decree-holder, the decree-holder's claim and the judgment-debtor's liability in respect of the decree which is reopened shall be reduced by the amount of the purchase money paid by such other person and received by the decree-holder.

- (b) shall not do anything which affects any right acquired *bona fide* by any person, other than the decree-holder, in consequence of the execution of the reopened decree.
- (c) shall order the restoration ³[of possession] to the judgment-debtor of such property, if any, of the judgment-debtor acquired by the decree-holder in consequence of the execution of the reopened decree as may be in the possession of the decree-holder on the date on which the decree was reopened.
- (d) shall order the judgment-debtor to pay to the decree-holder, in such number of instalments as it may think fit, the whole amount of the new decree passed under clause (a) ⁴[and upon such payment of all the instalments the sale shall be deemed to have been set aside], and

¹These figures within square brackets were substituted for the figures "1935" by section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

²This proviso was added by s. 8(2)(i) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

³The words within square brackets were inserted by s. 8(2)(ii), *ibid.*

⁴The words within square brackets were inserted by s. 8(2)(iii) *ibid.*

of 1940.]

(Chapter VII.—Miscellaneous.—Section 36.)

- (c) shall direct that, in default of the payment of any instalment ordered under clause (d), the decree-holder shall be put into possession of the property referred to in clause (c) and that the amount for which the decree-holder purchased such property in execution of the reopened decree shall be set off against so much of the amount of the new decree as remains unsatisfied.

(3) In this section the expression "suit to which this Act applies" includes a proceeding in respect of any application relating to the admission or amount of a proof of a loan advanced before or after the commencement of this Act in any insolvency proceedings.

(4) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement of security in respect of a loan or for the redemption of any such security.

(5) Nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment to him was *bona fide*, [and, in the case of an assignment after the commencement of this Act, also that he had not received] the notice referred to in clause (a) of sub-section (1) of section 28.

(6) Notwithstanding anything contained in any law for the time being in force,—

- (a) the Court which, in a suit to which this Act applies passed a decree which was not fully satisfied by the first day of January, 1939, may exercise the powers conferred by sub-sections (1) and (2)—
- (i) in any proceedings in execution of such decree, or
 - (ii) on an application for review of such decree made within one year of the date of commencement of this Act, and the provisions of rules 2 and 5 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any such application;
- (b) any Court before which an appeal is pending in respect of a decree referred to in clause (a) may either itself exercise the like powers as may be exercised under sub-sections (1) and (2), or refer the case to the Court which passed the decree directing such Court to exercise such powers, and such Court shall after exercise thereof return the record with the additional evidence, if any, taken by it and its findings and the reasons therefor to the Appellate Court and thereupon the provisions of rule 26 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply.

Act V of
1908.

¹The words within square brackets were substituted for the words "and that he had not received" by s. 8(3) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act 1965).

(Chapter VII.—Miscellaneous.—Sections 37, 37A, 38 & 39.)

Prohibition of execution of decrees by arrest and detention in prison.

37. Notwithstanding anything contained in any law for the time being in force, no Court shall order execution of a decree passed in any suit to which this Act applies by arrest and detention in prison of the judgment-debtor.

Saving as to mortgage by conditional sale.

37A. In the case where any loan is secured by a mortgage and the mortgagor ostensibly sells the mortgaged property on any of the conditions specified in sub-section (c) of section 58 of the Transfer of Property Act, 1882, then, notwithstanding anything to the contrary contained in the proviso to the said sub-section, the transaction shall always be deemed to be a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale for the purposes of the said sub-section.

4 of 1882.

Inquiry for taking accounts and declaring the amount due.

38. (1) Any borrower may make an application at any time to a Court which would have jurisdiction to entertain a suit by the lender for the recovery of the principal and interest of a loan made before or after the commencement of this Act for taking accounts and for declaring the amount due to the lender. Such application shall be in the prescribed form and shall be accompanied by a fee of one rupee, and on receipt of such application the Court shall cause a notice thereof to be served on the lender.

(2) The Court shall thereafter take an account of the transactions between the parties and shall declare the amounts, if any,—

(a) payable and already due,

(b) payable but not yet due

by the borrower to the lender, whether as principal or interest or both. In taking accounts under the section the Court shall follow the same procedure as it does in regard to civil suits and, so far as may be, the provisions of Chapter IV, VI and VII.

(3) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal.

Deposit in Court of money due to lender.

39. (1) Where any sum of money has been declared under sub-section (2) of section 38 to be payable by the borrower to the lender as principal or interest or both, or where a borrower has sent to a lender by postal money order any sum of money due from him to the lender in respect of a loan and the lender has refused to accept the same, the borrower may apply in the prescribed manner to the Civil Court of the lowest grade having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the lender, and the Court shall keep the said sum in deposit.

¹Section 37A was added by s. 9 of the Bengal Money-lenders (Amendment) Act, 1965 (XXV of 1965).

of 1940.]

(Chapter VII.—Miscellaneous.—Section 40.)

(2) The Court shall thereupon cause notice of the deposit to be served on the lender, and the lender may on presenting a petition, verified as for a plaint and stating the sum then due in respect of the loan and his willingness to accept the money so deposited, receive the sum:

Provided that in accepting any sum deposited under this section, a lender shall not be bound by any statement made by the borrower in depositing the same:

Provided also that, if the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the borrower in respect of the loan, it may direct the payment to the borrower, from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(3) Notwithstanding any agreement between the parties, when the borrower has deposited in Court under this section any sum due in respect of the loan, if such sum is in payment of the principal or any part thereof, the interest on such principal or part shall cease from the date of service of notice on the lender under sub-section (2).

(4) Nothing in this section shall affect the operation of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which those sections apply.

IV of 1882.

40. (1) No lender shall take from a borrower or intending borrower any note, promise to pay, power of attorney, bond or security which does not state [the address of the borrower, the date and place of transaction,] the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly, nor shall he take from any borrower or intending borrower any instrument in which any entry is left blank for completion at a latter date.

Entry of an amount in a bond, etc., different to the amount actually lent to be an offence.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) No money-lender shall take from any borrower or intending borrower any note, promise to pay, power of attorney, bond or security which described or refers to as a commercial loan any loan which is not a commercial loan.

(4) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, power of attorney, bond, security or document referred to in sub-section (1) or sub-section (3) shall be void and unenforceable.

*The words within square brackets were inserted by s. 10(1) of the Bengal Money-lenders Act, 1940.

(Chapter VII.—Miscellaneous.—Section 41.)

(5) Notwithstanding anything contained in any law for the time being in force, in any suit, or proceeding the burden of proving that a loan is a commercial loan shall be on the money-lender who advanced the loan.

1 of 1872.

¹(6) Notwithstanding anything contained in the Indian Evidence Act, 1872, evidence adduced by a borrower in a suit to which this Act applies or a suit brought by a borrower for relief under section 36 or in any criminal proceedings under section 41 or section 42, of any oral agreement or statement contradicting, varying, adding to or subtracting from the terms of any document creating or witnessing a loan shall be admitted.

41. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover, a debt shall be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Penalty for molestation.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

- (a) obstructs or uses violence to or intimidates such other person, or
- (b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or
- (c) loiters or does any similar act at or near a house, building or place where such other person resides or works or receives his pay or wages or carries on business or happens to be—

shall be deemed to molest such other person:

Provided that a person who attends at or near such house, building or place for the purpose only of making a formal demand for repayment of a loan due or of obtaining or communicating information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be cognisable and bailable.

Act V of 1898.

(3) Nothing in this section shall be deemed to restrict the provision of the Bengal Workmen's Protection Act, ²[1935].

Ben. Act IV of 1935.

¹Sub-section (6) was inserted by s. 10(2) of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965).

²These figures were substituted for the figures "1934" by s. 2 and the First Schedule to the

of 1940.]

(Chapter VII.—Miscellaneous.—Sections 42, 43.)

42. (1) When any money-lender or any servant or agent of, or any person responsible for the management of the money-lending business of, a money-lender knowingly and wilfully commits, authorises or permits any default in complying with, or any contravention of, any provision of this Act, if the money-lender or such servant, agent or person is—

General provisions regarding penalties.

- (a) an individual, such individual, or
- (b) an undivided Hindu joint family, any member of such family who is knowingly and wilfully a party to such default or contravention, or
- (c) a body corporate, any director or officer of such body who is knowingly and wilfully a party to such default or contravention, or
- (d) an unincorporated body, any member of such body who is knowingly and wilfully a party to such default or contravention,

shall, where a specific penalty has been provided in this Act, be punishable under the provisions of this Act providing such penalty, and where no such specific penalty has been provided, be punishable on conviction—

- (i) for the first offence, with fine which may extend to two hundred rupees,
- (ii) for the second offence, with fine which may extend to five hundred rupees, and
- (iii) for any subsequent offence, with rigorous imprisonment which may extend to three months and shall also be liable to fine.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of the ¹[State] Registrar or a Registrar or of a person authorised in this behalf by the ¹[State] Registrar or a Registrar.

(3) The ¹[State] Registrar may order the withdrawal of a complaint made under sub-section (2), and, if he does so, shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

(4) No Court inferior to that of a Presidency Magistrate or a Subdivisional Magistrate or a Magistrate of the first class shall try an offence punishable under sub-section (1).

43. No suit, prosecution or proceeding shall lie against any ²[person] * * * for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

¹See foot-note 5 on page 519, *ante*.

²This word was substituted for the word "servant of the Government" by s. 11 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965). Prior to this substitution the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

(Chapter VII.—Miscellaneous.—Section 44.)

Power to
make rules.

44. (1) The ¹[State] Government may, subject to the condition of previous publication, make rules² for carrying out the purposes of this Act.

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

- ³(a) the conditions referred to in the proviso to section 3;
- (b) the control to be exercised by the ¹[State] Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars;
- ⁴(bb) the manner of appointment and qualifications of Inspectors referred to in sub-section (1) of section 6A, the powers and duties of such Inspectors and the control to be exercised over such Inspectors by the State Registrar, Registrars and Sub-Registrars;
- (c) the form in which registers under section 7 shall be maintained;
- (d) the form and manner in which an application for the grant of a licence shall be made, and the particulars to be therein contained;
- (e) the manner in which licence fees and penalties shall be paid;
- (f) the form of licences;
- (g) the form of, and the fee payable on, an application under sub-section (2) of section 14;
- (h) the procedure to be followed by a Competent Court or by a Registrar in proceedings under section 16;
- (i) the form in which a Court shall send the substance of the order referred to in sub-section (5) of section 20, and the method of circulation of the same to other Registrars;
- (j) the form in which a money-lender shall maintain his cash book, ledger and receipt book;
- (k) the form of, and the particulars to be contained in, the statement to be delivered under sub-section (2) of section 24;
- (l) the form of the statement to be furnished under section 25 and the fee to be paid under the proviso to sub-section (3) of that section;

¹See foot-note 5 on page 519, *ante*.

²For the Bengal Money-lender Rules, 1940, made under section 44, see notification No. 4054J., dated 10th December, 1940, published in the *Calcutta Gazette* of 1940, part 1, pages 3468-3498, as subsequently amended.

³For rules providing for the conditions for declaring a bank to be a notified bank under section 3 of the Act, see notification No. 1800J., dated 3.4.52, published in the *Calcutta Gazette* of 1952, part 1, page 1144.

⁴This clause was added by s. 12 of the Bengal Money-lenders (Amendment) Act, 1965

of 1940.]

(Chapter VII.—Miscellaneous.—Section 45, 45A.—The Schedule.)

- (m) the form in which information shall be supplied to an assignee under clause (b) of sub-section (1) of section 28;
- (n) the form in which notice shall be given by the plaintiff to the defendant under sub-clause (ii) of clause (a) of sub-section (1) of section 34, and by the decree-holder to the judgment-debtor under sub-section (2) of that section;
- (o) the form of an application under section 38; and
- (p) the manner in which an application under section 39 shall be made.

45. The Bengal Money-lenders Act, 1933, shall not apply to any loan to which this Act applies nor to any transaction connected with such loan.

Bengal Act VII of 1933 not to apply to loans to which this Act applies.

45A. The following Acts are hereby repealed, namely:—

Repeal.

(1) The Usury Laws Repeal Act, 1855, in so far as it applies to West Bengal; and

(2) The Usurious Loans Act, 1918, in so far as it applies to West Bengal, except in cases relating to matters enumerated in sub-clauses (d), (e), (f), (h) and (i) of clause (12) of section 2.

THE SCHEDULE.

[Sections 14 (1) (b) and 15.]

Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 379 to 382, 384 to 389, 392 to 404, 406 to 409, 411 to 414, 417 to 424, 449, 450, 451 (with intent to commit theft), 454 (with intent to commit theft), 455, 457 (with intent to commit theft), 458 to 462, 465, 477 and 477A or under section 52 of the Indian Post Office Act, 1898.

¹Section 45A was added by s. 13 of the Bengal Money-lenders (Amendment) Act, 1965 (West Ben. Act XXI of 1965)