THE MADRAS AGRICULTURISTS RELIEF ACT

(IV OF 1938)

(As amended up to date)

THE MADRAS AGRICULTURISTS RELIEF ACT

(IV OF 1938)

BY

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Third Edition
Revised and Brought to Date
by

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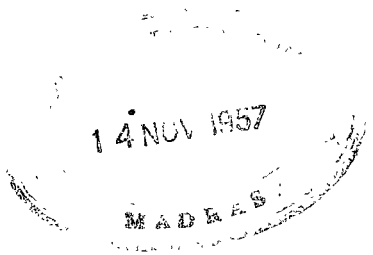

" The husbandman that laboureth must be the first partaker of the fruits."

(*Bible : Paul's Epistles—Timothy—Chap. II.*)

" Neither a borrower nor a lender be,
For loan oft loseth both itself and friend,
And borrowing dulls the edge of husbandry."

(*Shakes. : Hamlet, Act I, Scene iii.*)

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PREFACE

Over eight years have passed after the last edition and during the period three Amending Acts were passed introducing a few, but very drastic and important, amendments in the body of the Act. The Rules under the Act too have been added.

Quite a substantial volume of case law has also been rendered on several matters covered by the Act. These factors have necessitated a fresh edition of the Act, and the Publishers have therefore brought out this third edition, incorporating all the amendments up to date as well as the adaptations made by the Adaptation of Laws Order and the Amending Order of 1950.

Allied Acts recently passed for the protection of Indebted Agriculturists are given as Appendices. The amendments made by the Andhra State to the Rules are also given in the Appendix portion.

The case law, part of which relates to the changes effected by the Amending Acts, has also been brought up to date. A good lot of matter, which has served its purpose and is considered no longer necessary, has been eliminated from this edition. Every effort has been made, and due care taken to make the book useful to the utmost extent.

It is hoped that the members of the Bench and the Bar, as well as the public who are affected by the Act, will find the work helpful.

15th August, 1957.

P. R. NARAYANA IYER.

PREFACE TO THE FIRST EDITION

Those who hold, and those who are without, property have ever formed distinct interests in society. Those who are creditors and those who are debtors follow under a like discrimination. A landed or agricultural interest, a manufacturing interest, a mercantile interest, with many lesser interests, grow up of necessity in civilized nations and divide themselves into different classes, actuated by different sentiments and views. The just regulation of these various and conflicting interests forms one of the principal and hardest tasks in modern legislation.

The Madras Agriculturists Relief Act, 1938, is a measure intended to help those that are engaged in cultivation—the basic industry of the country—from the load of debt that has been pressing them, almost for ages past.

Whatever may be said about the merits or demerits of the several provisions of this Act, it has been universally admitted, that without some such strong measure as is aimed at in this enactment, there is not the slightest hope of our agricultural population finding themselves free from crushing poverty and the load of debt, which, with the progress of time, only tends to become more and more burdensome. The aim of the present Government is to give them a sense of freedom from an almost irredeemable bondage, and instil in them a fresh hope of finding themselves once again owners and toilers on an unencumbered soil. How far this Act or other Acts enacted with the same object, will succeed in producing the desired effect,—it remains to be seen. It is a bold and honest effort in the right direction.

It is absolutely necessary that the public should become acquainted with the provisions of this Act in all its details.

It is hoped that this Edition of the Act, with short explanatory notes and an exhaustive introduction, will be found of use to lawyers and Judges as well as the large body of the lay public.

P. RAMANATHA IYER.

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The Madras Agriculturists Relief Act (IV of 1938).

INTRODUCTION

History of the Legislation—The Madras Moratorium Bill (1937)–At first the Government wanted to pass a Moratorium Act and introduced a Bill to that effect. The object of that Bill was to give temporary relief to indebted agriculturists in this province pending the formulation of comprehensive measures for dealing with the problem of their indebtedness.

Provisions of the Bill—"The Bill was to remain in force only for one year; but power was proposed to be taken to extend it for another year if necessary.

The intention was to give relief to agriculturists who had a saleable right in agricultural land situated in the Province and who derived not less than three-fourths of their annual income from such land. Relief was proposed to be confined to agriculturists, whose liabilities under the heads, land-revenue, rents and taxes and cesses payable to local authorities, did not exceed four hundred rupees per annum.

The Bill was not to apply to certain classes of debts, for example, revenue due to Government, income-tax, loans granted by a co-operative society, land mortgage bank, or joint stock bank. Nor was relief to be given in respect of rent which was payable after 30th June, 1935.

After the Bill should come into force and so long as it should remain in operation, no suit or proceeding could be instituted against an agriculturist and all pending suits and proceedings should be stayed.

It was also made clear that an agriculturist should not be entitled to transfer any immovable property so as to defeat the rights of his creditors. Special provision had also been made for giving relief to persons the major portion of whose assets consisted of debts due from agriculturists and which could not be recovered while this Bill should remain in operation. In such cases, the Court was empowered to give to such persons the same relief as was given to an agriculturists by this Bill or such smaller measure of relief as the Court considered sufficient."

Provision had been made for the setting up, if necessery, of an authority to dispose of matters arising out of the provisions of the

Bill and to make and issue declarations on the application of agriculturists or their creditors.

Power had also been taken to make rules for the jurisdiction and conduct of proceedings taken before any such authority or authorities and also generally to carry into effect the provisions of the Bill and to remove any difficulties which may be experienced in its working." *(Statement of objects and reasons.)*

On the publication of this Bill in the Local Official Gazette, it was subjected to very severe criticism from various persons and public bodies, from several points of view, on the merits of which it is not necessery now to enter.

Suffice it to say that the Government, after reconsideration of the measure in all its aspects, decided not to proceed with the Moratorium Bill, but immediately to introduce the contemplated measure of relief as a substantive enactment.

Agriculturists' Debt Relief Bill—Object of the bill—This new measure was published in the *Fort St. George Gazette* on the 1st December, 1937. The object of the Bill and its scope were explained as follows in the Statement of Objects and Reasons;

"The object of the Bill is to rehabilitate agriculture which is the basic industry of this province. Directly or indirectly, the prosperity of all sections of the people is dependent upon the economic well-beings of the agriculturists. His present deplorable plight is well-known. While, on the one hand, his income has diminished, on the other, the interest upon his debt has been steadily accumulating, often at an unconscionable rate. The predominant feature of the distress is due to the burden of debt. It is the duty of any modern Government which is alive to its responsibilities to the people to relieve the producers of the people's food from such an intolerable burden. It would not be right for the State to permit the hereditary skill of the agriculturists to pass into unemployment, allowing land to fall into the hands of people who are strangers to the calling of agriculture. Conciliation and other voluntary methods have failed and the adoption of the principle of compulsion has become necessary.

The Bill provides that payment of the outstanding principal should discharge the debt. Interest will run from 1st October, 1937, at a rate not exceeding 6 per cent. per annum. In cases where high rates of interest are charged, payment of twice the principal is to have the effect of completely discharging the debtor from further liability. As far as possible, persons following occupations other then agriculture have been excluded from the benefit of the Bill. Dues to Government and local bodies and to co-operative and certain joint-stock banks have also been excluded from its scope. Every endea-

vour has been made in drafting the Bill to simplify the issues and make them easy of decision, thus minimising litigation.

The Bill also provides for the relief of tenants from the burden of old arrears of rent without encouraging default in the payment of current dues.

Numerous complaints have been received that owing to the expectation of legislation on these lines, creditors have had recourse to coercive processes causing great distress amoung agriculturists, and it is therefore proposed to give the benefit of the measure to debtors proceeded against since October, 1937."

The provisions of this Bill were subjected to even greater criticism than those of the Moratorium Bill. A Joint Select Committee of both Houses were appointed on the 21st December, 1937, to consider the Bill in the light of public criticism.

Report of the Joint Select Committee—The following are extracts from the Report of the Joint Select Committee:—

"The Committee has noted the various suggestions for improvement that have been made in the numerous memoranda submitted to it and in the light of those suggestions and of other criticisms which have been made, it has subjected the provisions of the Bill to a thorough scrutiny; and as a result thereof, has made many amendménds therein.

The Bill as introduced had provided that in all cases, interest should run only from the 1st October, 1937 at a rate not exceeding 6 per cent. per annum. The Committee has come to the conclusion that a distinction should be made between debts incurred during the pre-depression period when the value of money was very much less than now and debts incurred after the depression became acute. In the case of the former, a greater extent of scaling down is considered justifiable than in the case of the latter. It has accordingly limited the provisions which had been made in the Bill for the wiping out of arrears of interest, only to debts incurred before 1st October, 1932. As regards debts incurred on or after 1st October, 1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent. in all cases where it is higher than 5 per cent. Where a debt incurred after 1st October, 1932, is found to be wholly or in part a renewal of a debt incurred prior to that date, that debt or any part of it which may constitute such renewal will be dealt with as a debt incurred before 1st October, 1932. What has been compendiously described as the *damdupat* principle has been retained. In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to the 1st October, 1932, the invoking of that principle is unnecessary in respect of such debts and has therefore been expressly provided for in the

case of debts incurred prior to 1st October, 1932. The Committee considers that these provisions which it has made for the scaling down of old and new debts will go a great length to meeting the objection which had been raised to the provision in the Bill as introduced, for the wiping out of all interest on all debts outstanding on the 1st October, 1937.

The Committee has also exempted from the operation of this Act any debt or debts due to a woman who is entirely dependent on such debt or debts for her maintenance, and has accordingly included the following additional item in clause 4 of the Bill, *viz.*:—

> "any debt or debts due to a woman on the 1st October, 1937, who on that date did not own any other property, provided that the principal amount of the debt or debts did not exceed rupees three thousand."

It has provided that in calculating the value of the property owned by the woman on the 1st October, 1937, the house in which she lived or any furniture therein or her household utensils wearing apparel, jewellery or such like personal belongings, should not be taken into account.

The Committee has also exempted any wages due to an agricultural labourer or other rural labourer from the operation of the Act.

The Bill had provided that to obtain exemption from this Act, a company registered in British India or in an Indian State should have had on its register on the 1st October, 1937, at least 500 members. This provision did not apply to foreign companies, and the Committee has removed the distinction. In view of the provision in the revised Bill in favour of debts incurred after the 1st October, 1932, the Committee felt that there was no need to accept the suggestion made to extend the exemption to companies with smaller membership.

Another major change made by the Select Committee in the Bill is in regard to rents. Much apprehension was felt in certain quarters that the wiping off of arrears of rent would encourage the tenants to allow rent to fall into arrears even in the future. In order to remove this apprehension the Bill had provided that relief in respect of arrears should depend upon prompt payment of current dues. The Committee has strengthened this position by making the payment of the rent for fasli 1347 before 30th September, 1938, a condition precedent to the grant to a tenant of the relief from arrears of old rent. It is only where, after paying the rent for fasli 1347 on or before 30th September, 1938, the tenant also pays the rent for fasli 1346 on or before the 30th September 1939, that he obtains a full discharge in respect of all arrears of rent secured for previous faslis. If, having paid the rent for fasli 1347 on or before

30th September, 1938, he makes default in payment of the rent for fasli 1346, on or before 30th September, 1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him. These provisions while helping the landholder to collect current dues are calculated to save the tenant against his own neglect. Mr. G. Krishna Rau strongly pressed that in any case the arrears for fasli 1345 should not be written off. But the Committee after carefully considering the position decided that there would be no practical relief given to a tenant if the burden of three faslis were left unrelieved and that there would be no incentive for the payment of current dues, if he was still to be left so heavily indebted.

The Committee has also provided that where a landholder has paid the tenant's share of the land-cess under the Madras Local Boards Act, 1920, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for fasli 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree.

As a corollary to the abovementioned provisions, the Committee has provided that any payment of rent made by a tenant after the commencement of this Act shall be credited first towards the rent due by him for fasli 1347 and then towards the rent due by him for fasli 1346 and not towards any rent due for any prior fasli. It has also made a provision enabling the tenant to deposit the rent due by him into court and to ask the court to cancel his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of this Bill.

The Committee has provided that the period of limitation for suits for the recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for the payment of the rents for faslis 1347 and 1346 as those dates would determine the tenant's liability for such arrears.

Bill explained.—In presenting the Report of the Joint Select Committee to the Assembly, the Prime Minister said that the measure was in some form or other before the country for four months. The Bill itself was before the country for two months and the measure as amended by the Select Committee for nearly a month. All sections of the House were represented on the Committee. "On the whole, I do not think" the Prime Minister said, "I am overstanding the case, if I say that the report carries with it a considerable amount of unanimity of opinion of the members that formed the Joint Select Committee. The changes made have been

set out in the Report. The major one is worthy of elucidation once again. The debts in respect of which relief is sought to he given, have been divided into two groups, firstly those incurred before the depression period and secundly those incurred after the depression period. The first set of debtors are treated in the manner in which they had been treated in the original Bill; that is to say, the modified form of Damdupat continues to apply. If a debtor has paid twice the amount of the principal he had borrowed in substance, he is said to be discharged, and if he has done that to a lesser extent, he has to give only the difference in order to get a discharge. In the other cases the principal is due, but the interest is wiped out. The second class of debtors are treated in a different way in the amended Bill. Five per cent. interest is charged instead of the higher rates that might have been charged in the original obligation; all payments made are given credit; and for the debt to be discharged, only the residue is to be paid. This is a major difference between the original Bill and the Bill as it has emerged from the Committee. There have also been other alterations, and some of them are very important. The revised Bill also deals with banks that were excepted."

"With regard to rent," the Premier continued, "the position even in the original Bill was that a tenant, if he is to claim the benefits of the measure in respect of arrears, was bound to pay the dues for the current fasli and the previous fasli. The Bill made it necessary for the tenant to be prompt in respect of the payment of the current rent. The Select Committee strengthened this position a little further. One more step has been taken and that is the provision making it necessary that the arrears for the current fasli 1347 should be paid before 30th September next in order that the tenant might be entitled to the benefit of this Bill."

The Prime Minister, proceeding, said that this was done to create a new psychology and to prevent the continuation of an attitude of falling into arrears year after year. It was felt by the framers of the Bill that this would enable the landlords to have better tenants and the tenants a better living. "The insistence on payment of current dues is beneficial to all parties concerned. This practice, if it is not prevailing now, is due not only to the poverty of the people to a great extent but also due to a desperate untidiness brought about by the burden of provious arrears, which makes them feel that, as they have no means of escape from them, they might not worry about the present." It was with that object that the write-off was proposed. It would be beneficial in the long run to the tenants and the landlords. The present change strengthened the position further by the making of a beginning absolutely necessary within a tangibly near time, namely, before 30th September, 1938. Much apprehension was felt, and it was used also as an argument, that probably the

measure would lead to a tendency not to pay dues to the landlord and thus lead to a difficult situation. The policy behind the provision proposed in the Select Committee must be sufficient to dispel the apprehensions in that direction."

Bill reserved for assent of the Viceroy—"This Bill was reserved for the consideration of the Victory. The reason for this reservation is that it is an essential requirement under the Government of India Act. Section 107 of the Government of India Act provides that where a provincial law with respect to any of the matters enumerated in the Concurrent Legistlature list contains provisions repugnant to an Act of the Central Legislature on that matter, the Act of the Central Legislature will prevail, and the provincial law will to the extent of the repugnancy be void.

If, on the other hand, such an Act passed by a provincial legislature is reserved for the consideration of the Governor-General and has, thereafter, received the Governor-General's assent, the section provides that the provincial Act shall prevail in the province concerned; so that it is manifestly in the interests of the province that a Bill should be thus reserved.

The Governor-General's instructions for the transitional period lay down that in considering a Bill reserved on grounds of repugnancy, he shall take into account both the provincial and the all-India effects of its proposals, bearing in mind the necessity for keeping substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

By a number of its provisions, the Madras Debt Relief Bill affects civil rights and procedure on which the Central and provincial legislatures have concurrent legislative powers.

Under section 107 of the Government of India Act, this particular provincial legislation would not prevail in the Province against the existing law unless the Governor had taken action to reserve it for the consideration of the Governor-General. It is only by thus obtaining the assent of the Governor-General that the legislation of the Madras Legislature could be made effective.

The question, therefore, mainly at issue is, which of two sets of valid law shall, in respect of some of the provisions of the Debt Relief Bill, prevail. Reservation has thus been an essential constitutional requirement on which this legislation depends." The Viceroy gave his assent to the Bill.

This Act has since been amended by subsequent Acts of the Madras Legislature, namely, **Acts XIII of 1938; XV of 1943; XXIII of 1948; V of 1949; XXIV of1950; and again by Act XXVIII of 1956.**

Act XV of 1943 introduced two new sections 19-A, and 25-A, providing for applications to determine the amount due from an agricultural debtor and for appeals from certain orders.

Act XXIII of 1948 introduced some substantial amendments; the most important of which is one relating to the redemption of usufructuary mortgages.

Act XXIII of 1948;-Statement of Objects and Reasons.—The Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938) was enacted in order to give relief to indebted agriculturists and made suitable provision for scaling down their existing debts and reducing the rate of interest on their future debts. Certain practical difficulties were felt in the working of the Act and some defects in its provisions were also noticed. An amendment of the Act was found necessary for the purpose of removing these difficulties and defects. The most urgent of these were embodied in Madras Act XV of 1943 and passed into law during the section 93 situation. The rest were postponed until the termination of the war. Several representations have also since been received by Government, pointing out that in certain cases the judicial decisions given were not in accordance with the intention underlying the Act and that amendment of the Act was necessary and urgent. These representations and the amendments to the Act which were postponed when Madras Act XV of 1943 was passed, have been carefully examined by Government and the decisions arrived at by them have been incorporated in the Bill.

Mr. Madhava Menon, in presenting the Report of the Joint Select Committee on the Agriculturists Relief Amendment Bill, said:—The Select Committee had made certain changes which are intended to extend relief to a larger number of debtors by liberalising the difinition of "agriculturist." Usufructuary mortgages where rates of interest had not been fixed were outside the purview of the original enactment. The Government in order to bring in such cases also for relief had proposed in the Bill that where for 25 years the mortgagee had been in possession the mortgage should be deemed to have been discharged. The Select Committee had increased this this period to 30 years and had also provided certain safeguards for *bona fide* alienees. South Kanara and parts of Malabar district had been excluded from the operation of this measure. This exclusion was justified by the peculiar nature of the "kanam tenure" of the area concerned and in view of certain requirements of the local law of inheritance. On the whole, he said, this exclusion was favourable to the tenants and not to the landlords.

The Minister urged the House to pass the measure early as already creditors had started action anticipating the legislation and there was a plethora of execution petitions before courts. The

Minister desired to clear another misconception. Members who spoke on the clause relating to usufructuary mortgages spoke as if this class of debts had been brought in for the first time in this amending Bill. It was not the case and under the existing Act also usufructuary mortgage-debts had been scaled down. The only exception provided in that Act was under section 10 (2) by which usufructuary mortgages in respect of which no rate of interest had been prescribed were excluded from the scope of the Act. The reason for the exclusion was that it was impossible to assess the income such mortgagees would have derived by the use of the properties mortgaged. Even this exclusion had been objected to and it was pointed out that in the course of the last few years even ten times the amount advanced would have been recovered. In cases where mortgagees had leased back properties and fixed a rent, the High Court had held that those cases would come under the Transfer of Property Act and not the Agriculturists Relief Act. The amendments now suggested would cover such cases, and a major portion of the amendments now proposed were those suggested by Courts including the High Court.

Justifying the exclusion of South Kanara and North Malabar from the scope of this Bill, the Minister said that this had been done because the system of mortgage there virtually amounted to lease and the people who would be benefited by the Bill would be landlords and not agriculturists. The Select Committee found that more harm than good would be done by the inclusion of those two areas in this Bill. He would not deny that a few cases of hardship might occur. This was the case with all legislations and the only consideration they should have was the rarest good to the greatest number. The Minister also did not agree with the view that thousands of cases would be re-opened by the passing of this Bill. Most of the cases would have been decided and if there were a few cases still pending, it only meant that the parties were so poor that they could not discharge even the scaled down debts. He would also point out that in the Bill, the widow's share had been raised from Rs. 3,000 to Rs. 6,000.

Act V of 1949 introduced a new section, section 17-A, providing for the scaling down of interest on arrears of rent in suits and proceedings in civil and revenue Courts, and also provided for retrospective operation of the amendment made by that Amending Act.

Act XXIV of 1950 amended Explanation III to section 8 of the Act, and added a new Explanation IV to that section. It also amended section 9, Proviso, and added another proviso to that section dealing with the debts which have been split up. It substituted a new section 9-A in the place of the existing section 9-A, which is a special provision in respect of usufructuary mortgages. The new section 9-A is far more comprehensive than the original section 9-A, which

itself was inserted by the Amending Act XXIII of 1948. This Amending Act further amended sections 10, 24 and 25-A and inserted a new section, section 23-B providing for modifications in the application of section 23-A to certain cases. Like the previous Act, this last Amending Act too provided for retrospective effect being given to the amendments made by it.

Act XXVIII of 1956 has amended proviso A to section 3 of the Act by deleting the words "or foreign Government" at the end of that proviso.

The rules relating to application to civil Courts for scaling down non-decreed debts, framed under section 28 of the Act were amended by adding a new rule, Rule 11, by G. O. Ms. No. 4190, Development, dated 20/9/1951.

THE MADRAS AGRICULTURISTS RELIEF ACT (IV OF 1938).

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The Madras Agriculturists Relief Act IV of 1938

An Act to provide for the relief of indebted agriculturists in the Province of Madras.

[Amended by Madras Acts XIII of 1938, XV of 1943, XXIII of 1948, V of 1949 and XXIV of 1950].

WHEREAS it is expedient to provide for the relief of indebted agriculturists in the province of Madras ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE MADRAS AGRICULTURISTS RELIEF ACT, 1938.

Notes under Section 1.

SECTION. 1.—CONSTRUCTION OF THE ACT.—Where the provisions of the Act are clear and free from any doubt there is no necessity for interpretation. Where there is any possibility of doubt as to the intention of legislature, the question would arise, as to whether a strict or liberal interpretation has to be adopted. Viewed as a piece of beneficial legislation to help the basic industry of the country, the Act has to receive the most liberal construction. *See* A. I. R. 1941 Mad. 158. But, there is another point of view that may be taken of this Act. It is a measure that seriously interferes with the contractual obligations of the parties. It affects the free flow of economic forces of supply and demand, especially in respect of monetary transactions. It curtails credit and interferes with banking facilities of the people. It is clearly expropriatory in character. Viewed from this standpoint, it should receive a strict, rather than a liberal, construction. *See* A. I. R. 1940 M. 910; 1941 Mad. 321; 1941 Mad. 158; 1941 Mad. 118. In this connection it may also be noted that the relief granted by this enactment is proposed to be given only once. (*Vide* Proceedings in Council), *i.e.*, it is intended to be an extreme measure, from which money-lenders in other Provinces may take a lesson of restraint in dealing with the agricultural popu-

lation. Viewed from this point also, the Act should receive a strict construction.

Several questions on the construction of the Act, on which much could be said on either side "are rendered possible by the language of the various provisions of the Act. The Act is one of the most ill-drafted enactments now existing on the statute-book. Every section bristles with difficulties, and it is no wonder that the Act has become a fruitful source of litigation." 1940 Mad. 485 (488).

The Madras Agriculturists Relief Act is designedly expropriatory in its effect, and the scope of its provisions ought not to be extended under the guise of what is sometimes called a benevolent construction: A. I. R. 1941 Mad. 321: A. I. R. 1940 Mad. 910.

His Lordship Patanjali Sastri, J., said:— "There is no apparent reason to suppose that the Legislature intended to introduce into the Act such a starting departure from the basic principle of all judicial proceedings, namely, that all available pleas in answer to a claim should be made the subject of enquiry before the Court passes the decree. It is one thing to provide relief to agriculturists by way of scaling down their debts even when such debts had already ripened into decrees before such relief was thought of, but it is a different thing to declare that even if they failed to claim, when they could have claimed, such relief before a decree was passed, they should nevertheless be entitled to claim it at any time afterwards. It may be laudable to rehabilitate agriculturists by a compulsory scaling down of their debts, but it could be no part of this object to condone, and thereby encourage, their laches in the conduct of legal proceedings. On the other hand, having regard to the expropriatory nature of the provisions, Courts should watch with a jealous eye attempts to have the scope of the Act extended, under colour of interpretation, beyond what its terms expressly warrant." A. I. R. 1940 Mad. 910. [(1940) 1 M. L. J. 600: 1940 M. W. N. 338 is not good law.)] The procedure provided in a statute for conforcement of the substantive rights conferred thereby should be construed as far as possible, so as to give effect to and not to nullify those rights. A. I. R. 1941 Mad. 158. "The Act is an expropriatory measure and if there is any doubt as to the meaning of its terms that doubt should be resolved in favour of the person expropriated and not of the person who claims the right to expropriate." A. I. R. 1941 Mad. 118; 1941 Mad. 158. Referring to the anomalies which the wording of some of the sections in the Act [section 4 (h)] lead to his Lordship Patanjali Sastri said:—"This result is no doubt regrettable and was perhaps not intended; but it is unavoidable on the present wording of the provision. That, however, is no reason for adopting the petitioner's construction which would render the exemption (granted to

woman) more illusory, and the anamolies involved in its application more glaring—especially when there is nothing in the language employed to support such construction." *See* (1940) 1 M. L. J. 534 at pp. 536-537.

Amending Act—SCOPE AND CONSTRUCTION.—The passing of an amending Act, though it changes the law with retrospective effect, is not a sufficient ground for re-opening matters which had already been decided on the basis of the law as it stood before the amendment. (1944) 1 M. L. J. 15 : 57 I. C. 20: (1944) M. W. N. 56 : 1944 Mad. 238.

Scope of Act—If ultra vires—DECREE ON PROMISSORY NOTE PASSED BEFORE ACT—SCALING DOWN—Per *Gwyer, C. J. and Varadachariar, J.*—It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also on a subject in another list and different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule has been evolved whereby the impugned statute is examined to ascertain its "pith and substance" or its "true nature and character," for the purpose of determining whether it is legislation with respect to matter in this list or in that. It is clear that the pith and substance of Madras Act IV of 1938, whatever it may be, cannot at any rate be said to be legislation with respect to negotiable instruments or promissory notes; it is immaterial that many or most of the debts with which it deals are in practice evidenced by or based upon such instruments. That is an accidental circumstance which cannot affect the question. The validity or invalidity of the Act cannot vary with money-lenders' practice. The Act cannot therefore be challenged as invading the forbidden field of List I referred to in section 100 (1) of the Government of India Act, and is therefore *intra vires*. Further where the liability on which the Act operates is a liability under a decree of Court passed before the Act in a suit on a promissory note, it ceases to be a debt evidenced by or based on a promissory note, as that is merged in the decree and has become a judgment debt. The judgment-debt being already in existence when the Act was passed, the Act neither affects nor purports to affect any liability on a promissory note. The provisions of the Act in their application to a decree obtained on the promissory note are within the competence of the Madras Legislature to enact. It cannot be broadly stated that the Act does not really affect the principles embodied in the Negotiable Instruments Act. It is doubtful whether any Provincial Act could, in the form of a Debtors' Relief Act fundamentally affect the principle of negotiability, or the rights of a *bona fide* transferee for value. (1941)

1 M. L. J. (Supp.) 1; 1941 F. C. 47. *See also* (1946) 2 M. L. J. 6 (P. C.); 1943 Mad. 292: I. L. R. (1943) Mad. 717: (1943) 1 M. L. J. 104: 56 L. W. 141; 1942 Mad. 169: (1941) 2 M. L. J. 808: 54 L. W. 577.

Sulaiman, J.—There can be no doubt that the doctrine of pith and substance is of general application. The substance of the impugned Act is to give relief to agriculturists in respect of interest accuring upon the debts due from them and the scheme of the Act is without doubt to benefit agriculturists as a class and relieve them from the onerous burden of high interest. Taking all the provisions together and considering the Act as a whole, it cannot be doubted that it is one with respect to matters in Lists II and III and it is most difficult to place it outside these two Lists. But List I, entry No. 28, specially and expressly assigns cheques, bills of exchange, promissory notes and other instruments to the Federal Legislature and it is impossible to deny that the Act encroaches upon the field covered by such instruments. A legislation which is with respect to decrees passed on promissory note is necessarily also with respect to promissory notes. The effect of sections 8 and 19 of Madras Act IV of 1938 is to compel Courts to re-open decrees passed on the basis of promissory notes before the Act came into force, and recalculate the amounts due on them disallowing all interest outstanding on 1—10—1937, and even the principal if double the amount has already been paid by way of interest. The Act thus being repugnant to an existing Indian law relating to promissory-notes, which is really a Federal subject, is void to that extent. There is, however, nothing in the Act which really conflicts with any provision of Hindu Law and any repugnancy to the Contract Act is cured by the assent of the Governor-General. 1941 F. C. 47: (1941) 1 M. L. J. (Supp). 1.

Varadachariar, J.—As there is no provision in the Act dealing *in terms* with negotiable instruments, any objection based on the wide scope of the Act may be obviated by so interpreting the *general* terms used in the Act as to limit them to cases with which alone the Legislature was competent to deal. 45 C. W. N. (F. R.) 1; 73 C. L. J. 1: 3 F. L. J. 157: 1940 F. C. R. 188: A. I. R. 1941 F. C. 47: (1941) 1 M. L. J. (Supp.) 1.

To say, that the three lists of the Seventh Schedule of the Constitution Act have a definite order of priority attributed to them so that anything contained in List I is reserved solely for the Federal Legislature and that similarly any item in the concurrent list if dealt with by the Federal Legislature is outside the power of the Provinces and it is only the matters specifically mentioned in List II over which the Province has complete jurisdiction, is to simplify unduly the task of distinguishing between the powers of divided jurisdictions. It is not possible to make so clean a cut

between the powers of the various Legislatures. They are bound to overlap from time to time. The existence of the concurrent list has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of the subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdiction. (1947) 2 M. L. J. (P. C.) 6.

Subjects must still overlap and where they do the question must be asked what is "*in pith and substance*" is the effect of an enactment of which complaint is made and in what list is its true nature and character to be found. *(Ibid.)*

Then, the extent of the invasion by the Provinces into subjects enumerated in the Federal List has to be considered, not because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the "pith and substance" of the impugned Act. Its provisions may advance so far into Federal Territory as to show that its true nature is not concerned with Provincial matters; but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the "pith and substance" of the impugned Act is not a Provincial subject but a Federal one? Once that question is determined, the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content.

This places the precedence accorded to the three lists in its proper perspective. Further, in each case one has to consider what the substance of an Act is, and, whatever is ancillary effect, attribute it to the appropriate list according to its true character.

To take a promissory notes as a security for a loan is the common practice of money-lenders and transactions of loans so secured are in pith and substance money-lending transactions; the substance is money-lending and the promissory note is but the instrument for securing the loan.

A Provincial Legislature can validly enact a measure which deals in "pith and substance" with money-lending. Even if it is contended that the Act trenches upon the Federal List by making regulations for banking or promissory notices, it would be still an answer that neither of those matters is its substance. (1947) 2 N. L. J. 6 (P. C.) (Case under Bengal Money-Lenders Act.)

Though in one aspect and for one purpose a subject may be within the powers of the Federal Parliament, in another aspect and for another purpose it may fall within the powers of a provincial Legislature. The Madras Agriculturists Relief Act is one which

relates to "*agriculture*" a subject reserved for the Provincial Legislature. The Act relates to money-lending to agriculturists and "*money-lending*" also is a subject reserved for Provincial Legislature. The only effect of the Act, so far as negotiable instruments are concerned is to reduce liability where the maker or endorser is an agriculturist. The act being in substance within the powers of the Madras Legislature, the fact that in particular cases it may operate to reduce liability on contracts evidenced by negotiable instruments cannot affect its validity. So too its affecting discretion given to Courts by the Usurious Loans Act cannot affect its validity. The Act is *intra vires* the Provincial Legislature, and not *ultra vires* on the ground that its provisions are repugnant to the provisions of the Negotiable Instruments Act, the Usurious Loans Act and the Hindu Law as to debts. I.L.R. (1939) Mad. 151 : 180 I.C. 994 : 49 L.W. 257; A.I.R. 1939 Mad. 361 : (1939) 1 M.L.J. 272 (F.B.).

The provisions of the Act are not invalid even though they may affect the rights of parties under the Negotiable Instruments Act. 4 F.L.J. (H.C.) 398 : 54 L.W. 577 : A.I.R. 1942 Mad. 169 : (1941) 2 M.L.J. 808.

Act not invalid or inoperative to affect decree or order of Privy Council—Decree of Privy Council can also be scaled down under the Act—Competency of Provincial Legislature. *See* (1941) 2 M.L.J. 125 : A.I.R. 1941 Mad. 817 : I.L.R. (1942) Mad. 60 : 54 L.W. 107.

CONSTITUTIONAL VALIDITY OF ACT.—Act not *ultra vires* as being repugnant to Arts. 14 and 19 (1) (f) of the Constitution of India.

The provision of the Act are not repugnant to any of the provisions of the Constitution of India and are certainly *intra vires* thereof. The principle of equality before the law does not come into play in any controversy as to the legality of a law enacted by the State. "Equality before the law" in Art. 14 of the Constitution only means that the laws of the land shall be enforced against all persons equally without any distinction being made on any ground whatsoever. The guarantee was intended to secure equality of protection not only for all, but also against all similarly situated.

The right of equality before the law is not offended by any provision of the Act in its sphere of enforcement. It is enforceable against all persons coming within the ambit of the Act, without any distinction being made on any ground whatsoever. Hence the Act does not offend against the principle of "equality before the law." Nor does the Act offend against the concept of equal protection, by reason of the Act including non-agriculturists in the definition of 'agriculturist' and by reason of its excluding agriculturists under the various exceptions contained in section 4 of the Act. The exceptions are based upon reasonable classification and have not singled out any

person or class of persons for discriminating and for hostile legislation. The burden of proving that the classification rests upon arbitrary and not reasonable basis is on the person impeaching the validity. The State shall be competent to impose restrictions under clauses (5) and (6) of Art. 19 of the Constitution not only on grounds of public order but also on grounds of social and economic policy or on the ground of the "common good", *e.g.*, for securing the objects referred to in clauses (b) and (c) of Art. 39 of the Constitution.

What Act IV of 1938 has done is no more than to redress an admittedly serious state of affairs, namely, imminent ruination of agriculturists by prices falling down and interest mounting up. The reliefs provided by the Act cannot be regarded as either unnecessary, arbitrary or of an excessive nature or unwarranted by public interest. The Act does not place arbitrary restrictions on the acquisition, holding and disposal of property. 1951 M.W.N. 779 : 64 L.W. 812 : (1951) 2 M.L.J. 566.

APPLICABILITY IN ORISSA PROVINCE.—A Court in Orissa is not bound to give effect to the provisions of Madras Act IV of 1938, on the ground that the defendant is an agriculturist who would be entitled to its benefits, if sued in a Court in Madras. The Act can have no application outside the boundaries of Madras Province and it cannot be said that it is a personal law which a Madrasi carries with him wherever he goes. 10 Cut. L.T. 40. *See also* 1944 F.L.J. 109 : A.I.R. 1944 F.C. 31 : (1944) 1 M.L.J. 356 (F.C.); (1943) 1 M.L.J. 457; 23 Pat. 446 : 1944 Pat. 309; 50 L.W. 851 : (1939) 2 M.L.J. 853 : 1940 Mad. 131; 1941 F.C. 47; 53 L.W. 109.

APPLICABILITY—MORTGAGE OF LANDS IN MADRAS PROVINCE—DEBTOR AND CREDITOR PERMANENT RESIDENTS OF NATIVE STATE—DEBT INCURRED IN NATIVE STATE—APPLICATION FOR SCALING DOWN. —Pending an appeal from a decree in a suit on a mortgage, an application was filed by the debtor in the appellate Court. The appeal was dismissed and the appellate Court directed the application for scaling down to be sent to the trial Court for disposal, holding that the proper Court to be moved for scaling down was the trial Court. It was contended in the trial Court in bar of the scaling down that (1) the mortgage was executed to secure an account debt incurred outside British India, (2) that both debtor and creditor permanently resided outside British India and that therefore Madras Act IV of 1938 did not apply and (3) that since the appellate decree was passed after the Act came into force the trial Court had no power to scale down the decree, there being no reservation in the appellate judgment providing that the appellate Court's decree would be subject to the result of the application for scaling down. The trial Court upheld the contentions and dismissed the application. *Held*, in revision, (1) that the residence of the debtor outside would not affect his status as an agriculturist if he

had a saleable interest in agricultural lands in the province of Madras; (2) that since the mortgage was executed within the province of Madras binding a security which was land situate in the Province, the contract was governed by the law of the province; and (3) that the application should have been treated as a matter arising in the appeal for which provision ought to have been made in the appellate judgment, and the difficulty caused by the absence of a reservation in the appellate judgment could be met by a review petition to the lower appellate Court to make the necessary provision for the decree being made subject to the result of the application for scaling down. 1943 M.W.N. 94: 56 L.W. 105: A.I.R. 1943 Mad. 330: (1943) 1 M.L.J. 32.

APPLICABILITY OF ACT:—*Mortgage decree—All mortgagors agriculturists—Decree scaled down as against those who applied but not as against defendant who did not apply—Decree one and indivisible—Payments towards the decree by judgment-debtors against whom decree was scaled down—Difference between scaled down amount and payments made deposited by the defendant who had not applied for scaling down—Application by him for entering up satisfaction and release of hypotheca—If can be ordered.*

In a suit by the mortgagee, the mortgage was held binding on all the defendants and while scaling down was not ordered with reference to the 1st defendant (though he was an agriculturist) as he made no application for scaling down of the decree when the Act came into force, scaling down was ordered so far as the other defendants were concerned, as they had made the necessary applications. In the decree passed there was no specification of the different interests in the hypotheca of the several defendants. Thereafter applications were made by the first defendant for amendment of the decree under S. 19 of the Madras Agriculturists Relief Act. It was dismissed as also his application for permitting him to file an application to have the decree scaled down as against him also. A revised final decree was passed as no payment under the preliminary decree was made, 'that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold.' The other defendants made certain payments towards the decree, when it was put into execution. Then the first defendant deposited an amount equal to the difference between the amount of the scaled down decree against the other defendants and the payments made by them and prayed that the deposit should be accepted and full satisfaction entered up and the entire hypotheca released from the mortgage.

Held (i) As the defendants other than the first defendant could, by payment of the scaled down amount, get the property freed from the burden of the mortgage on the principle of unity

and indivisibility of the mortgage and by the terms of the decree, and as the decree-holder could sell the mortgage security only for the reduced amount, there was no reason for holding that further execution of the mortgage decree could not be resisted by the first defendant by payment of what still remained due out of the amount to which the decree was scaled down.

(ii) As the decree was scaled down at the instance of all the mortgagors but one and in view of the restrictions imposed on the mortgagee's rights permitting him to proceed against the mortgage security only for the scaled down amount, there was no logic in refusing to allow the remaining judgment-debtor alone to deposit the balance due and thereby resist the execution of the mortgage decree for anything more than the scaled down amount.

(iii) The first defendant was also not precluded from claiming the relief by reason of anything which happened in the course of the execution proceedings. 1948 M. W. N. 393: 1949 Mad. 238: (1948) 2 M. L. J. 28.

JURISDICTION OF DEBT CONCILIATION BOARD.—The Madras Debt Conciliation Board is merely concerned with the settlement of the debts in accordance with the Madras Debt Conciliation Act. Scaling down of debts under Madras Act IV of 1938 is for the Courts and not for a Debt Conciliation Board. The Board has no power to scale down debts. (1940) 1 M. L. J. (Notes of Cases) 38: C. M. P. No. 539 of 1939.

APPLICABILITY OF ACT—DEBT CEASING TO BE PAYABLE BEFORE ACT.—No debts which have ceased to be payable when the Act came into force can in any way be affected by any provision of the Act. Where full satisfaction of a decree had been entered before the Act came into force, it cannot be made the subject of an application under Madras Act IV of 1938. 1942 M. W. N. 137: 55 I. W. 170 (2): A. I. R. 1942 Mad. 323: (1942) 1 M. L. J. 341.

POWER TO MODIFY DECREE AFTER APPEAL HAD BEEN DISPOSED OF—RESTITUTION—PRINCIPLE UNDERLYING.—A mortgagee filed a suit on a mortgage and the first appellate Court decreed the suit. The amount due was reduced by the High Court in second appeal. Pending the second appeal the decree-holder took out execution and certain properties were brought to sale and sold to the decree-holder and taken delivery of by him. On the date of the hearing of the second appeal an application was filed by the person whose properties were brought to sale in execution for scaling down the decree in accordance with the provisions of Act IV of 1938. That application when it came on for hearing was remanded to the trial Court for disposal and the trial Court scaled down the debt. On an application for restitution being filed by the person whose proper-

ties were sold in execution of the mortgage decree. *Held, (i)* the decree in second appeal having become final any finding by the trial Court regarding the relief which might have been obtained had the proper procedure been taken will not affect the decree. [(1941) 2 M. L. J. 855: I. L. R. (1942) Mad. 346 (F. B.), followed.] *(ii)* That has the true criterion for restitution is to consider what would be the position had the appellate Court's decree been passed by the Court of first instance and as the sales which had been held were sales which would have been held even if the Court of first instance had decreed the amount eventually found to be due in appeal, there was no legal or equitable reason for setting aside the sales or ordering restitution. (42 M. L. J. 315, referred to). 59 L. W. 14: 1946 M. W. N. 25: A. S. R. 1946 Mad. 258: (1946) 1 M. L. J. 5.

RES JUDICATA.—When a previous application for scaling down had been dismissed for default and a restoration petition had also been dimissed a fresh application for the same relief is barred by the principle of S. 11 of the C. P. Code. (C. R. P. No. 1166 of 1939); (1940) 2 M. L. J. (Short Notes) 37; (1940) 2 M. L. J. 499; (1940) 2 M. L. J. 416; 52 L. W. 385.

RULES.—Amendment of rules made under the Act have no retrospective effect. (1940) 1 M. L. J. 317: 1940 M. 417.

WHO CAN CLAIM RELIEF UNDER THE ACT.—The liability of a purchaser of the equity of redemption to pay the mortgage-debt arises on the date of his purchase. And if he as the purchaser of the mortgagor's interest in the year of purchase would be entitled to the relief under the Act, then even if he does not own any other properties, by reason of this very purchase he becomes an agriculturist by the time the suit for redemption is filed, provided nothing is proved to deny him the benefit of the Act. A. I. R. 1953 S. C. 370: 1953 S. C. J. 539: (1953) 2 M. L. J. 252, foll.; A. I. R. 1944 Mad. 128: (1943) 2 M. L. J. 531, held overruled. (1956) 1 M.L.J. 213: 69 M.L.W. 98 (D.B.)

NON-AGRICULTURIST PURCHASER OF HYPOTHECA—IF ENTITLED TO BENEFITS OF ACT.—A non-agriculturist purchaser of the hypotheca is not entitled to relief in respect of the mortgage-debt under Madras Act IV of 1938, when the agriculturist mortgagor is not at the time when the matter came before the Court a person liable to discharge the debt. Such a purchaser is not entitled to have the debt scaled down merely because the mortgagor was at the commencement of the Act an agriculturist entitled to the benefits of the Act, which benefits he has not claimed. 60 L. W. 583: 1947 M. W. N. 542: (1947) 2 M. L. J. 273.

COMPROMISE DECREE—ANTECEDENT PROMISSORY NOTE DEBT—PORTION OF DECREE REGARDING COSTS SCALING DOWN.—A compro-

mise decree provided for the payment of the full amount of the suit claim with interest and costs, the agreement only relating to the instalments in which it was to be paid and the security to be given. The decree was based on a promissory note of 1930 which included a certain sum paid as cash and a certain amount due on an earlier promissory note of the year 1928. It appeared that the latter note was the result of a partition in the debtors' family whereby the first defendant became liable for half the debts of the family. *Held*, that the integrity of the anterior debts was broken by the partition and that the debts incurred by the first defendant after partition constituted a fresh obligation. The debt had consequently to be scaled down to the principal of the note of the year 1928 together with the subsequent cash advance under the note of 1930. [(1941) 1 M. L. J. 39, relied on.] (1944) 1 M. L. J. 422. In scaling down the compromise decree it was necessary to differentiate between the decree representing costs and the amount of the decree representing the debt with interest thereon. It cannot be contended in such a case that the liability for costs had been extinguished. [(1941) 2 M. L. J. 658, ref.] 57 L. W. 357: A. I. R. 1944 Mad. 410 (1): (1941) 1 M. L. J. 422.

SURETY FOR DEBTOR—AMOUNT SCALED DOWN AS AGAINST DEBTOR—SURETY NOT AGRICULTURIST—RIGHTS.—S. 128 of the Contract Act lays down only the general principle governing the interpretation of contracts of guarantee and does not purport to govern the relations between parties as a result of subsequent events after the contract has been entered into. While the release of the principal debtor by the act or omission of the creditor has the legal consequence of discharging the surety under S. 134 of the Contract Act, no such result can follow when the principal debtor is discharged by operation of a law or statute subsequently enacted; in such a case the surety cannot claim discharge *pro tanto* with the principal debtor. Hence a non-agriculturist surety is liable for the full amount of the debt even though the principal debtor who is an agriculturist would be liable only for the amount as scaled down in accordance with Madras Act IV of 1938. 54 L. W. 553: 1941 M. W. N. 992: A. I. R. 1942 Mad. 145: (1941) 2 M. L. J. 751.

This case is no longer law, as it has been over-ruled by the decision in the full Bench case of *Subramania Chettiar* v. *Narayanaswami Gounder*, reported in I. L. R. (1951) Mad. 305: 1950 M. W. N. 851: 63 L. W. 1130: (1951) 2 M. L. J. 674 (F. B.); which holds that a non-agriculturist surety will not be liable for the entire debt when the principal debt has been scaled down under the Act, but will be liable only to the extent of the scaled down debt due by the principal debtor. Their Lordships arrived at this decision after a discussion of the various authorities on the point.

LESSEE OF MORTGAGOR.—In a suit by a usufructuary mortgagee for possession, a person claiming to be a lessee from the mortgagor under a lease obtained subsequently to the plaintiff's mortgage is entitled to raise the question as to the true amount payable to the plaintiff, as he is a person entitled to redeem the mortgage. His application for scaling down cannot be rejected on the ground that the suit is not one to enforce the debt. (1940) 2 M. L. J. 290: 1941 M. 21.

MORTGAGE DECREE DEBT DUE BY HINDU JOINT FAMILY—APPLICATION FOR SCALING DOWN BY ONE MEMBER.—Where one member of a joint Hindu family sought to have a debt due by the joint family scaled down, *held*, any member of a joint family can apply to have the decree debt of the family scaled down and it is the debt of the family as a whole that is to be scaled down, if the family is proved to be an agriculturist within the meaning of Act IV of 1938. The benefit under the Act is not to be restricted to the member of the family who makes the application. The entire scheme of the act has reference to the character of the debtor and not to the character of the property composed in a security for the debt. So where there is a mortgage comprising of agricultural land and other properties, the scaling down cannot be restricted only to agricultural land comprised in the mortgage. 51 L.W. 269: 1940 M.W.N. 283: A.I.R. 1940 Mad. 435: (1940) 1 M.L.J. 300. *See also* notes under S. 3, *infra*.

APPROPRIATION—WHAT CONSTITUTES — *Appropriation of Payment—Rules as to—Payment in excess of interest due on date of payment—How to be appropriated.*

To constitute appropriation within the meaning of the Madras Agriculturists Relief Act there must be an overt Act from which appropriation can be reasonably deduced or inferred. The mere payment of money towards a debt and the passing of a receipt acknowledging such a payment will take the matter no further.

A calculation of the amount of principal and interest due on the date on which an arrangement is made for the payment of the debt and a statement in deed of arrangement that a portion out of the amount to be raised in the manner indicated therein should be credited towards the debt is not sufficient to constitute appropriation.

Where sales are executed in discharge of mortgages, the notional payment made under those documents can fully be regarded as being or amounting to open payments. In cases of payments in excess of interest due on this date of such payments. There is an appropriation only as regards that excess and the appropriation at all of the balance which would be an open payment liable to be appropriated according to law. *See* 1949 M.W.N. 499: 62 L.W. 488: (1949) 2, M.L.J. 305.

RULE OF APPROPRIATION FIRST TOWARDS INTEREST AND THEN PRINCIPAL—APPLICABILITY.—The principle of law which has been observed and recognised is that when a payment is made in respect of principal and interest, there is an inference that the payment is ordinarily first allocated towards interest and thereafter any balance in respect of principal. This principal regarding the utilization of a payment which is made in respect of principal and interest has in no way been interfered with by any provision in the Madras Agriculturists Relief Act. In part payment of a money decree a payment was made in September, 1937. It was not a certified payment nor was any part satisfaction recorded. In the receipt given by the decree-holder he acknowledged the payment as part payment in respect of the decree debt and agreed to exonerate the 3rd defendant alone from his liability in respect of the said decree. On the question whether the payment should be considered as an open payment which being unappropriated by the creditor before 1st October, 1937, shall be credited towards the principal some owing and not to interest. *Held*, that it must be inferred that the creditor had appropriated it towards interest. (1948) 1 M.L.J. 441.

N. B.—This is not now good law in view of the new Explanation I to S. 8 added by the Amending Act of 1948. *See* notes under S. 8, *infra.*

THEORY OF APPROPRIATION—AMOUNT PAID TOWARDS DECREE IN EXECUTION—Reversal of decree—Fresh decree directed to be passed—Right of decree-holder to appropriate—Original decree superseded by reason of later decree. 1941 M.W.N. 542: 56 L.W. 578: 1943 Mad. 671: (1943) 2 M.L.J. 166.

APPLICATION FOR DECLARATION OF AMOUNT OF DEBT—SCOPE OF INQUIRY.—Subtituted by A.L.O., 1950. It is true that the Court acting under the rules framed under S. 28 of the Act cannot be required to go into the question of the amount of the debt where the applicant who seeks the aid of the Court denies the existence of any enforceable debt. But the position is different where the applicant admits the existence of the debt but pleads that there is a partial failure of consideration and that payments which ought to have been appropriated to the debt in question have wrongly been appropriated some other debt. The Court cannot in such a case refuse to adjudicate on such contentions and to give a positive determination of the amount due after applying the provisions of the Act to the debt having regard to the findings on pleas of this nature. However the Amending Act (XV of 1943) has made the

Extent.

2. It extents to the whole of the *[State] of Madras.

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position clear and the effect of S. 2 of the Amending Act is that the creditor is not allowed to file any suit after the amount due under the debt has been declared. Therefore any declaration made under the rules of the Act as amended must deal comprehensively with all matters necessary to be decided before a decree for the debt can be passed in as much as the new Act contemplates the decree being passed on payment of Court-fee in terms of the declaration given as a result of the application. A complete adjudication should therefore be made of the amount of the debt due by applying the provisions of the Act to the actual figures reached after taking into account any plea of failure of consideration or misapplication of payments. 1944 M.W.N. 259: 57 L.W. 283: A.I.R. 1944 Mad. 369 (1): (1944) 1 M.L.J. 299.

Notes under Section 2.

LEG. REF.

*Substituted by A. L. O. 1950.

SEC. 2: EXTENT OF THE OPERATION OF THE ACT.—The Act has been declared to extend to the whole of the Province of Madras.

Difficult questions may arise as to interprovincial transactions. A transaction with an agriculturist may be entered into in this province, in respect of which, a part of the cause of action may arise in some District in the Bombay Presidency, and a suit is instituted in that province. What is the law to be applied? Conversely, an agriculturist in Bombay may be sued in Madras on a contract of loan entered into with a creditor in Madras. Would the defendant get the benefit of the Act? Such questions are not altogether free from difficulty. Whether the law of the province in which the person resides and carries on business prevails, or the law of the place where the court in which the suit is laid prevails, is a matter on which this Act afford no guidance. It would appear that each court is bound to apply its own laws irrespective of the parties that are brought before them. A citizen of Bombay sued in Madras would get the benefit of this Act, and conversely, it may be that an agriculturist of this province may not be able to obtain the protection of this Act, when sued in a court situate in another province, where a similar statutory relief is not provided for. *See* 10 Cut. L.T. 40; (1943) 1 M.L.J. 32: 1943 Mad. 330; 50 L.W. 851 :(1939) 2 M.L.J. 853: 1940 M.W.N. 64; A.I.R. 1944 F.C. 31: 1944 F.L.J. 109: (1943) 1 M.L.J. 356 (F.C.); 23 Pat. 446: 1944 Pat. 309; 1943 Mad. 91: (1943) 1 M.L.J. 457: 55 L.W. 648.

Definitions.

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

(i) 'person' means an individual and includes an undivided Hindu family, a marumakkattayam or aliyasantana tarwad or tavazhi, but does not include a body corporate, a charitable or religious institution or an unincorporated company or association;

(ii) 'agriculturist' means a person who

Notes under Section 3.

SEC. 3 (i): "PERSON".—This is a special definition for the purpose of this Act. But for this special definition, the meaning given to the word in the General Clauses Act would prevail. The General Clauses Act defines "persons" as including "a company or association or body of individuals."

"PERSON"—ESTATE OF DECEASED IF "PERSON" ENTITLED TO RELIEF UNDER ACT.—There is no provision in the Act under which an impersonal entity, such as the estate of a deceased person can claim relief. The estate is not a person, and therefore cannot be an "agriculturist", as defined in section 3 of the Act. The question of assessment of the estate is a matter of no relevance for determining the right to relief under the Act. 58 L.W. 565 (1): 1945 M.W.N. 722 (1): A.I.R. 1946 Mad. 58: (1945) 2 M.L.J. 410. "Person" does not include an "Incorporated company". 1942 M. 382.

SEC. 3 (i) & (ii): "PERSON"—JOINT HINDU FAMILY—PARTITION.—Petitioner, the second defendant in the suit, which ended in a decree against him and his uncle became divided from the latter who was the 1st defendant in the suit as a result of a partition which was decreed on 30-3-1936. In ignorance of this division his uncle, the 1st defendant, was assessed to income-tax as manager of a joint family for 1936-1937. The petitioner was refused relief under section 19 of the Act, on the ground that he had been assessed to income-tax. *Held*, (1) that the family could not be deemed to be a person after 30-3-1936 under Madras Act (IV of 1938,) though assessed to income-tax in spite of its disruption; (2) that the petitioner was himself a person who had not in fact been assessed to income-tax and whose income could not be deemed to have been assessed to income-tax in view of section 14 (1) of the Income-tax Act; (3) that the petitioner was not therefore disentitled to the benefits of Act (IV of 1938). 56 L.W. 132 (1): 1943 I.T.R. 181: 1943 M.W.N. 705: A.I.R. 1943 Mad. 469: (1943) 1 M.L.J. 211; 1942 M. 428; *see also* (1940) 1 M.L.J. 300: 1940 M. 435: 51 L.W. 269.

RE-UNITED HINDU FAMILY—IF "UNDIVIDED HINDU FAMILY".—The words "undivided Hindu family" in the definition of "person" in section 3 will cover a re-united Hindu family which therefore will be disqualified from receiving the benefits of the Act where it pays more than Rs. 100 as *kattubadi*. 54 L.W. 223: 1941 M.W.N. 776: A.I.R. 1941 Mad. 846: (1941) 2 M.L.J. 304.

COMPOSITE FAMILY IN NELLORE.—The association known as the composite family, the existence of which by custom has been recognised in the Nellore and adjacent districts, cannot be properly termed an "undivided Hindu family," such as is recognised in the definition of "person" in section 3 (*i*) of Act (IV of 1938). 204 I.C. 629: 1942 M.W.N. 719: 55 L.W. 706: A.I.R. 1943 Mad. 5: (1942) 2 M.L.J. 592.

SEC. 3 (ii): AGRICULTURIST.—FIRM OF MONEY-LENDERS.—A firm of money-lenders cannot be an agriculturist. 1941 M.W.N. 166: 5 L.W. 105: A.I.R. 1941 Mad. 537; *see also* 1942 M. 428: (1942) 1 M.L.J. 559; 1941 M. 672: (1941) 1 M.L.J. 782; (1941) 1 M.L.J. 172. So also a person entitled to collect rents of estate. 1941 M. 244.

"Agriculturist."—The definition of 'agriculturist' does not include within the term, any person who merely helps a land-holder, tenant or sub-tenant in cultivation either as a carpenter, blacksmith, barber or labourer and makes his living by such service.

Nor will the term include any mere agricultural labourer, who is not a 'tenant', although he may depend mainly upon the income from such labour.

Agriculturist.—The fact that a person is held to be an agriculturist for the purpose of relief under the Usurious Loans Act, 1918, does not entitle him to be treated as an agriculturist under the Madras Agriculturists Relief Act (Act IV of 1938).

In order to come within the definition of "agriculturist" under section 3, it is not enough for him to show merely that he has a saleable interest in agricultural land not being situated within a Municipality or Cantonment, but he has further to establish that he does not come under any of the provision to that section. Proviso (C) will apply if the conditions, viz., that there is ownership of property within a Municipality which has an annual rental value of not less than to Rs. 600, and (2) that the property had been assessed to house or property tax for two years immediately preceding 1—10—1937, are present, irrespective of the fact that the property appears in the property registers in the value of some one else. The word "assess" does not require that there should have been also a demand by the Municipality or that the Municipality must have recovered the tax, but only means "to fix the amount of the tax" or "to determine the amount and impose the tax upon an

individual or to estimate officially the value for purposes of taxation." 1954 Mad. 488: 1953 M.W.N. 802: (1954) 1 M.L.J. 170.

"Agriculturist"—Burden of Proof.—Though the burden of proving that he is an agriculturist is on the debtor in the first instance, where he shows that he fell within the general definition of the word he would be entitled to relief unless he is deprived of the privilege by one of the provisos, and the burden would lie upon any one so asserting to prove his case.

It is wrong to say that the assessments under the Acts mentioned in proviso (*C*) to section 3 (2) of the Act should not be treated as cumulative.

Where a person is not the owner of any building, the mere fact that the assessment registers show that it stands in his name is not enough to bring the matter within proviso (*C*). (*Sir John Beaumont.*) VEERAYYA VANDAYAR *v.* SIVAGAMI ACHI. 62 L.W. 819: A.I.R. 1949 P.C. 319: 1949 M.W.N. 721: (1949) 2 M.L.J. 688 (P.C.).

Agricultural labourers.—Amendments to include these persons also within the term 'agriculturist'were proposed and lost.

Replying to this point the Prime Minister said that it was time that he should, on behalf of the Government, say a few words on the point raised as to agricultural labourers who depended mainly on agriculture for their living. The only reason why no provision had been made for the relief of such classes of people from the burden of their debts, was that steps to be taken in connection with such relief were entirely different from the steps that could be taken in respect of the classes contemplated in this measure. It was difficult to bring together under one law the two classes of people. It was not as if the difficulties were not known or were not appreciated. It was not as if those, people were not in need of relief in the opinion of the Government. They were in need of as much relief as the classes covered by the present Bill. Much could be done and much must be done for them. The Prime Minister said that he was in entire agreement with what the hon. the mover of the amendment had stated in regard to the condition of the agricultural labourers, but there were difficulties in bringing such classes under this Bill. It was very difficult, by any amendment to the present Bill, to bring within its purview, the agricultural labourers.

Sub-lesses of land either directly from a lessee or from an intermediate lessee have been included by the Select Committee in the definition of 'agriculturist.'

No upper limit to ryotwari land-holder—Unlike in the case of landholders under the Estates Land Act and of jenmis in

Malabar with refereuce of whom upper monetary limits of rent have been fixed with a view to exclude such from the benefits of rhis Act. there is no upper limit fixed in the case of a ryotwari land-holder. So whatever may be the amount of land revenue payable by a ryotwari landholder even when it is more than Rs. 500 per annum, he will be an 'agriculturist' within the meaning of this Act, and be entitled to its benefits. The only restrictions placed on ryotwari landholders in this Act are occupational and residential restrictions and not quantitative or monetary ones, and this has been so done with a view to avoid complications.

"Saleable interest in.....land"—This would include the interest of a mortgagee. A mortgage is defined to be a transfer of an interest in specific immoveable property (*See* S. 58, T. P. Act). Hence a person who holds a mortgage over an agricultural land would be an agriculturist, although he is only a money-lender, who holds the land as mere security for his money, and has never cultivated his lands and never intends to cultivate the same himself or through labour employed by him. As to what is or is not saleable interest in land, *see* Transfer of Property Act, 1882, S. 6.

"Saleable interest"—Benamidar and true owner.—(*See* 1942 M.W.N. 139: 55 L.W. 127: 1942 Mad. 388: (1942) 1 M.L.J. 289; 53 L.W. 245: (1941) 1 M.L.J. 313: 1941 M.W.N. 303. *See also* rule 7 framed under the Act). Suppose *A* is the owner of land and it stands in the name of *B* in the revenue register; who is deemed to be an agriculturist under this section, the real owner *A*, or the benamidar *B*, or both? Under the general law the benamidar has no title to convey. It is the owner who has the right to convey any title to the property. But an amendment proposed in the assembly to confine the term to "owners of property" was opposed by the Premier on the ground that if evidence was to be allowed as to the ownership of property, it would lead to unnecessary litigations. It would thus appear that in the intention of the Legislature the person whose name appears on the record should be deemed to be the agriculturist whether or not he has any real interest in the property. Reference may also be made to sections 26 and 27 of the Act, which provide for furnishing information to creditors by District Collectors, Revenue Officers, Executive Officers of Municipalities and local Boards as to payment of Income-tax, professional tax or house tax by their debtors. Provision is also made to the effect that such information given in the form of a memorandum or certificate shall be received as evidence of the facts stated therein. But it may be noted that the memorandam or certificate is not made conclusive evidence. It follows, therefore, that other evidence may be let in to show that the person mentioned in these documents as the assessee is not the real assessee but only a benamidar for the real owner. Again,

(*a*) has a saleable interest in any agricultural or horticultural land in the Province of Madras, not being land situated within a municipality or cantonment, which is assessed by the Provincial Government to land revenue (which shall be deemed to include peshkash and quit-rent), or which is held free of tax under a grant made, confirmed or recognized by Government; or

(*b*) holds an interest in such land under a land-holder under the Madras Estates Land Act, 1908, as tenant, ryot or under-tenure holder; or

(*c*) holds an interest in such land, recognized in the Malabar Tenancy Act, 1929; or

(*d*) holds a lease of such land from any person specified in sub-clause (*a*), (*b*) or (*c*) or is a sub-lessee of such land:

Provided that a person shall not be deemed to be an 'agriculturist' if he—

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section 4 enacts that nothing in this Act affects debts and liabilities due to a woman on the 1st October, 1937. Would she get the benefit of this section if she is only a benamidar for another or would she be entitled to the exemption under section 4 if she is the real creditor, but the document stands in the name of a male relative? Such cases are not at all uncommon in this province, and it is difficult to ascertain what exactly was the intention of the Legislature—to give the benefit of the Act to the true owner or only the nominal owner. It would appear that the only right course to follow is to consider the real ownership as the criterion of having a "saleable interest." There is nothing in the Act to exclude evidence of real ownership. (*See* notes under section 4, *infra*.)

S. 3 ii (a): "Saleable interest "—Meaning—" Saleable interest in the definition of "agriculturist" in the Act does not and cannot mean an interest capable of being sold by the perpetration of a fraud. An enforceable contract of sale in respect of property in favour of a third party is a serious defect in the seller's title to the property. A person who has entered into a contract to sell his land to another and delivered possession in pursuance thereof cannot claim to have a "saleable interest," in that land on the ground that no registered deed of conveyance has been executed and that therefore title has not passed and that therefore he could still pass title to a bona fide purchaser without notice. He would therefore be no longer an "agriculturist." 56 L.W. 518: 1943 M.W.N. 603: A.I.R. 1943 Mad. 711: (1943) 2 M.L.J. 285.

"SALEABLE INTEREST"—*Person insolvent on 1-10-1937 and on 27-3-1938*—Subsequent annulment of adjudication—Effect if has saleable interest.

A debtor who was insolvent on 1-10-1937 and on 22-3-1938, but whose adjudication was subsequently annulled, has a saleable interest in the property on the two crucial dates.

I. L. R. (1951) Mad. 555 : 1951 M. W. N. 1 : 64 L. W. 128 : 1951 Mad. 63 : (1950) 1 M. L, J. 35 (F. B.)

"Interest"—MEANING OF:—"Interest" in section 3 (iii-a) of the Act means anything paid, or intended or agreed to be paid, over and above the principal amount borrowed. Produce delivered by the debtor to the creditor admittedly, if of higher value, is certainly a thing paid in excess of what has been borrowed. The excess so paid would be "interest" as defined in the sub-section. The sub-section cannot be construed in the light of Explanation II added to section 8 of the Act by the amending Act of 1948. 64 L. W. 168 : 1951 Mad. 606 : (1951) 1 M.L.J. 21.

Simple mortgagee.—A simple mortgagee of agricultural land has such a saleable interest as to qualify him to the benefit of this Act. (1940) 2 M.L.J. 513 : 1940 M. 941 : 52 L. W. 480 ; (1940) 2 M.L.J. 516 ; also a puisne mortgagee. 1941 M. 113 : 52 L.W. 481 : (1940) 2 M.L.J. 513 ; also the holder of vendor's lien. 1940 M.W.N. 959 : 52 L.W. 436 : (1940) 2 M.L.J 501 ; (1940) 2 M. L. J. (Short Notes) 26 ; 192 I. C. 100 ; I. L. R. (1941) Mad. 53 : 195 I. C. 697 : A.I.R. 1941 Mad. 113. Usufructuary mortgagee of agricultural land. 54 L. W. 184 : 1942 M. 296 : (1941) 2 M.L.J. 298.

The following persons also have saleable interest in land and are agriculturists under the Act. Person who obtains land by gift from she mortgagor. 1940 M. 944 : (1940) 2 M. L. J. 749 ; person beneficially entitled to land. 1935 P. C. 230 ; person entitled to land by reversion or remainder. (*Ibid.*) 1937 Pat. 178 ; 24 M. 449 ; 40 Bom. 313.

"Agricultural or horticultural land".—For the definition of "Agriculture" and "Agricultural income" see also Income-tax Act, XI of 1922, S. 2. Use of land for pasturage is use for agricultural purpose. 2 R. 211 : 1924 R. 337 : 1924 Cal. 668; so also extracting toddy from cocoanut trees, 50 M. 923. Lease of fishery rights and land covered with water is not agricultural purpose, nor the income therefrom agricultural income [see 63 M.L.J. 634 (F. B.)] ; nor the process of letting sea water on land and extracting salt therefrom. 50 M. 204 : 53 M.L.J. 377 (F.B.) ; as to using land for quarrying purposes and getting income therefrom, *see* 25 A. L. J. 816 : 1927 All. 703.

(A) [has in both the financial years][1] ending 31st March, 1938 been assessed to income-tax under the Indian Income-tax Act, 1922, or under the income-tax laws of any Indian State [* * *];[2] or

(B) [1][has in all the four half years immediately preceding] the 1st October, 1937 been [1][assessed to profession-tax on a half-yearly income of more than six hundred rupees] derived from a profession other than agriculture under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in [3][any other state in India or any foreign state in the continent of India] or under the Madras Local Boards Act, 1920, in a panchayat which was a union before the 26th August, 1930; or

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"Horticulture" is defined to mean the "cultivation of garden or orchard; the science and art of growing fruits, vegetables and flowers or ornamental plants." Horticulture is one of the main divisions of agriculture. (*Webster's Dict.*)

Person owning mere house or house site.—House or house site in a village would not come under "agricultural land" unless the site or backyard is used for raising crops, fruits, vegetables or any other kind of agricultural produce.

'Not being situated within a municipality or cantonment':—The reason for the exclusion of these lands is not clear, as there is very little difference in status between the landholders in Municipalities and cantonments and in the villages. An amendment was proposed to delete these words, but was lost.

'Lease'.—The lease may or may not be in writing. An amendment to restrict the clause to 'leases in writing' was proposed and lost. Sub-lessees and persons holding under such sub-lessees would also come under the definition. The words used are "sub-lessees of such land" not "sub-lessees under such lessee."

S. 3 (ii), Proviso A: 'Or Foreign Government.'—These words were not in the Original Bill nor in the Bill as it emerged from the Select Committee. These were added by way of amendment in the Assembly.

LEG. REF.

1. Substituted by Amendment Act XXIII of 1948.
2. Words "or foreign government" omitted by Madras Act XXVIII of 1956.
3. Substituted by A. L. O., 1950.

S. 3 (ii), Proviso B: 'Foreign State in India'.—An amendment to delete the words 'in India' was proposed and lost.

An amendment for the deletion of the proviso (B) to the sub-clause (ii) was proposed but was not carried in the Assembly.

The Prime Minister, in opposing the amendment, said that the deletion of this proviso would completely alter the character of the whole measure. It was possible to extend the relief to a large number of deserving people by amendments, but in order to extend relief to such persons, they should not do anything which would change the entire character of the Bill. The amendment would bring in for relief any man who had a little plot of land and also carried on a trade or paid profession tax. Liabilities arising out of purchases in shops and avocations in town would also be brought within the operation of the measure, which, he reminded the House, was not the object of the Bill.

Profession Tax.—*See* Madras Dist. Mun. Act, 1920, Ss. 93-97; Madras Local Boards Act, 1920, Ss. 93-97; Madras City Mun. Act, Ss. 111-112.

'Order under the Madras Local Boards Act, 1920, etc.'—A distinction is made between Panchayats which were Unions before 26th August, 1930, and other Panchayats, and it is only the former class that is included.

S. 3 (ii) (d), Provisos (A) and (B): Amendments by the Amending Act of 1948 explained.—The Law Member in introducing these new amendments in the Assembly said:—

"S. 3 of the Act.—(1) According to the existing proviso (A) to S. 3 (ii) (d) of the Act, a person shall not be deemed to be an agriculturist if he has in either of the two financial years ending 31st March, 1938, been assessed to income-tax. With reference to the suggestion of the Select Committee, an agriculturist who has been assessed to income-tax in both the financial years should be exempted from the provisions of the Act. The object of the Select Committee was to widen the scope of the Act."

"(2) Under proviso (B) to S. 3 (ii) (d) of the Act, a person who has within the two years immediately preceding 1st October, 1937, been assessed to profession tax on a half-yearly income of more than Rs. 300 (this limit has been raised to Rs. 600) shall not be deemed to be an agriculturist. According to the suggestion of the Select Committee, proviso (B) should apply only to a person who has been assessed to profession tax in all the four half-years immediately preceding 1st October, 1937 if an agriculturist had been assessed to profession tax even for one half year within the two years he was not deemed to be an agriculturist and therefore he did not get the relief. The Select Committee has provided that, unless a person has been assessed to profession

(C) [1][has in all the four half-years immediately preceding] the 1st October, 1937, been assessed to property or house tax in respect of buildings or lands other than agricultural lands, under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in [2][any other State in India] or under the Madras Local Boards Act, 1920, in a panchayat which was a Union before the 26th August, 1930, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 600; or

LEG. REF.

1. Substituted by Amending Act (XXIII of 1948).
2. Substituted by A. L. G., 1950.

tax in all the four half-years, he will be deemed to be an agriculturist and therefore will get relief.

"(3) Under Proviso (C) to S. 3 (ii) (d) of the Act, a person who has within the two years immediately preceding the 1st October, 1937, been assessed to property or house-tax shall not be deemed to be an agriculturist. With reference to the suggestion of the Select Committee the proviso should apply only to a person who has in all the four half years immediately preceding the 31st October, 1937, been assessed to property or house tax." *(Extracts from the Assembly Debates.)*

S. 3 (ii), Proviso (C): 'Assessed to property or house tax.'—It is not necessary that the assessee should be the actual owner of the property or house in respect of which the asssessment is levied. An amendment proposed to limit the exclusion to actual owners who may be assessed, was rejected on the ground that it would lead to unnecessary litigation if evidence was to be allowed as to ownership of property. [*See also* Notes under "Saleable Interest" *supra.*]

Property or House tax.—*See* Madras Dist. Mun. Act, 1920, Ss. 81-91; Madras City Mun. Act, 1919, Ss. 99-109; Madras Local Boards Act, 1920, Ss. 99-103.

'Under the District Municipalities Act, etc.'—It is only assessees under the several Acts mentioned in this clause that are excluded. An amendment was sought to be introduced to exclude such assessees in foreign countries, e.g., Ceylon and Burma, but the same was rejected on the grounds that such would be rare cases and that the introduction of this new element would complicate matters with regard to evidence.

(D) is a landholder of an estate under the Madras Estate Land Act, 1908, or of a share or portion thereof, whether separately registered or not, in respect of which estate, share or portion any sum exceeding five hundred rupees is payable as peshkush or any sum exceeding one hunderd rupees is payable under one or more of the following heads, namely, quit-rent, jodi, kattubadi, poruppu or other due of a like nature, or is a jenmi under the Malabar Tenancy Act, 1929, who is liable as such jenmi to pay to the [1][State] Government any sum exceeding five hundred rupees as land revenue.];

LEG. REF.

1. Substituted by A. L. O., 1950.

Limit of income and property qualification.—With regard to fixing the limit of income and property qualification, the Premier said, that if a pleader, an official or a shop-keeper who made Rs. 50 was brought within the benefit of the Bill, the consequences would be dangerous. It might be said that a man getting Rs. 49 would get the benefit of the measure and that there was not much difference between one who got Rs. 49 and another who got Rs. 50. Any line drawn anywhere would cover a few anomalies of that kind. Even at the risk of some deserving cases not getting the benefit of the measure, it was, he said, safer to confine the relief to agriculturists only. To have a Rs. 50 standard was, he would submit, a fair method of distinguishing the class they sought to benefit from those whom they did not take into account in the Bill. As for the picture of misgovernment of Municipal institutions (which resulted in unfair and incorrect valuations of property), he would protest against it and urge the House not to be carried away by it. On the whole, he would say that municipalities were well-governed and taxes were mostly properly levied. If there was anything wrong, he thought, it was that a large number of people got off without paying taxes. In order to save a few who were, according to some, taxed improperly, they should not spoil the whole scheme of the measure.

S. 3 (ii), Proviso (D): Jenmi tenure.—An amendment was moved for the deletion of the following words occurring in the proviso (D):—

"or is a jenmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government."

In support of this amendment it was claimed that this omission would place the jenmi on the same footing as the ryotwari landholder in reference to the measure. The jenmam tenure was

substantially the same as the ryotwari tenure, and there was no justification for a distinction being made to the prejudice of the jenmi.

The Prime Minister in opposing the amendment said that the Government would not go so far as the member wished, for, to do so would be to at once introduce a new policy altogether. In no sense of the term could the jenmi of Malabar be considered an "agriculturist." It might be that there were certain points of similarity between the jenmi and the ryotwari holders, but there were far more points of divergence between the two. "If the hon. Member has any other Debt Relief Bill in reference to the jenmam tenure on the West Coast," the Prime Minister said, "the Government would give every consideration to such a measure."

Mr. R. M. Palat (the mover of the amendment) said that if the jenmi was not an "agriculturist" in the sense he did not cultivate his land, then many mirasdars of Tanjore and other districts would also fall within that category. There were as many jenmis who cultivated their own lands as there were ryotwari holders doing so. Jenmis should not be made to suffer from the disadvantages of both the tenures without any of the benefits of either.

The Prime Minister said that the jenmam tenure had been separately treated all along. That was also the tradition of the House. There was a great deal of difference between jenmis and ryotwari holders. For instance, a jenmi could not evict his tenant as the ryotwari landholder could. The tenures being different, any measure of relief considered necessary in reference to the Jenmam tenure should be the subject-matter of a separate Bill and not be brought in by way of an amendment to a clause of the Bill under consideration.

Upper limit for ryotwari pattadars.—The question of introducing an upper limit in the case of ryotwari pattadars, was brought up by means of an amendment to proviso (D) which excludes certain classes of estate landholders, inamdars and jenmis from the definition of an "agriculturist." Mr. Appadurai Pillai moved an amendment to limit the benefit of the Bill to ryotwari pattadars paying a land revenue not exceeding Rs. 250.

The Leader of the Opposition asked why relief was sought to be given to big mirasdars whose large debts were incurred not necessarily for agricultural purpose.

The Premier contended that fixing a monetary limit would not serve the underlying purpose of the Bill. That was why, he said, the Government introduced a number of occupational and residential restrictions, in respect of which they were absolutely unwilling to agree even to the slightest amendments by way of liberalisation. To set up a monetary or quantitative limit would be to invite complications. The amendments were based on the notion that unde-

serving people were sought to be helped. That would not happen, the Premier assured the House, and declared that the provisos were so worded that relief would go only to deserving agriculturists.

It was contended that the Government had not made out a case for not providing an upper limit.

The Prime Minister, replying, said that he admitted that this was an important amendment. At first sight, he said, the criticisms that had been levelled might look correct. But, intead of putting aside bigger landlords by having a monetary limit, they were excluding from the benefits of the Bill those who were income-tax payers, and those who paid professional tax above a certain limit and so on. It was not correct to say that by fixing a money limit they would be simplifying the position. The intention of the legislation was to distinguish the agriculturist classes from those following occupations other than agriculture. An agriculturist who was paying say, Rs. 1,000 land revenue was indebted in proportion to his property in the same manner as an agriculturist who paid Rs. 50. If they wanted to distinguish the occupation of agriculture from other occupations they must go by professions. That was why they had adopted a complicated method rather than the one of fixing a money limit.

SUMMARY OF CASES—UNDISCHARGED INSOLVENT, IF "AGRICULTURIST."—A person whose estate has vested in the Official Receiver in insolvency cannot, so long as that vesting continues, be deemed to have a saleable interest in that estate. An undischarged insolvent therefore lacks the basic qualification for the status of an agriculturist under the Act. 1944 M.W.N. 593: A.I.R. 1944 Mad. 497: (1944) 2 M.L.J. 112.

MORTGAGE SUPPORTED BY CONSIDERATION ONLY TO A PARTIAL EXTENT—INSOLVENCY PROCEEDINGS BY OFFICIAL RECEIVER—AUCTION-PURCHASER OF SON'S SHARES IN PROPERTIES SOLD BY OFFICIAL RECEIVER.—The first defendant and his two sons, second and third defendants, for whom also first defendant acted, mortgaged suit hypotheca to the plaintiff, first defendant's son-in-law, for a certain amount of which a major portion remained unpaid. Still the findings of the lower Court were that a portion of the consideration passed which was the amount claimed by the plaintiff in the suit. The sixth defendant happened to be the successful bidder at an auction held by the Official Receiver, in insolvency proceedings against the mortgagor, of the properties including the suit hypotheca. But the sixth defendant had nothing more than a contract of sale at the commencement of the coming into operation of the Agriculturists' Relief Act. Apart from that the sixth defendant was not an agriculturist. On the question of the extent of relief to be granted to the sixth defendant, *held*, (1) that the relief to which he should

properly have been entitled on the assumption of the lower Court was a scaling down of the debt to the principal sum actually advanced under the mortgage with interest at 6 1/4 per cent. from 1st October, 1937. [(1942) 1 M.L.J. 329, Ref.] Hence plaintiff would be entitled to a decree against sixth defendant for the entire amount of consideration that actually passed with interest at 7 1/2 per cent. up to date of redemption and subsequent interest at 6 per cent. As regards liability of the sons, second, and third defendants, for the debt of the father, and as regards the validity of the sale of shares by the Official Receiver: *Held*, that the defendants 2 and 3 remained owners of their respective shares in the hypotheca after the sale, and were entitled to redeem the mortgage. (1943) 2 M.L.J. 87: I.L.R. (1944) Mad. 212 and (1944) 1 M.L.J. 292 followed.] 59 L.W. 319: 1946 M.W.N. 422: A.I.R. 1946 Mad. 434: (1946) 2 M.L.J. 72.

Lessee from a usufructuary mortagagor can apply for scaling down the debt under the Act. A.I.R. 1941 M. 21: (1940) 2 M.L.J. 290: (1940) M.W.N. 917.

RESIDENCE.—The fact that a person is residing out of the State of Madras will not affect his status as an agriculturist. 1943 M. 330: 56 L.W. 105: (1943) 1 M.L.J. 32. (Person owning agricultural lands outside Municipality in addition to other lands within the Municipality.)

SEC. 3 (ii), PROVISO—BURDEN OF PROOF.—A debtor applying for relief under the Act has first to establish a *prima facie* case that he falls under one of the categories enumerated in Section 3 (ii) *(a)* to *(d)*. Then the burden shifts to the respondent (creditor) to show *prima facie* that the applicant is excluded by one or other of the provisos. When this has been done, the burden again shifts to the applicant to adduce materials which are specially within his knowledge. 52 L. W. 470: 1940 M. W. N. 991: (1940) 2 M. L. J. 498.

SEC. 3 (ii), PROVISO A—APPLICABILITY—ASSOCIATION OF PERSONS—ASSESSMENT OF TO INCOME-TAX.—Where an association of persons is assessed to income-tax, it is clear that what is assessed is the income of the individual members of that association, and every individual member of the association must therefore be deemed to have been assessed to income-tax within the meaning of proviso A to Section 3 *(ii)* of Madras Act IV of 1938, and the individual members are not in consequence entitled to claim the benefits of the Act. 55 L. W. 352: 1942 I. T. R. 226: 1942 M. W. N. 287: A. I. R. 1942 Mad. 428: (1942) 1 M. L. J. 559; (1941) 1 M. L. J. 782. *See also* 56 L. W. 132: 1943 Mad. 469: (1943) 1 M. L. J. 211.

PARTNERSHIP—ASSESSMENT TO INCOME-TAX—CLAIM BY PARTNER TO BE AGRICULTURIST.—Where a partnership is assessed to income-tax, what is really assessed is the income of the individual partners and an individual partner cannot therefore claim the benefit of the Act. Whether the individual partner's income falls below the taxable minimum or not, he is undoubtedly subjected to income-tax when the partnership is assessed, and he therefore comes within proviso A to Section 3 of the Act. Hence he cannot be deemed to be an agriculturist. 1941 I. T. R. 284: 53 L. W. 685: 1941 M. W. N. 488: A. I. R. 1941 Mad. 672: (1941) 1 M. L. J. 782. *See also* 1942. Mad. 428.

DEBTOR ASSESSED TO INCOME-TAX AS MANAGER OF HINDU JOINT FAMILY—OTHER MEMBERS OF FAMILY ARE ALSO DISQUALIFIED.—A. I. R. 1941 Mad. 289: 52 L. W. 731: 1940 M. W. N. 1156; *see also* (1943) 1 M. L. J. 211: 1943 Mad. 469; 1945 Mad. 301. It was contended that Proviso A to Section 3 (*ii*) of the Act did not apply to a case in which the assessment was made in the year 1936-37 but in respect of the income of the previous year. *Held*, Proviso A only disqualifies persons who have been assessed to income-tax in either of the two financial years preceding 31—3—1938 and it does not lay down any restrictions regarding the period in respect of which that assessment might have been made. C. R. P. 66 of 1939; (1940) 2 M. L. J. (Short Notes) 42; 1941 M. 289: 52 L. W. 731: 1940 M. W. N. 1156: (1940) 2 M. L. J. 817; (1940) 2 M. L. J. 841: 52 L. W. 765.

SEC. 3 (ii), PROVISO B—PERSON ASSESSED TO PROFESSION TAX—LEGALITY OF ASSESSMENT.—It is not open to the Court dealing with a matter to go into the question whether a person who has in fact been assessed to profession tax during the relevant period has been assessed legally or illegally. I. L. R. (1942) Mad. 941: 55 L. W. 470: 1942 M. W. N. 447: A. I. R. 1942 Mad. 598: (1942) 2 M. L. J. 153; (1940) 2 M. L. J. 467.

FIRM ASSESSED TO PROFESSION TAX—PARTNER CAN CLAIM BENEFIT AS AGRICULTURIST.—Where a firm has been assessed to profession tax, the individual members of that firm can be assessed again on their share of the income of the firm. In applying proviso B to Section 3 (*ii*) of the Act to a partner who is an agriculturist debtor, one is not entitled to take into consideration his share of the income of the firm which has been separately assessed to profession tax in addition to his personal income in respect of which he has actually been assessed to profession tax. A partner of a firm may claim to be an agriculturist, and as an agriculturist scale down his liability under a partnership debt, though the firm itself may be paying a large sum as profession tax. But this anomaly is not a sufficient justification for adding to the proviso

words which it does not contain. 1942 M. W. N. 23: 55 L. W. 24: A. I. R. 1942 Mad. 382: (1942) 1 M. L. J. 24.

RETIRED OFFICER PAYING PROFESSION-TAX ON PENSION RECEIVED BY HIM.—A person who pays a profession tax on his pension as a retired police officer does in fact pay profession tax on an income derived from a profession, and is therefore disqualified from having the benefits of Madras Act IV of 1938. 55 L. W. 238: 1942 M. W. N. 331: A. I. R. 1942 Mad. 449: (1942) 1 M. L. J. 466.

PERIOD OF ASSESSMENT.—Under this proviso, assessment for consecutive half-years from October, 1935 to September, 1937 is not required; nor is it necessary that the person in question should have been validly assessed to be excluded from the definition of "agriculturist". 52 L. W. 420: (1940) 2 M. L. J. 467; 1941 M. 152: (1942) 2 M. L. J. 153: 1942 Mad. 598.

The assessment to profession-tax of a debtor was actually made on 15—1—1938 but it was retrospective and covered the half-year beginning 1—4—1937. *Held,* Section 137-B of the City Municipal Act contemplates the assessment being retrospective but does not provide that the date of assessment shall be deemed to fall within the period to which the assessment relates. It is impossible to read the words of Proviso B to Section 3 (*ii*) as if the criterion for exclusion was the actual period for which the tax was payable and not the time within which the assessment was made. The absence of a provision for entry of date of assessment in form B cannot control the meaning of the Act. *See* 52 L. W. 765: 1940 M. W. N. 1192: (1940) 2 M. L. J. 841.

SECTION 3 (*ii*), PROVISO C—"AGRICULTURAL"—MEANING OF.—The question whether land is or is not agricultural is largely a question of fact, and the term "agricultural" in proviso C to Section 3 must be read in the sense in which it is used in the relevant section of the Madras District Municipalities Act, and not in any narrow sense which might be spelt out of the definition of "agriculturist" in Section 3 (*ii*) (*a*) of the Agriculturists' Relief Act. 58 L. W. 87 (1): 1945 M. W. N. 41 (1): A. I. R. 1945 Mad. 148: (1945) 1 M. L. J. 2.

SCOPE AND EFFECT—ASSESSMENT TO PROPERTY TAX—IF SHOULD BE IN THE NAME OF DEBTOR.—A case comes within proviso C to Section 3 (*ii*) of the Act when the following factors are present: (*i*) There is property which has an annual rental value of not less than Rs. 600; (*ii*) the property has been assessed to house or property tax for two years immediately preceding the 1st October, 1937; and (*iii*) the municipality demands or recovers the tax from the owner or otherwise treats him as liable to pay the tax. The decision in (1939) 2 M. L. J. 495 is erroneous in that it holds that

a person cannot be assessed within the meaning of the proviso unless the assessment is made in his name in the municipal assessment register. The insertion in the assessment register of the name of the true owner of the property is not the deciding factor. I. L. R. (1944) Mad. 768: 1944 M. W. N. 427: 57 L. W. 328: A. I. R. 1944 Mad. 359: (1944) 1 M. L. J. 424 (F. B.).

JOINT HINDU FAMILY BUSINESS—MANAGER ASSESSED TO TAX IN HIS NAME WITH FAMILY *vilasam*.—Where properties in respect of which assessment was levied are shown to be joint family properties of a Nattukottai Chetty trading family and the assesement certificate shows that the assessment was made in the name of the father and manager but with the family *vilasam*, the assessment must be taken to have been made on the manager as representing the joint family, and all the coparceners would be disqualified from obtaining relief under the Act, if the rental value of the properties is sufficient to exclude the assessee from the benefits of the Act. 58 L. W. 172: 1945 M. W. N. 211: A. I. R. 1945 Mad. 301: (1945) 1 M. L. J. 238; *see also* 1941 Mad. 289.

In applying proviso C to Section 3 (*ii*) of the Act, the distinction between the assessment of a person in his individual capacity and the assessment of that person as manager of a joint family has to be borne in mind. In the absence of any evidence to indicate that the manager, whose name alone appears in the assessment registers, was being assessed as the manager of the family, the municipality must be deemed to have assessed him as an individual and not the family of which he is the manager, the family being a different person for purposes of the Act. Where therefore in a suit to enforce a mortgage of family properties standing in the name of the *de facto* manager, it is found that the manager has been assessed to municipal tax in respect of a building on a total rental value exceeding Rs. 600, the other members are not precluded from claiming the benefit under Madras Act IV of 1938. When the mortgagor's name alone appears in the municipal registers as the owner of the building in question, even his family *vilasam* not being prefixed to his name, the mortgagor must be deemed to have been assessed as an individual and not as manager, and the joint family is not disqualified from claiming relief as an "agriculturist" under the Act. 216 I. C. 338: 1943 M. W. N. 653: A. I. R. 1944 Mad. 98: (1943) 2 M. L. J. 548.

RECEIVER APPOINTED IN MORTGAGE SUIT AT THE INSTANCE OF MORTGAGEE—ASSESSMENT TO PROPERTY TAX.—Where a Receiver appointed under O. 40, R. 1, C. P. Code, in a mortgage suit is assessed to and pays property tax, it is a payment on behalf of and as representative of the mortgagor who is the owner of the

property; and when the assessment is in respect of a property of an annual rental value exceeding Rs. 600, the owner of the property, *i.e.*, the mortgagor must be held to be disqualified by proviso C to Section 3 (*ii*) of the Act from claiming to be an agriculturist. 202 I. C. 765: 1942 M. W. N. 391: 55 L. W. 298: A. I. R. 1942 Mad. 602: (1942) 1 M. L. J. 561.

USUFRUCTUARY MORTGAGEE OF HOUSE BOUND TO PAY HOUSE-TAX—DEMAND MADE ON MORTGAGEE—TAX PAID BY OWNER.—Where the municipal register indicated that the assessee in respect of a house was a mutt to which it belonged and the receipts showed that the tax had been paid by the mutt for the two years immediately preceding 1—10—1937, though the demand had in the first instance been made on a usufructuary mortgagee of the house who was liable to pay the tax under the contract of mortgage and had in fact so paid for some years, it cannot be said that a finding that the mortgagee was assessed to tax in the two relevant years is unjustified. Such a finding cannot be said to be perverse or to involve an irregularity relating to jurisdiction so as to justify interference in revision. It is difficult to treat the entries in the register as the sole criterion of assessment or to regard the demand for the tax as the sole criterion of assessment. 200 I. C. 257: 54 L. W. 283: A. I. R. 1941 Mad. 831: (1941) 2 M. L. J. 497.

COMPUTATION OF ANNUAL RENTAL VALUE.—The phrase "annual rental value" in proviso C to Section 3 (*ii*) is a general phrase and must be construed as the final figure of rental value on which the assessment is based and that has to be taken as the annual rental value for purposes of proviso C. The annual rental value is therefore the net figure after making the statutory deductions and not the gross rental. I. L. R. (1943) Mad. 591: 1942 M. W. N. 708: 55 L. W. 780: A. I. R. 1943 Mad. 194: (1942) 2 M. L. J. 676.

The words "aggregate annual value" in proviso C to Section 3 (*ii*) refer to the total of the rental values of the various buildings and lands in respect of which the tax has been imposed and not to the total of the valuation for two half years. If a person is assessed for the first of the four half-years on the basis of an annual rental value of not less than Rs. 600, he is excluded from the benefits of the Act. 55 L. W. 288: 1942 M. W. N. 415: A. I. R. 1942 Mad. 533: (1942) 1 M. L. J. 571.

Where an agriculturist debtor holds only a share in a house and not the whole of it, in computing the aggregate annual rental value of his properties to ascertain whether he is disqualified under proviso C to Section 3 (*ii*) from claiming the benefits of the Act, only his proportionate share of the value of the house

Explanation.—The annual rental value of any building or land for the purposes of proviso (C) shall—

(1) where the assessment is based on the annual rental value, be deemed to be such value;

(2) where the assessment is based on the capital value, be deemed to be five per cent. of the capital value; and

(3) in any other case, be deemed to be the value ascertained in the prescribed manner;

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should be taken into account and not the whole annual rental value of the house. 55 L. W. 851: 1943 M. 258: (1942) 2 M. L. J. 247.

PERIOD OF TWO YEARS—COMPUTATION.—Proviso C to Section 3 (*ii*) excludes a person from the category of an "agriculturist" if he has within the two years immediately preceding the 1st October, 1937, been assessed to property or house-tax, provided the aggregate annual rental value of such buildings and lands is not less than Rs. 600. The period during which the rental value is not less than Rs. 600 must be the same two years within which the assessment is made and not some subsequent date outside the period of assessment to disqualify the person who claims to be an agriculturist. The verb "is" in the final clause of proviso C must be read as being equivalent to "was". 204 I. C. 570: 55 L. W. 164: 1942 M. W. N. 208: A. I. R. 1942 Mad. 410: (1942) 1 M. L. J. 388. *See* now amendment by Act of 1948.

PAYMENT OF PROPERTY TAX THROUGHOUT THE PERIOD OF TWO YEARS—IF ESSENTIAL FOR DISQUALIFICATION.—In order to come within the purview of proviso C to Section 3 (*ii*) it is not necessary that property tax on a rental value of not less than Rs. 600 must have been paid throughout the period of two years specified in the proviso. If, at any point of time within that period, the disqualification has been incurred, that would satisfy the terms of the Proviso. 202 I.C. 6: 55 L.W. 288: 1942 M.W.N. 415: A.I.R. 1942 Mad. 533: (1942) 1 M.L.J. 571. *See* now amendment by Act of 1948.

Section 3 (*ii*), PROVISO C, EXPLN.–ASSESSMENT BASED ON CAPITAL VALUE—RENTAL VALUE—CALCULATION.—Where the assesment on properties is on the basis of capital value under the Expln. to Section 3 (*ii*), Proviso C, the rental value must be calculated at 5 per cent. of the capital value. It is not open to the Court to take evidance of actual rent paid, capitalise this on the 5 per cent. basis, and hold

that the capital value on which the assessment was based was not the actual figure adopted but the fictitious figure thus calculated. 53 L.W. 391: 1941 M.W.N. 291: A.I.R. 1941 Mad. 448: (1941) 1 M.L.J. 466.

ASSESSMENT—PROPRIETY OF—IF CAN BE QUESTIONED OR GONE INTO.—For the purpose of Proviso C to Section 3 (*ii*) the Court can go into evidence as to the correctness of the certificate under Section 27 of the Act, but not as to the propriety of the assessment on the basis of which person is to be qualified or disqualified as an agriculturist. If in fact there has been an assessment at a certain date it is this assessment which must govern the application of the proviso and not some theoretical figure which might have been, but was not, adopted. 53 L.W. 108: 1941 M.W.N. 173: A.I.R. 1941 Mad. 413: (1941) 1 M.L.J. 185. *See also* I.L.R. (1942) Mad. 941: A.I.R. 1942 Mad. 598: (1942) 2 M.L.J. 153; (1940) 2 M.L.J. 467.

Section 3 (ii), PROVISO D—"QUIT RENT, JODI, KATTUBADI, PORUPPU OR THE LIKE"—MEANING OF—IF INCLUDE KAVAL FEES, ROAD CESS AND WATER CHARGES.—The phrase "quit rent, jodi, kattubadi, poruppu or the like" in Section 3 (*ii*), proviso D refers only to payments in the nature of quit rent on inams, whatever be the name by which they are denoted, and does not include charges for police (kaval fees) for roads (road-cess), for water (water charges) and similar fees levied for services rendered by the state or by a local authority. 1940 M.W.N. 946: 52 L.W. 494: A.I.R. 1940 Mad. 915: (1940) 2 M.L.J. 461.

Section 3 (*ii*), PROVISO D—CONSTRUCTION—JENMI—PAYMENT OF LAND REVENUE.—Proviso D would apply to any *jenmi* "who pays more than Rs. 500 as land revenue." It is not necessary that he should pay as *jenmi*; and it cannot therefore be held that one who pays land revenue under a *kanom* deed does not pay land revenue for himself merely because the payment enures for the benefit of his *jenmi*. Where a *jenmi* pays as *jenmi* land revenue of Rs. 430 and is also liable to ryotwari assessment amount to about Rs. 300, he cannot be deemed to be an agriculturist under Act IV of 1938. The same rule applies also to the case of a *jenmi* who pays land revenue exceeding Rs. 500 partly in respect of *jenmam* land and partly in respect of land held on *kanom* tenure. 200 I.C. 859: 1941 M.W.N. 914: 54 L.W. 466: A.I.R. 1942 Mad. 120: (1941) 2 M.L.J. 584. *See also* 1941 Mad. 305.

CO-OWNERS JOINTLY HOLDING ESTATE BUT DIVIDED IN STATUS.—A co-owner's proportionate share of the liability for quit rent has alone to be taken into consideration in applying proviso D to Section 3 (*ii*) to the case of a co-owner jointly holding an estate with others, where it is found that the co-owners are divided in status. I.L.R. (1943) Mad. 717: 210 I.C. 98: 1943 M.W.N. 26: 56 L.W. 141: A.I.R. 1943 Mad. 292: (1943) 1 M.L.J. 104.

The application of proviso D to Section 3 (*ii*) to the landholder of a portion of an estate would be governed not by his theoretical liability jointly and severally with his co-sharers to pay the whole of the quit rent or *kattubadi*, regardless of the extent of his interests therein but by the actual proportionate liability, having regard to the extent which the individual sharer owns in his estate. It cannot be contended that if in a particular year or series of years the landholder manages to evade the payment of the lawful *kattubadi* he is not the landholder of an estate "in respect of which *kattubadi* is paid." In other words, the criterion must not be the actual money which the Government or superior landholder succeeds in recovering but the proportionate share which the individual owner of a part of the estate has to pay in respect of the share which he owns. 209 I.C. 333 :56 L.W. 234 : 1943 M.W.N. 269 : A.I.R. 1943 Mad. 586 : (1943) 1 M.L.J. 333.

Where the debtors are owners of only a share in a *shrotriem* and the proportionate *jodi* payable by them is less than Rs. 100, they are not excluded from the category of "agriculturists" entitled to relief under Madras Act (IV of 1938), even though there may be a theoretical liability for the whole of the *jodi* laid upon each of the shares so far as the Government is concerned. 199 I.C. 746 : 54 L.W. 118 : 1941 M.W.N. 746 : A.I.R. 1941 Mad. 741 : (1941) 2 M.L.J. 164.

HOLDER OF TWO "ESTATES" ONE PAYING MORE AND THE OTHER LESS THAN Rs. 500 AS *peshkush*—TRANSFER OF THE "ESTATE" PAYING THE HIGHER *peshkush* TO ORISSA PROVINCE—RIGHT TO RELIEF.—The plaintiff and his sons mortgaged in 1929 their house in Berhampore and two villages *K* and *T* all situated in the then Ganjam District of the Madras Province. In 1936 when Orissa was constituted into a separate province, *K*, which paid more than Rs. 500 as *peshkush* was incorporated in the Orissa Province, while *T*, which paid *peshkush* of less than Rs. 500 was allowed to continue to be a part of the Madras Province. In March, 1939, the plaintiff filed a suit (his sons being impleaded as defendants) praying for a redemption decree on the taking of accounts between him and his mortgagee in accordance with the provisions of the Madras Agriculturists Relief Act which had by that time come into operation. The plaintiff and his sons as owners of *K* and *T* were "landholders" of "estates" and if both the "estates" were taken into account they would be excluded from the definition of "agriculturist" in Section 3 (*ii*) of Madras Act IV of 1938 by reason of proviso *D* to the subsection. But it was contended on behalf of the plaintiff that unless the "estate" to be taken into account was situated within the Madras Presidency as now constituted its owner could not be held to fall within the description of a "landholder of an estate under the Madras Estates Land Act, 1908" in proviso D to Section 3 (*ii*)

and that only an "estate" which was governed by the Madras Estates Land Act in 1938, when the Agriculturists' Relief Act was enacted, could be comprehended by those words and that therefore the *T* estate only should be taken into account. It was further contended that the effect of Section 7 of Regulation I of 1936 read with para. 11 of the Government of India (Constitution of Orissa) Order, 1936, was to terminate the operation of the Madras Estates Land Act *as such* in the transferred area and to enact for that area a new Act in the same terms, and as the Madras Estates Land Act was not *proprio vigore* in operation in that area. *K* estate could not be an "estate" included in the words of proviso D to Section 3 (*ii*). *Held*, (*i*) that the words "landholder of an estate under the Madras Estates Land Act, 1908," occurring in proviso D to the definition of "agriculturist" in the Madras Agriculturists' Relief Act were applicable as well to an "estate" in the areas transferred from the Madras Presidency to the Orissa Province as to an "estate" which remained in the area now constituting the province of Madras and hence the plaintiff was excluded from the benefit of the Act; (*ii*) that the object and effect of Section 7 of Regulation I of 1936 as read in the light of paras. 11 and 26 of the Constitution of Orissa Order in Council was not to *enact* a law for the transferred area, but to provide how certain provisions of laws *assumed* to be in force in the transferred areas should be interpreted in view of the changed circumstances. 1944 M. W. N. 246: 48 C. W. N. (F. R.) 104: 78 C. L. J. 117: 57 L. W. 301: (1944) F. L. J. 109: A. I. R. 1944 (F. C.) 31: (1944) 1 M. L. J. 356 (F. C).

The effect of Section 26 of the Government of India (Constitution of Orissa) Order, 1936, is that the Madras Estates Land Act is to continue in force in the areas transferred to the Province of Orissa newly created. A person who pays Rs. 255-8-0 to the Government of Madras as *peishkush* for his estate in Madras and Rs. 2,508 to the Government of Orissa in respect of parts of his estate which became part of the New Province of Orissa after the Government of India Order, must therefore be regarded as "a landholder of an estate under the Madras Estates Land Act, 1908" within the meaning of Section 3 (*ii*), proviso D of Madras Act IV of 1938 even with reference to the estates owned by him in the Province of Orissa, and if he pays more than Rs. 500 as *peshkush* in respect of such estates, he is disqualified under the proviso from claiming the benefits of the Act as an agriculturist. I. L. R. (1943) Mad. 370: 207 I. C. 175: 6 F. L. J. 7: 55 L. W. 648: A. I. R. 1943 Mad. 91: (1943) 1 M. L. J. 457.

SEC. 3 (*ii*), PROVISO D—CONSTRUCTION—PERSON BEING LANDHOLDER IN RESPECT OF SEVERAL ESTATES AND PAYING OVER RS. 500 AS PESHKUSH IN ALL.—Section 3 (ii)$_2$ Proviso D$_2$ must be read as

covering a landholder of an estate or estates in respect of which estate or estates a sum exceeding Rs. 500 is paid as *peshkush.* The fact that he is not the real owner of one of the estates standing in his name would not affect the matter, if he is the person entitled to collect the rents of that estate. 1940 M. W. N. 1043: 52 L. W. 521: 1941 M. 244: (1940) 2 M. L. J. 711.

INAM—ANNUAL PAYMENT OF RS. 150 BY *mokhasadar* TO ZAMINDAR IN PLACE OF RATE VARYING WITH YIELD—IF QUIT RENT OR *kattubadi.*—Where after a proposal for the enfranchisement of an Inam had fallen through the land continued to be held by a *mokhasadar*, on a payment varying with the yield, of Rs. 4 per putti up to 1889, on which date there was an agreement between the zamindar and the *mokhasadar* that instead of the varying payment an annual sum of Rs. 150 should be paid "towards cist:" *Held*, that the fixed annual payment to the zamindar was in the nature of a quit rent or *kattubadi*, which would disqualify the *mokhasadar* under proviso D to Section 3 (ii) of Madras Act IV of 1938 from claiming the benefits of the Act as an agriculturist, as he is a landholder. 204 I. C. 450: 55 L. W. 610: 1942 M. W. N. 721: A. I. R. 1942 Mad. 733: (1942) 2 M. L. J. 421.

SERVICE INAM—GRANT OF PORTION OF VILLAGE IN PERMANENTLY SETTLED ZAMINDARI—SUBSEQUENT ENFRANCHISEMENT BY GOVERNMENT.—Certain lands situate in a zamindari which was permanently settled in 1803, were granted by the proprietor of the zamindari to the then holder of the karnam service in 1809. The lands granted formed only a portion of a village in that zamindari. In 1833, on account of the rebellious acts, the zamindari was forfeited and the estate was declared to be land belonging to the Government. The holders of the Service Inam Lands in the village, however, continued in possession and their holding was enfranchised in the Inam Commission proceedings of 1863, on payment of the quit rent which was Rs. 82-10-5. Since that date the lands were held as an inam holding situated within a Government village. *Held*, that the lands were not either an estate or part of an estate in respect of which the owners can be regarded as landholders for the purpose of proviso D, to Section 3 (*ii*) of Madras Act IV of 1938. As there was never any grant of a village, the definition of "estate" in Section 3 (2) (*d*) of the Madras Estates Land Act would not apply; nor would Section 3 (2) (*b*) of the definition apply as there was no separately registered portion of any estate. The fact that historically the inam was, a century ago, part of an estate would have no bearing on its present status. 207 I. C. 89: 1943 M. W. N. 9: 56 L. W. 15: A. I. R. 1943 Mad. 263: (1943) 1 M. L. J. 90.

(iii) 'debt' means any liablity in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue court or otherwise, but does not include rent as defined in clause *(iv)* or '*Kanartham*' as defined in section 3 *(l)* (1) of the Malabar Tenancy Act, 1929;

KANOM HELD BY TARWAD PAYING OVER Rs. 500 AS LAND REVENUE—SUIT FOR REDEMPTION.—On 10-9-1934, the pettioner who was a jenmi sued to redeem a kanom of 23—3—1915, which was held by the tarwad of the respondent (9th defendant in the suit). The tarwad admittedly paid more than Rs. 500 as land revenue and therefore not an agriculturist in view of the Proviso D to Section 3 *(ii)* of the Act. Pending the suit, on 5—7—1935, there was a partition in the respondent's tarwad by which the kanom right in question was allotted to the *tavazhi* represented by the respondent, which *tavazhi* paid less than Rs. 500 as land revenue and was therefore entitled to be regarded as an agriculturist as defined by the Act. The respondent, after the partition, filed an application under Section 15 of the Act for relief under the Act. The petitioner contended that since he field his suit against the tarwad as a whole which was the tenant, it was the tarwad as a whole which was liable to pay the rent and that there was no liability on the respondent's *tavazhi* such as would entitle it to apply under Section 15. *Held*, that the respondent's *tavazhi* was, after partition, under a liability to pay the rent such as would entitle it to claim the benefits of Section 15. 52 L.W. 676: 1941 M. 196: (1940) 2 M L.J.788.

SECS. 3 (ii) AND (iii), 7, 8—MORTGAGE DEBT—SALE OF MORTGAGED PROPERTY—RIGHTS OF PURCHASER—RIGHT TO TRACE BACK TO EARLIEST DEBT.—A purchaser of a mortgaged property can claim to have the mortgage debt scaled down under the Madras Agriculturists Relief Act on the basis that such debt is itself a renewal of an earlier debt secured or unsecured.

The liability of the purchaser of the equity of redemption is not a new liability but only one arising under a pre-existing mortgage debt, though his liability is confined only to the properties in his possession. In this view, his right under the Act is co-extensive with that of the mortgagor, his vendor. As the mortgagor can trace back his debt to the earliest debt, whether secured or unsecured, a purchaser, who gets into his shoes can also do so. A.I.R. 1942 Mad. 412: (1942) 1 M.L.J. 329, Dissented from. Case-law discussed. 1956 Andhra L. T. 293: 1950 Andhra W. R. 211 (F. B.).

SEC. 3 *(iii)*.—"Debt" does not include rent or *Kanartham*, which is an incident of the Kanom tenure in Malabar. This word is defined

as follows in the Malabar Tenancy Act. "Kanom" means the transfer for consideration in money or in kind or in both by a landlord of an interest in specific immovable property to another (called the 'kanomdar') for the latter's enjoyment, the incidents of which transfer includes, a right in the transferee to hold the said property liable for the consideration paid by him or due to him which consideration is called 'Kanartham'.....(Section 3, Mal. Ten. Act).

DEBT.—"*Kanartham*" was included from the definitions of 'debt' by an amendment introduced by the Government. The object of this amendment was to remove the possibility of any injury to the tenure in Malabar called the '*Kanom*' tenure. This amendment does not in any way change the specific position of the debtor and creditor.

"DEBT"—ADVANCE BY ONE PARTNER TO PARTNERSHIP—IF CAN BE SCALED DOWN.—Advance made by one partner to the partnership does not entail a liability by the partners to repay that advance but rather a mere right in equity to have a claim on the assets to the extent of the advance at the time of the dissolution of the partnership. Consequently such an advance cannot be scaled down as a debt even where the partners of the firm are shown to be agriculturists within the meaning of Madras Act IV of 1938. There is no reason to suppose that "debt" in Section 3 (*iii*) of the Act is meant to include, contrary to usage, an unascertained amount. "Liability" in that clause means a legal liability, a liability enforceable at law. 198 I.C. 801 : 1941 M.W.N. 49 : 53 L.W. 191 : A.I.R. 1941 Mad. 410 : (1941) 1 M.L.J. 36.

As to what is a "debt" under Section 3 of the Act. *See* (1939) 1 M.L.J. 528 : (1939) 2 M.L.J. 745.

DEBT—LIABILITY TO MAKE RESTITUTION.—The liability to make restitution is a debt, and it is no less a debt when due from the son of a original party by reason of his possession of family property after partition. Nor would the insolvency of a Hindu father prevent his son from applying for the benefits of Madras Act IV of 1938, by reason of Section 21 of the Act. Clearly Section 21 only bars an application by the insolvent and not by some other non-insolvent person liable for the same debt. I.L.R. (1941) Mad. 496 : 201 I.C. 267 : 53 L.W. 69 : 1941 M.W.N. 95 : (1941) 1 M.L.J. 467.

PURCHASER OF MORTGAGED PROPERTY—The definition of "debt" in Section 3 (*iii*) cannot be read as limited to cases where a person is personally liable. The reference to liability in the clause is wide enough to cover every person who is in any manner liable, either because he is personally liable or because he is liable on account of the possession of property. A purchaser of mortgaged property

"*(iii-a)* 'interest' means any amount or other thing paid or payable in excess of the principal sum borrowed or pecuniary obligation incurred, or where anything has been borrowed in kind, in excess of what has been so borrowed, by whatsoever name such amount or thing may be called, and whether the same is paid or payable entirely in cash or entirely in kind or partly in cash and partly in kind and whether the same is expressly mentioned or not in the document or contract, if any;" *(Inserted by Am. Act XXIII of* 1948.*)*

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is a person liable to pay the debt due under the mortgage and can therefore claim the benefit of the Act if he is an agriculturist. 48 L.W. 954: (1938) 2 M.L.J. 1068.

PUISNE MORTGAGEE.—Puisne mortgagee has right to apply to scale down as he is a person liable to pay the debt. *See* I.L.R. (1941) Mad, 53: 195 I.C. 697: A.I.R. 1941 Mad. 113: 52 L.W. 481: (1940) 2 M.L.J. 513: 1940 M.W.N. 1010.

SOLE LEGATEE EXECUTING PROMISSORY NOTE IN 1936 FOR DEBTS UNDER EARLIER NOTES BY TESTATOR.—In 1936, the sole legatee under a will executed a consolidated promissory note in discharge of earlier promissory notes executed by the testator who died in 1935. In a suit on the note, the legatee who was an agriculturist himself applied for scaling down the debt. *Held*, (1) that in order to treat the suit promissory note as a renewal of the earlier promissory notes so as to enable the applicant to take advantage of the Explanation to Section 8 of Madras Act IV of 1938, the debtor had to show that the prior debts were due by an agriculturist and that the maker of the earlier notes (the testator) was an agriculturist on and after 1—10—1937 and the testator having died in 1935, *i.e.*, before the relevant period, could not be treated as an agriculturist on 1—10—1937, and the Court could not go behind the suit promissory note in scaling down; (2) that the debt must consequently be scaled down under Section 9 as a fresh debt of 1936. 1941 Mad. 854.

Quaere.—Whether if the testator had lived long enough to make the definition of agriculturist applicable to him, the legatee who was obliged to pay his testator's debts could claim that a fresh document in discharge of the testator's debts was a renewal thereof? 200 I.C. 327: 54 L.W. 225: 1941 M.W.N. 863: A.I.R. 1941 Mad. 854: (1941) 2 M.L.J. 261.

S. 3 *(iii-a)*: "INTEREST."—This definition of "Interest" has been newly inserted by the Amending Act of 1948. This definition is intended to avoid doubts raised in scaling down proceedings (under Sections 8, 9, 10 and other sections of the Act) as to

(iv) 'rent' means rent as definet by the Madras Estates Land Act, 1908, or rent or Michavaram as defined by the Malabar Tenancy Act, 1929, or quit-rent, jodi, kattubadi, poruppu or the like, payable to the landholder of an estate as defined by the Madras Estates Land Act, 1908, whether a decree or order of a civil or revenue court has been obtained therefor or not, and includes interest payable thereon but does not include costs incurred in respect of the recovery thereof through a civil or revenue court or the share of the land cess recoverable by the landholder under section 88 of the Madras Local Boards Act, 1920 ;

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what constitutes interest. Under this definition anything paid or intended or agreed to be paid over and above the principal sum borrowed would be deemed to be interest under the Act.

The reason for the insertion of the new definition of "interest" is explained as follows:—

"A new definition of interest has been introduced in the original Bill. According to this definition, payments in kind made in excess of the borrowing will also come within its scope. An Explanation has also been inserted that in the case of usufructuary mortgages the rent and profits will constitute the interest, and in case where the property is leased back to the mortgagor the rent due to the usufructuary mortgagee under the lease will be regarded as the interest on the mortgage debt. This Explanation regarding usufructuary mortgages has been omitted by the Select Committee as it has been embodied in section 9-A." (Extract from the speech of the Law Member in introducing the Bill in the Assembly).

SEC. 3 (iv): RENT AS DEFINED IN THE MADRAS ESTATES LAND ACT. 1908.—*See* Mad. Act I of 1908, Section 3 (11).

"RENT OR MICHAVARAM" AS DEFINED IN THE MALABAR TENANCY ACT.—"'*Rent*' means whatever is lawfully payable in money or in kind or in both, to a person entitled to the use or occupation of a land, by another, permitted by the person so entitled, to have the use or occupation of the said land, for any purpose, on the understanding, express or implied, that the person so permitted would pay consideration for such use or occupation," (Mal. Ten. Act, Section 3 (*w*). "*Michavaram*" means whatever is agreed by a kanomdar in a kanom deed to be paid periodically, in money or in kind or in both, to or on behalf of the jenmi. (Section 3 (*q*), Mal. Ten. Act).

Decree on a promissory note executed for arrears of rent is a decree for a debt and is not one for rent. 1941 Mad. 116: (1940) 2 M.L.J. 825.

(v) 'creditor' includes his heirs, legal respectatives and assigns.

"DOES NOT INCLUDE COSTS INCURRED.....OR SHARE OF THE LAND CESS."—Costs incurred in respect of recovery of rents and land cess recoverable by the landholder under Section 88, Madras Local Boards Act, will not be treated as rent. Special provision is made for the recovery of these dues. (*See* Section 16, *infra*).

"WHETHER A DECREE OR ORDER OF A CIVIL COURT, ETC."—It was made clear by the Prime Minister in speaking on this point that this provision should not be interpreted as intended to re-open decrees with all the sins implied in the procedure. The provision really treated the liabilily as a whole and then scaled it down. It does not mean re-opening the whole matter. Only the resultant decree would be scaled down.

S. 3 (v):—'CREDITOR'.—The definition of this term was included by the Select Committee.

"CREDITOR"—"ASSIGNS"—MEANING OF.—In defining the term "Creditor" in Section 3 so as to include his heirs, legal representatives and assigns the Legislature must be presumed to have intended to refer to those who are the legal heirs of the legal assigns and not to persons who claim to have acquired rights in a manner which the law does not recognise. If a debt under an earlier mortgage has in some informal way been made over to another before a second deed is executed in his name, he cannot by virtue of such informal transfer, be deemed to be the assign of the previous mortgagee or the latter's legal representative. 204 I.C. 629 : 1942 M.W.N. 719: 55 L.W. 706 : A.I.R. 1943 Mad. 5 : (1942) 2 M.L.J. 592:

PROMISSORY NOTE OBTAINED ON ALLOTMENT IN JOINT HINDU FAMILY PARTITION SUIT—ALLOTTEE IF ASSIGNEE—ALLOTMENT IF [1] ASSIGNMENT—TRACING OF DEBT IN AN APPLICATION FOR SCALING DOWN SUCH PROMISSORY NOTE DECREE DEBT.—Where in a case, the original promissory note was executed in favour of *X*, the manager of a joint family consisting of himself and his two sons, *A* and *B* and there was a partition suit between them and the promissory note was allotted to the share of *A* and a fresh note was executed in favour of *A* for the amount outstanding, in an application for scaling down the decree debt on the promissory note so obtained.

Held, there was a legal assignment (of the original promissory note) in favour of *A* by reason of the partition decree. *A* should be regarded as an assigree of *X* and the debt should be traced to the note in favour of *K*. (1948) 2 M.L.J. 463, foll. (1954) 2 M.L.J. (Andhra) 244 : 1955 Andhra 114.

[*(vi)* "Mortgagee" includes his heirs, legal representatives and assigns.] [*Clause* (vi) *added by Amending Act XXIII of 1948.*]

Certain debts and liabilities not to be affected.

4. Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:—

The term "creditor" does not include a person who has only a beneficial interest in the amount lent. *See* 1942 M. 143: 54 L. W. 517: (1941) 2 M. L. J. 703; 1943 Mad. 168: 55 L. W. 785; 1942 M. W. N. 711; (1940) 2 M. L. J. 664: 52 L. W. 595.

The renewal of a debt to the assignee of the original creditor is a renewal to the "same" creditor within the meaning of the Explanation to Section 8 of Madras Act IV of 1938. This definition of "creditor" extends not only to a first assignee but to any subsequent assignee also. The ultimate assignee has, in respect of the debt succeeded to, the legal right of the original creditor in exactly the same sense as the first assignee has. 1941 M. 74; (1940) 2 M. L. J. 553: 52 L. W. 484; (1940) 2 M. L. J. (Short Notes) 24; *see also* (1940) 2 M. L. J. (Short Notes) 26.

PROMISSORY NOTE—ENDORSEE—IF CREDITOR.—There can be no doubt that the endorsee of a promissory note is the assign of the original promisee even though he has greater rights than an assign by deeds and the endorsee is therefore a "creditor" within the meaning of Section 3 (*v*) of the Act. 201 I. C. 117: 4 F. L. J. (H. C.) 398: 54 L. W. 577: A. I. R. 1942 Mad. 169: (1941) 2 M. L. J. 808.

Notes under section 4.

SECTION 4.—This section lays down the categories of debts and liabilities not to be affected by this Act.

SCOPE OF SECTION—"NOTHING CONTAINED IN THIS ACT SHALL AFFECT, ETC."—The classes of debts and liabilities enumerated in this section are wholly exempted from the operation of this Act. Such debts can be collected and those obligations may be enforced as if this Act has not been passed.

CLAUSES (*a*) TO (*c*).—These clauses exempt debts due to the State Government, to the Central Government and to Local Authorities from the operation of this Act. The reason for this has been explained by the Prime Minister as follows: "If revenues, taxes and cesses were written off no object or advantage would be gained for the people by the passing of this Act. If revenues, taxes and cesses were exempted, it was because they were necessary for ordered administration. The procedure adopted by the

(*a*) any revenue, tax or cess payable to the State Government or any other sum due to them, by way of loan or otherwise;

(*b*) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise;

(*c*) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise;

Government in granting loans and collecting them was different from that adopted by private individuals. Further, the writing off of loans or interest thereon was a matter for executive action, and that course was available and need not be dealt with by legislation. Government could not afford to nor did they leave interest on loans to get into arrears as private creditors did, thereby leaving a burden, may be an act of charity, too heavy for the debtor to bear." (*Proceedings in Council.*)

SUMMARY OF CASES, SECTION 4 (*a*)—X AS RECEIVER PAYING THE REVENUE DUE TO STATE GOVERNMENT ENTITLED TO RECOVER THE SAME FROM Y—LIABILITY OF Y TO X, IF CAN BE SCALED DOWN:— X while in possession of certain property, practically in the capacity of a Receiver of Court paid the revenue due to the State Government, and he sued to recover the sums paid by him with interest at 6 per cent. from Y who applied for relief under Madras Act IV of 1938; X pleaded Section 4 (a) of the Act in bar. Held, that the expression "liability, etc., falling under the head of revenue payable to the State Government" did not imply that the liability to pay the revenue to the State Government should be subsisting on the date of the suit or that the suit itself should be directly by the person entitled to claim the revenue for recovery of revenue as such, and Section 4 (a) applied to the claim and Y was not entitled to relief under the Act. 58 L.W. 89: 1945 M.W. N. 172: A.I.R. 1945 Mad. 125: (1945) 1 M.L.J. 20.

SEC. 4 (*c*): APPLICABILITY—CHATRAM ADMINISTERED BY LOCAL AUTHORITY—LESSEE OF—RIGHT TO APPLY UNDER ACT.—Income from endowments and trusts, such as chatrams, whose administration has been made over to a local authority must be regarded as income of local authority within the meaning of Section 4 (*c*) of the Act; and a lessee of the chatram managed by the local authority cannot therefore call in aid the provisions of the Act. 50 L.W. 503: 1939 M.W.N. 972: (1939) 2 M.L.J. 818.

The exemption in S. 4 (*c*) of Madras Act IV of 1938 will cover any sum payable to a local authority even though it partakes of the nature of rent, and it makes no difference whether the rent in

(*d*) any debt contracted on the security of house property alone in a municipality, a cantonment, or a panchayat which was a union before the 26th August, 1930;

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question be an ordinary contractual rent governed by the special provisions of the Madras Estates Land Act, which would bring it within the definition of "rent" under Act (*IV*) of 1938. The words "any other sum" in Section 4 (*c*) must be read in their natural and wide sense not restricted by the proximity of the special words preceding, and the *ejusdem generis* rule should not be applied. Rent due under the Madras Estates Land Act to a District Board as a trustee of a chatram estate is therefore not liable to be scaled down under Act IV of 1938. 201 I.C. 771: 1942 M.W.N. 215: 55 L.W. 203: A.I.R. 1942 Mad. 462: (1942) 1 M.L.J. 416.

SEC. 4 (*d*): "HOUSE PROPERTY"—COMPOUND OF HOUSE—VACANT GROUND WITHIN—IF HOUSE PROPERTY.—Vacant ground which is a part of the compound of the house property, is "house property" under Section 4 (*d*) of the Act; "house property" will normally include the site on which the building stands and the garden, compound or yard attached thereto. 1940 M. 54: 50 L.W. 578: 1939 M.W.N. 1148: (1939) 2 M.L.J. 782.

The term "house" includes the land appurtenant to the house and necessary for its enjoyment. But a vacant piece of land, which is a separate unit with no building upon it, though destined for building purposes, would not be properly "house property" within the meaning of Section 4 (*d*) of the Act. I.L.R. (1939) Mad. 943: 1939 M.W.N. 731: 50 L.W. 181: A.I.R. 1939 Mad. 789: (1939) 2 M.L.J. 233.

HOUSE PROPERTY—ESSENTIAL CONDITION.—The existence of a house is an essential condition of a property being "house property" The property must be a house before it can become house property entitled to exemption under Section 4 (*d*). The intention to build a house on the site or its suitability for building purposes cannot convert a vacant site into a house property. If on the date when the debt was contracted the "house property" was not in existence, the Act would apply and no exemption can be claimed. 65 L.W. 852: 1952 Mad. W.N. 675: (1952) 2 M.L.J. 471.

Where a mortgagor has given as security for the debt some houses and other lands and not the buildings standing thereon (which are owned by third parties) it cannot be said that he contracted the debt on the security of "house property" alone as contemplated in Section 4 (*d*) so as to exempt the debt from the operation of the

Act. 207 I.C. 207: 55 L.W. 851: A.I.R. 1943 Mad. 258: (1942) 2 M.L.J. 487.

MATERIAL DATE FOR APPLICATION OF SECTION 4 (d).—Where a mortgage was created on the security of three tiled houses in a street and a vacant site in the opposite row of the same street, described by boundaries as a seperate and independent item, and the site was not appurtenant to any of the three houses, it cannot be said that the debt was "contracted on the security of house property alone in a panchayat which was a union before the 26th August, 1930" so as to attract the provision in Section 4 (d). The fact that the original mortgagor subsequently built on a portion of the site or that subsequently a tenant of one of the houses used the site for a latrine and dung pit would not make any difference. The material date on which the question has to be decided is the date on which the security was created and not a subsequent date. 66 L. W. 35: 1952 M. W. N. 925: (1952) 2 M. L. J. 880: I. L. R. (1952) Mad. 650.

MORTGAGE OF HOUSE PROPERTY WITHIN A UNION BOARD—INCLUSION OF ENGINE IN THE HOUSE.—A site which is a paved yard adjoining a zinc-sheet shed must be regarded as appurtenant to the shed which is house property and an engine fixed in the house for the purpose of trade being carried on in the premises must be deemed to be a fixture for the beneficial enjoyment of the building and not a separate chattel so as to make the mortgage-debt not one contracted on the security of the house property alone in a panchayat which was a union before 26th August, 1930. Accordingly such a mortgage is exempt from the operation of the Act by the provisions of Section 4 (d). 60 L. W. 583: 1947 M. W. N. 542: (1947) 2 M. L. J. 273.

DEBT ON SECURITY OF HOUSE PROPERTY ALONE IN MUNICIPALITY IN EXISTENCE ON 1-10-1937—ADDITION OF AGRICULTURAL PROPERTY AS SECURITY AFTER ACT.—Where on the 1st October, 1937, there is a debt already contracted on the security of house property alone in a Municipality, which by the terms of Section 4 (d) of the Act is excluded from the operation of the Act, the addition of further security of agricultural property at a date after the Act came into force cannot retrospectively make it a debt contracted on the security of property other than municipal house property so as to exclude Section 4 (d) and to bring into force Sections 7 and 8 of the Act. 201 I. C. 265: 54 L. W. 468: 1941 M. W. N. 991: A. I. R. 1942 Mad. 34: (1941) 2 M. L. J. 653. When a previous transaction is excluded from the operation of the Act by Section 4 (d), a promissery note for interest due thereon cannot be scaled down as a renewal of that transaction. 1943 Mad. 53: 55 L. W. 609: 1942 M. W. N. 744.

(*e*) any liability in respect of any sum due to any co-operative society, including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 "or any debt due to any corporation formed in pursuance of an Act of Parliament" [of the United Kingdom] or of any special Indian Law or Royal Charter or Letters Patent.

"ANY DEBT CONTRACTED ON THE SECURITY OF HOUSE PROPERTY ALONE....."—If the security comprises any other property, *e.g.*, agricultural land, or house or building in a village which is not a Municipality, *etc.*, it would not come under this clause. Even if the security comprises along with the house in the Municipality a pledge of jewels, documents or other valuable moveable property, this clause would not apply.

CLAUSE (e).—This exempts debts due to co-operative societies from the benefits of this Act. The reason for this exemption is that the credit system of co-operative societies is not less important than the functions of the Government in regard to agriculture, and it would be impossible to treat co-operative societies as outside bodies and to place them in the same category as ordinary creditors. Debts due to certain corporations, companies and Banks have also been exempted, as national credit organizations have, from the very nature of their constitution and business management, to be treated differently from individual creditors. The only restriction that is imposed is that such Banks should not charge usurious rates of interest.

This clause enumerates two classes of debts; the word "liability" is used in respect of the former class, and the word "debts" in respect of the latter. Sums due to co-operative societies and land mortgage banks are termed liabilities; where amounts due to Corporations formed under Acts of Parliament or Special Indian Laws, Royal Charter or Letters Patent are spoken of as debts. It would appear that the legislature did not intend to make any difference between the words "debt" and "liability" as used in this section.

SECTION 4 (*e*)—CONSTRUCTION—"SPECIAL INDIAN LAW".—The words "Special Indian Law" in Section 4 (*e*) of the Act are not intended to apply to Banks which come within the definition of "scheduled bank," as defiined by Section 2 of the Reserve Bank of India Act, 1934.

LEG. REF. [1] Inserted by A.L.O., 1950.

(f) any liability arising out of a breach of trust;

The words "formed in pursuance of any special Indian law" are intended to take in companies constituted by an Act, such as a University, Corporation, Port Trust and similar institutions formed under special Acts. A company formed by a private arrangement and registered under the companies Act is not a company formed under a special Act, though, by being registered under the Companies Act, certain statutory conditions are annexed to the functioning of the company. (1954) 2 M. L. J (Andhra) 215.

Society formed under Societies Registration Act is a corporation, and so, a debt due to such a society cannot be scaled down. 1940 M. W. N. 1015: 52 L. W. 549: 1940 M. 949: (1940) 2 M. L. J. 554.

CLAUSES (f) AND (g).—Liability arising out of a breach of trust (express or implied) and in respect of maintenance are treated differently from ordinary debts. Even agriculturists cannot escape discharging their obligations to the fullest extent possible in respect of these special classes of liabilities. No court of equity would extend its protection to persons guilty of a breach of trust in any form, or to any extent; and the helpless condition of persons whose sole means of support is a paltry maintenance allowance calls for even a greater measure of protection than what even an agriculturist is entitled to. Such maintenance may be payable to women, children, aged parents, junior members of a Malabar tarward or younger brothers of the holder of an impartible estate. Liability in respect of all classes of maintenance is left untouched by this Act.

SECTION 4 (f): APPLICABILITY—MAHOMEDAN CO-HEIRS—LIABILITY OF CO-HEIR IN MANAGEMENT TO ACCOUNT TO OTHERS—IF "DEBT"—LIABILITY TO PAY INTEREST.—The relation of co-owners, such as co-heirs under Mahomedan law, is not that of creditor and debtor; the liability to pay interest will arise in such cases where the co-owner in possession of the common funds has realised interest by their investment. The liability of the co-owner in management to account to the others is not a "debt" within the meaning of the Act. The case is taken out of the Act by Section 4 (f) of the Act. I. L. R. (1939) Mad. 525: 1939 M. W. N. 279: 49 L. W. 391: A. I. R. 1939 Mad. 471: (1939) 1 M. L. J. 528.

SURETY FOR NEXT FRIEND OF MINORS—LIABILITY OF—IF ONE ARISING OUT OF BREACH OF TRUST.—The liability towards the beneficiary of a surety for the due discharge by a person under

a fiduciary relationship of his duties such as a surety for the next friend of a minor is a contractual liability enforceable only in case the trustee commits a breach of trust, and is not one "arising out of a breach of trust" excluded from the operation of the Act by Section 4 (f) of the Act. 201 I. C. 33: 54 L. W. 697: 1941 M. W. N. 1042: A. I. R. 1942 Mad. 202: (1941) 2 M. L. J. 1008.

Vendee of mortgaged property agreeing to discharge mortgage—Promissory note to vendee—Debt—If falls under Section 10 (2) (ii)—Breach of trust, if any. *196 I. C. 276: A. I. R. 1941* Mad. 59. See also (1940) 2 M. L. J. 651.

DEPOSIT OF STRIDHANAM OF NATTUKKOTTAI CHETTI BRIDE—NATURE OF—DEPOSITARY IF TRUSTEE.—*K's* grandfather received, on the occasion of the marriage of his son with the 1st respondent, a deposit of the amount of her stridhana from her father and the amount in accordance with the usual Nattukkottai Chetti practice was left in his firm to accumulate with interest for the benefit of the bride and her offspring. K became the proprietor of the firm in course of time after the death of his grandfather and father and continued to hold the deposit and was fully acquainted with the circumstances connected with the deposit. A suit filed for the return of the deposit with interest ended in a compromise decree against *K*. The latter having become insolvent, the Official Receiver applied under Sections 19 and 21 of Madras Act IV of 1938 to have the compromise decree scaled down and amended. The insolvent also filed an application and the two were heard and disposed of together, the Court holding that the decree could not be scaled down as it embodied a liability arising out of a breach of trust, falling within Section 4 (f) of the Act. An appeal against the order was preferred by an authorised creditor representing the Official Receiver. Objection was raised to the maintainability of the appeal on the ground that the insolvent alone was competent to apply under Section 19 and to appeal.

Held, (1) that the term "*judgment-debtor*" *in Section 19 must* be read widely and would cover an Official Receiver in whom the estate of the judgment-debtor was vested, and therefore the appeal was competent, although it would be desirable generally to make the insolvent also a party to the appeal: (2) that the character of the deposit was such as to make the position of the recipient analogous to that of a trustee, and the refusal to repay it amounted to a breach of trust, and the decree therefore could not be scaled down in view of Section 4 (f) of the Act. 220 I.C. 117: 57 L.W. 34: 1944 M.W.N. 118: A.I.R. 1944 Mad. 256: (1944) 1 M.L.J. 38.

(g) any liability in respect of maintenance whether under decree of court or otherwise;

Purchaser of mortgaged property executed a pronote to the mortgagee having agreed with the vendor to discharge the mortgage debt. Held, pronote debt is not a liability in respect of which a charge was provided under Section 55 (4), T.P. Act and therefore Section 10 (2) (ii) did not apply. 1940 M.W.N. 1942 : 52 L.W. 582: (1940) 2 M.L.J. 651. See also 1941 Mad. 59.

SECTION 4 (g): APPLICABILITY—SECURITY BOND IN FAVOUR OF FAMILY—ASSIGNMENT TO MEMBER IN LIEU OF MAINTENANCE.—The mere fact that an asset of a joint family, in the shape of a security bond executed in favour of the family by another, has been assigned to a member of the family in lieu of mamtenance, would not make the liability of the debtor under the security bond a liability in respect of maintenance protected by Section 4 (g) of Madras Act IV of 1938. 202 I.C. 64 : 1942 M.W.N. 182 (1) : 55 L.W. 118 : A.I.R. 1942 Mad. 385 : (1942) 1 M.L. J. 290.

ASSIGNEE OF ARREARS OF MAINTENANCE.—Section 4 (g) of Madras Act IV of 1938 covers not only liabilities due to a person who is entitled to be maintained but also the claim of an assignee of arrears of maintenance. It cannot be said generally that the exemptions in Section 4 are grounded upon the character or status of the creditor. The wording of Section 4 (g) is wide enough to cover the claims not only of persons who are entitled to be maintained but also of assignees from them of their right to recover arrears of maintenance. The clause must be construed as extending the protection to all persons who seek to enforce a liability which arose out of a non-fulfilment of an obligation to maintam. I. L. R. (1944) Mad. 218 : 210 I. C. 626: 1943 M. W. N. 266 : 56 L. W. 238 : (1943) 1 M. L. J. 339 : 1943 Mad. 487.

CLS. (h) AND (i).—With reference to these clauses the Select Committee has observed as follows:—

"The Committee has also exempted from the operation of this Act any debt or debts due to a woman who is entirely dependent on such debt or debts for her maintenance, and has accordingly included the following additional item in clause 4 of the Bill:

"Any debt or debts due to a woman who, on October 1, 1937, did not own any other property, provided that the principal amount of the debt or debts on such date did not exceed Rs. 3,000." (This amount has been raised to Rs. 6000 by the Amending Act of 1948).

It has provided that in calculating the value of the property owned by the woman on October 1. 1937. the house in which she

(h) any debt or debts due to a woman on the 1st October, 1937, [provided that the value of the property owned by her on that date, including the principal amount of the debt or debts so due, did not exceed six thousand rupees.] [*Substituted by Amending Act XXIII of 1948.*]

Explanation.—For the purpose of this clause, the house in which the creditor woman lived, or any furniture therein, or her household utensils, wearing apparel, jewellery, or such like personal belongings shall not be regarded as property.

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lived or any furniture therein or her house hold utensils, wearing apparel, jewellery or such like personal belongings, should not be taken into account.

"DEBTS DUE TO A WOMAN ON THE 1ST OCTOBER, 1937."—Would this clause apply if the debt becomes due to a woman after 1st October, 1937. A, a woman, lends money to B, an agriculturist, on 1st January, 1937 on a mortgage of his holding. The debt is made payable with interest on 1st January, 1939. Such a debt would not come under this clause, the same not becoming due to the woman on the 1st October, 1937.

"PROVIDED THAT THE PRINCIPAL AMOUNT OF THE DEBT OR DEBTS DID NOT EXCEED RUPEES THREE THOUSAND."—The test is whether on the 1st October, 1937, the principal amount of the debts due to the woman did or did not exceed Rs. 3,000. (Now raised to Rs. 6,000.)

SECTION 4 (h)—EXEMPTION UNDER—TEST—DEBT DUE TO WOMAN LIFE-ESTATE HOLDER :—The enactment of Section 4 (h) of Madras Act IV of 1938 intended two tests for the application of the exemption *viz.*, (i) whether the debt is due to a woman, and (2) whether the value of the property owned by her, either as a life estate holder or as absolute owner, did not exceed Rs. 6,000. The value of her property for purposes of exemption is the value of her interest in the property. If the value of the estate on the material date did not exceed Rs. 6,000 (under the section as amended in 1948), the debtors would not be entitled to claim relief under the Act against the life—estate holder. 1952 M. W. N. 420: 65 L. W. 632: (1952) 2 M. L. J. 36.

"JEWELLERY OR SUCH LIKE PERSONAL BELONGINGS.—These words would not include all personal property. For instance, costly and saleable goods and merchandise owned or possessed by a woman would not come under the words "like personal belongings."

SECTION 4 (h): WOMAN TAKING ASSIGNMENT OF DEBT FROM MALE CREDITOR—CLAIM TO EXEMPTION.—A woman taking an assignment of a debt from a male creditor is not disentitled to claim the exemption under Section 4 (h) of Madras Act IV of 1938 merely because her

assignor, a male, was not entitled to such exemption. By taking the assignment, she becomes the owner of the debt and when she claims the benefit of the exemption it is no answer to say that the original creditor or payee was a male. 203 I. C. 192: 55 L. W. 457 (1): 1942 M. W. N. 432: A. I. R. 1942 Mad. 662 (2): (1942) 2 M. L. J. 123.

SECTION 4 (h)—EXEMPTION UNDER—AVAILABILITY—CONDITIONS—DEBT DUE TO WOMAN—CHARACTER AND STATUS OF CREDITOR WHEN DEBT IS SOUGHT TO BE ENFORCED—RELEVANCY.—Under Section 4 (*h*) of the Madras Agriculturists' Relief Act to get an exemption, it would be enough if the debt was due to a woman on 1st October, 1937, provided she does not possess property of the value mentioned in that clause. If once that condition is satisfied at its origin, the Court need not concern itself with the character or status of the creditor at the time when the debt is sought to be enforced. (*Subba Rao and Panchapakesa Ayyar, JJ.*) KAMALA BAI AMMAL *v.* THEETHACHARI. 63 L. W. 1027: 1950 M. W. N. 492: (1950) 2 M. L. J. 286.

SECTION 4 (h)—WOMEN CREDITORS—EXEMPTION IN FAVOUR OF—PROPERTIES BELONGING TO SUCH CREDITORS—COMPUTATION OF TOTAL VALUE—PROPERTIES SITUATE OUTSIDE INDIAN UNION—IF TO BE EXCLUDED.—The only criterion for deciding whether the exemption in favour of women-creditors given under Section 4 (*h*) of the Act applies to a particular woman creditor is to find out whether, on the whole, she is a rich or a poor creditor, that is, whether she is possessed of properties of the value of more than Rs. 6,000 or less than that amount. There is absolutely no warrant on the language of Section 4 (*h*) to exclude certain categories of properties belonging to the woman-creditor, except those expressly mentioned in the Explantion to that section. The absence of mention of properties belonging to women-creditors situate outside the Indian Union limits, in the said Explanation, is a clear indication of the intention of the legislature that such properties were not contemplated to be excluded and that they should be taken into account, while ascertaining the total value of all the properties belonging to any woman-creditor. *Jayarama Pillai* v. *Parvathi.* 69 Mad. L. W. 334: 1956 Mad. W. N. 351: (1956) 1 M. L. J. 585.

DEBT DUE TO TWO WOMEN JOINTLY.—When the Court has to adjudicate under the Act on a debt due by an agriculturist to two women jointly or as co-owners the interest of each woman in the debt and the assets of each woman apart from the debt must be taken into consideration in order to determine whether each woman is entitled to claim the exemption under Section 4 (h) of the Act. 52 L. W. 292: 1940 M. W. N. 912: A. I. R. 1940 Mad. 885: (1940) 2 M. L. J. 342.

CLAIM TO EXEMPTION—PLEA OF BENAMI—EVIDENCE.—A plea of benami is admissible and can be gone into in a matter arising under Section 4 (h). Where in an application under Section 23 of the Act, the decree-holder who is a woman pleads that she comes within the exemption under Section 4 (h), and the debtor pleads the existence of a mortgage in her favour, it is open to the decree-holder to adduce evidence to show that though the mortgage stood in her name, she was really a benamidar for another and that she was not beneficially interested therein. 201 I. C. 790: 55 L. W. 127: 1942 M. W. N. 139: A. I. R. 1942 Mad. 388: (1942) 1 M. L. J. 289. *see also* (1941) 1 M. L. J. 313.

PROMISSORY NOTE STANDING IN FAVOUR OF MEN—EVIDENCE TO SHOW THAT DEBT IS REALLY OWNED TO A WOMAN.—Where a decree was obtained by the holder of a promissory note which at least since 1935 stood in the name of men it will not be permissible for the decree-holder to adduce evidence that the debt is really owed to a woman in order to invoke Section 4 (h) of the Act. The liability of the judgment-debtor is to the decree-holder and to no one else, though the deree-holder may himself be liable to pay the realisation to a woman. 53 L. W. 245: 1941 M. W. N. 203: A. I. R. 1941 Mad. 596: (1941) 1 M. L. J. 313.

DEBT DUE TO WOMAN AND MAN—SCALING DOWN.—When there is a debt due to a woman and a man and the amount of the debt due to each can be ascertained, if the woman is entilted to the protection under Section 4 (h), to the extent of her interest in the debt the agriculturist debtor should be refused relief, but he should be given relief to the extent of the interest in the debt belonging to the man. 58 L. W. 141: 1945 M. W. N. 212: A. I. R. 1945 Mad. 260: (1945) 1 M. L. J. 468.

"OTHER PROPERTY"—MAINTENANCE ALLOWANCE DECREED TO HINDU DAUGHTER AGAINT FATHER'S HEIRS OR DEVISEES.—Maintenance allowance decreed to a Hindu daughter against the heirs or devisees of her father is "property" within the meaning of Section 4 (h) and a woman in receipt of such allowance is not entitled to the immunity afforded by that section. I. L. R. (1941) Mad. 567: 1941 M. W. N. 296: 53 L. W. 75 (2): 199 I. C. 753: A. I. R. 1941 Mad. 507: (1941) 1 M. L. J. 123.

"OTHER PROPERTY"—CONSTRUCTION OF SECTION.—Besides the decree debt sought to be scaled down a woman creditor was entitled to a half-share in a mortgage debt. The principal amount of these two debts which were due on the 1st October, 1937, did not exceed Rs. 3,000. But the debtor contended that she was not entitled to exemption under Section 4 (h) as the share in the mortgage debt was "Other property." Held, if it is found, that the other debt due to the woman creditor is also a debt due from

(*i*) Any wages due to an agricultural or other rural labourer.

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an agriculturist, she will be entitled to the benefit of the exemption under Section 4 (h); if not, such debt must be regarded as "other property" within the meaning of the provision and she will be excluded from it. [Anomalies which the wording of the section leads to pointed out. Decision of Krishnaswamy Aiyangar, J., in C. R. P. No. 1072 of 1938 (unreported) overruled.] I. L. R. (1940) M. 688: 1940 M. 42: (1940) 1 M. L. J. 534: 192 I. C. 386.

DEBT DUE UNDER PROMISSORY NOTE OF 1937—RENEWEL BY FRESH PROMISSORY NOTE EXECUTED AFTER 1—10—1937—EFFECT.—Seetion 4 (h), which refers to any debt or debts due to a woman on 1—10—1937 does not say expressly what is to happen if the debt due to a woman on 1—10—1937 is transferred, or renewed or reduced by payment in the interval between 1—10—1937 and the date when the matter comes before the Court. The clause must, however, be read as exempting from the operation of the Act all that class of liabilities of an agrlculturist which are included in the clause, regardless of whether after 1—10—1937 a fresh document is or is not executed by the same debtor in respect of that debt. 210 I. C. 273: 1943 M. W. N. 610: 56 L. W. 491: A. I. R. 1943 Mad. 686: (1943) 2 M. L. J. 276.

SEC. 4 (i): WAGES DUE TO AGRICULTURAL OR OTHER RURAL LABOURERS are also exempted from the operation of this Act. Such debts rarely carry any interest. The words "other rural labour" would include a village-labourer employed for any purpose, though not agricultural. Wages due to domestic servants and personal attendants in the rural parts of this province would be saved by this sub-clause. Such labourers in towns and in city factories would not come under the term "rural labourers."

An amendment was proposed to include within the scope of this exemption debts due to orphans, very aged and disabled persons. The Prime Minister in opposing this amendment said that women, for whose benefit the protection was devised, constituted a distinct class. As for the other categories of persons referred to, numerous difficulties would arise in defining them or ascertaining their fitness for relief. He was unable to accept the amendment, because it would lead to enquiries whether a person was infirm or not and whether he was capable or not of earning a livelihood, and in the case of minors, the time that minority should be calculated up to—whether the date of the loan or of the legislation. The complications that would ensue might be too many to be solved easily. In the case of women, at least, the tradition was to make a distinction with respect to tenure, estate and other matters.

Provided that where the liabilities mentioned in clause (*e*) arise by reason of an assignment to the co-operative society such assignment has taken place before the 1st October, 1937, or is an assignment to such society of a loan granted by a co-operative society.

Special provision for undivided Hindu families, etc.

5. Where an undivided Hindu family other than a marumakkattayam or aliyasanthana tarwad or tavazhi is assessed to the taxes specified in provisos (A), (B) and (C) to section 3 (*ii*), or falls within the category of persons specified in proviso (D) to the same section, no person who was a member of the family on the 1st October, 1937, shall be deemed to be an agriculturist for the purposes of this Act except section 13.

Sons and descendants of non-agriculturist members of Hindu families to be non-agriculturists.

6. Where in an undivided Hindu family other than a marumakkattayam or aliyasanthana tarwad or tavazhi which is an "agriculturist" within the meaning of section 3 (*ii*), any member of the family is not an agriculturist, then, notwithstanding anything contained in section 3 (*ii*), none of his sons and descendants in the male line shall be deemed to be an agriculturist for the purposes of sections 7 to 12 and 19 to 27 of this Act.

If a similar distinction was to be made in the case of other persons also, it would lead to difficulties. As for orphans, what was the criterion? Was it the mere fact of the death of parents? If so, a minor might be driving in a motor car, due perhaps to the absence of parental care, and was he to be considered an orphan? The House would be ill-advised in aceepting this amendment. He would admit, at the same time, that there were many cases of an absolutely deserving character, but he was afraid these could not be provided for. Let them therefore be content with providing for women who, he addel, became "a nightmare" to him, because of the amount of literature which appeared in the Press on their behalf."

It would be very difficult to define a "disabled" person so as to entitle him to be exempt frem the provisions of the Bill. Regarding minors, there was one great difficulty. In this country, if they proceeded to differentiate in regard to the legal rights of minors, an amount of complication with regard to the rights of the individual members of Hindu families would arise. Such difficulties would not arise in the case of women. (Proceedings in Council).

Section 5—Notes.

CONSTRUCTION—"UNDIVIDED HINDU FAMILY"—IF SYNONYMOUS WITH "JOINT FAMILY"—ASSESSMENT OF DIVIDED FAMILY UNDER SECTION 25-A OF THE INCOME-TAX ACT, XI OF 1922—RELEVANCY—DIVIDED MEMBER—IF ALSO ASSESSED AS MEMBER OF ASSOCIATION OF INDIVIDUALS.—Section 5 of the Madras Agriculturists' Relief Act has no application to the case of Hindu families divided in status. The fact that a divided family is assessed by a fiction as an undivided Hindu family under Section 25-A of the Indian Income-tax Act cannot affect the real status of the family. Under Section 5 of the Madras Act, the words "undivided Hindu family" are synonymous with the words "joint family". It is impossible to say that, when a family whether divided or undivided is assessed as a separate legal entity, a member thereof is also assessed as one of a group of persons. Accordingly a member of a divided Hindu family is entitled to claim the benefits of the Agriculturists Relief Act. (*Subba Rao and Chandra Reddi, JJ.*) NADIAMMAI ACHI *v.* MARIAPPA THEVAR. 1950 M.W.N. 75: (1949) 2 M. L. J. 806.

Scope of Section 5.

This section contains a special provision for undivided Hindu families who are assessed to any of the taxes which disqualify such family from being treated as an agriculturist. As originally introduced the Bill applied to marumakkattayam and aliyasantana tarwads and tavazhis. In view of the impossibility of obtaining individual partitions in such families, the latter have now been excluded from this clause. A corresponding exclusion has also been effected in Section 6 which relates to the case of descendants of non-agriculturist members of undivided Hindu families which are agriculturists. (*Vide* Rep. of Select Committee.)

"UNDIVIDED HINDU FAMILY."—Would it include a re-united Hindu family?

"NO PERSON WHO WAS A MEMBER OF THE FAMILY ON THE 1ST OCTOBER, 1937, SHALL BE DEEMED TO BE AN AGRICULTURIST."—Would a member born or adopted after 1st October, 1937, be an agriculturist? Would a person separated before 1st October, 1937, but who became re-united subsequent to that date be an agriculturist under this Act?

"EXCEPT SEC. 13."—Section 13 deals with the rate of interest on new loans.

Notes under section 6.

SEC. 6: HINDU JOINT FAMILY OF FATHER AND SONS—FATHER ASSESSED TO INCOME-TAX—SONS, IF DISQUALIFIED FROM CLAIMING

CHAPTER II.

SCALING DOWN OF DEBTS AND FUTURE RATE OF INTEREST.

Debts payable by agriculturists to be scaled down.

7. Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this Chapter.

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him; nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Chapter.

BENEFITS OF ACT.—*Prima Facie*, Section 6 of the Act contemplates the existence of a larger agriculturist unit consisting of a family of several branches, one branch of which is headed by the father who is disqualified from being an agriculturist under one or other of the provisos to Section 3, in which case his sons would be also disqualified as long as they are joint. The section does not apply to a case where there is no such larger unit, and where the family consists only of a father and his sons, the latter would be entitled to the benefits of the Act, if his assessment to income-tax, which is the ground of his disqualification, has been made in his individual capacity and not as manager of the joint family of himself and his sons. 205 I. C. 364: 1942 M. W. N. 191: 55 L. W. 160: A. I. R. 1942 Mad. 402: (1942) 1 M. L. J. 327. *See also* (1944) 2 M. L. J. 112: 1944 Mad. 497.

Section 6 has no application to a family consisting only of a father and son. It is intended to apply to families in which there are several branches, one or more of which is composed of father and son. 1943 M. 35: 55 L. W. 636: (1942) 2 M. L. J. 486: 1942 M. W. N. 752.

Notes under section 7.

SEC. 7: APPLICABILITY—SCALING DOWN—PRE-REQUISITES.—The essential pre-requisite for the application of Section 7 is the existence of a debt payable by an agriculturist on the date of commencement of the Act, namely, 22nd March, 1938. It is not necessary that the applicant for relief should be liable for the debt on that date. Nor is the right to claim relief confined to the person who originally contracted the debt; it is equally available to his legal representatives and assigns as well; nor again is it necessary that the applicant should be personally

liable for the debt. The liability of a purchasee of the equity of redemption in mortgaged property to pay the mortgage debt arises clearly on the date of his purchase, though the debt itself existed before he purchased the property; and if the debt was payable by an "agriculturist" on the date of commencement of the Act, the purchaser would be entitled to claim relief if he is an agriculturist himself on the date of his application. NAGESWARASWAMI *v.* VISWASUNDARA RAO. (1953) 2 M. L. J. 252: 1953 S. C. R. 894: A. I. R. 1953 S. C. 370: (1953) S. C. J. 539.

SCOPE OF SECTION.—This section enacts that debts payable by agriculturists shall be scaled down, and the method and extent of scaling down are prescribed by the subsequent sections. (*See* Sections 8 and 9.)

"DEBTS PAYABLE.....AT THE COMMENCEMENT OF THIS ACT."—The scaling down is only for debts payable at the commencement of this Act. This is in accordance with the intention of the Legislature that the relief to the agriculturists is intended to be given only once, and it is expected that, once they are enabled to free themselves from the present pressing load of debt, they will take care of themselves for the future—provided some provision is made to regulate rates of interest for future transactions. (*Vide* Sections 12 and 13.)

The words used are "payable.....at the commencement of this Act." *A*, an agriculturist, contracts a debt on the 1st January, 1937, on the security of his holding, for the repayment of which with interest, two years' time is given, *i. e.*, it is made payable on 1st January, 1939. Would it be a debt payable at the commencement of this Act? Would the sections relating to the scaling down apply to such a debt? It would appear that the word "payable" as explained by judicial decisions would also include debts that would become due on a future date or on the happening of a future contingency.

PAYABLE.—A sum of money is said to be payable when a person is under an obligation to pay it. "Payable" may therefore signify an obligation to pay at a future time, but, when used without qualification, 'payable' means that the debt is payable at once, as opposed to 'owing.' (2 Ch. Div. 103 and Sweet Law Dic.; Black Law Dic.)

This term "payable" is used in preference to the word "recoverable" which appeared in the original draft bill, as the latter word may imply the question of the solvency of the debtor. (*See* Rep. of Sel. Com. and Proceedings in the Assembly.)

"NO SUM IN EXCESS OF THE AMOUNT AS SO SCALED DOWN SHALL BE RECOVERABLE."—This only applies to recovery by coercive process. There is no bar to the debtor voluntarily paying the full amount of interest and principal as per terms of the contract, or any sum in excess of the amount fixed by the scaling down process. Such voluntary payment will not be illegal, nor can the debtor recover the same from the creditor as sums had and received or as payment made under mistake. (*Vide* section 8, sub-section (4) *infra*, and section 9.)

SECS. 7, 8, 9 AND 13: IF ULTRA VIRES IN SO FAR AS THEY RUN COUNTER TO THE PROVISIONS OF NEGOTIABLE INSTRUMENTS ACT RELATING TO PROMISSERY NOTES.—Sections 7, 8, 9 and 13 of the Madras Agriculturists' Relief Act, in so far as they run counter to Sections 32, 79 and 80 of the Negotiable Instruments Act, relating to promissory notes, are *ultra vires*. I. L. R. (1945) Mad. 679: 58 L.W. 199: 1945 M.W.N. 258: 1945 F.L.J. 105: A.I.R. 1945 Mad. 203: (1945) 1 M.L.J. 339 (F. B.); (1945) 1 M.L.J. 24 (F. C.)

STATUS OF AGRICULTURIST—CRUCIAL DATE TO DECIDE.—Apart from Sections 13, 19 and 23 of the Act, there is nothing in the Act which requires a debtor to prove his agriculturist status as on the date on which the matter is brought to the notice of the Court. Reading Sections 7 and 10 of the Act together, in the absence of any provision in the Act, requiring proof that the debtor must continue to be an agriculturist also up to the time when the matter comes before the Court, it must be held that the debtor, in cases where his claim to relief is put forward during the trial of the suit, will be entitled to relief if he can show that he was an agriculturist on 1—10—1937 and on the date of commencement of the Act, 22—3—1938. 204 I. C. 478: 55 L. W. 635: 1942 M. W. N. 809: A. I. R. 1942 Mad. 726 (2): (1942) 2 M. L. J. 498.

"DECREE"—PRELIMINARY DECREE IN MORTGAGE SUIT PASSED AFTER ACT—SCALING DOWN.—The word "decree" in Section 7, 8 and 9 refers to decrees passed before the commencement of Madras Act IV of 1938 and not decrees passed after the Act. A preliminary decree in a mortgage suit passed after the coming into force of the Act is not liable to be scaled down subsequently. The fact that no final decree has yet been passed in the mortgage suit makes no difference, because it is the preliminary decree which fixes the rights and liabilities of the parties. The final decree does not change the position except that it gives the mortgagee the right to sell the property for the amount declared to be due in the preliminary decree. 199 I. C. 448: 1942 M. W. N. 832; 54 L. W. 306: A. I. R. 1941 Mad. 891 (1): (1941) 2 M. L. J. 359. As to decrees passed after Act came into force, *See* 52 L. W. 176: 1940 M. 910: (1940) 2 M. L. J. 202.

See also JAGANNADHAN CHETTY *v.* PARTHASARATHY IYANGAR, (1952) 2 M. L. J. 430, where it was held by Krishnaswami Naidu, J., that where a preliminary decree passed in a mortgage suit pior to the commencement of the Act had not yet become final, the final decree passed subsequently would not come within the scope of the term "decree" in S. 7.

SALE IN EXECUTION BEFORE 1—10—1937—APPLICATION UNDER O. 21, R. 90, PENDING WHEN ACT IV CAME INTO FORCE—DECREE SCALED DOWN—DEPOSIT OF REDUCED AMOUNT.—An execution sale was held on 19—9—1935, a stranger purchasing the properties at the sale. The sale was not confirmed as the judgment-debtors applied to have the sale set aside under O. 21, R: 90, C. P. Code. During the pendency of the application Madras Act IV of 1938 came into operation, and, on 26—9—1939, the decree was amended by scaling down. One of the judgment-debtors then deposited the amount of the decree as scaled down on 5—1—1940 and prayed to have the sale set aside under Section 7 of Madras Act IV of 1938. Held, that Section 7 could not apply and the confirmation of the sale held long before the Act would not contravene the provisions of Section 7 as there was no question at all of the property being "proseeded against in execution" wlthin the meaning of the 2nd paragraph of Section 7 at the stage when the Court was called upon to confirm the sale. The sale held before 1—10—1937 could not be set aside under the Act and the effect of an order under Section 19 of the Act was only to reduce the amount due to the decree-holder. 1944 M. W. N. 75: 57 L. W. 67: 217 I. C. 372: A. I. R. 1944 Mad. 314: (1944) 1 M. L. J. 110. *See also* 1940 Mad. 478: 51 L. W. 606.

DEPOSIT WITH NATTUKOTTAI CHETTY BANKER—INTEREST ADDED TO PRINCIPAL AND MADE TO CARRY INTEREST.—Where, in the case of deposits made with a Nattukottai Chetty banker, periodical settlements of accounts are made under which the interest is added to the principal sums outstanding and made to carry interest at the stipulated rate for the next period, the interest accrued due and capitalised cannot be deemed to be paid and discharged and cannot be regarded as no longer "outstanding" to be scaled down under the Act. There is no warrant for the fiction that in such cases the interest can, by the mere process of being capitalised, be said to have been paid. I. L. R. (1942) Mad. 742: 58 L. W. 193: 1945 M. W N. 268: A. I. R. 1945 Mad. 342; (1945) 1 M. L. J. 391. See also (1942) 2 M. L. J. 753: 1943 Mad. 157.

COMPROMISE DECREE.—Scaling down on basis of original debt—Uncertitied payments, if and how provable. *See* I. L. R. (1940) Mad. 947: 1940 M. W. N. 839: 52 L. W. 262: (1940) 2 M. L. J, 293; *See also* 52 L. W. 857; (1940) 2 M. L. J. 927.

PAYMENT AFTER ACT IN EXCESS OF AMOUNT PROPERLY PAYABLE UNDER ACT AND APPROPRIATED TO INTEREST—POWER TO RE-APPROPRIATE TO PRINCIPAL.—Where payments made by a debtor in 1938 and 1939 have been definitely appropriated towards interest at the time, neither the debtor nor the creditor has the right to tear up the appropriations by an unilateral act. The Court has no power to re-appropriate the payments to principal in the absence of any provision for that course in the Act. It is not sufficient to show that the creditor cannot by reason of the provisions of Section 7 recover more than the amount as scaled down under the Act, and the excess amount paid towards interest as scaled down cannot be recovered by the powers under Sections 7 and 12 of the Act. The only way in which a debtor might get back money which he has paid after the Act came into force, in excess of the amount properly due under the Act, would be by establishing a right to a refund under the ordinary law on the ground that the payment has been made under a mistake. For this purpose there must be a definite plea of set-off supported by evidence showing that a mistake has in fact been made. 203 I. C. 596: 1942 M. W. N. 541: 55 L. W. 527: 1942 Mad. 655: (1942) 2 M. L. J. 275.

MORTGAGED PROPERTY SOLD AND PURCHASED BY DIFFERENT PERSONS IN PARCELS—SOME PURCHASERS, AGRICULTURISTS AND OTHERS NOT AGRICULTURISTS—SCALING DOWN.—In execution of decrees obtained by third parties against a mortgagor, a portion of the hypotheca passed to *X*, an agriculturist, and the rest of the hypotheca to *Y*, who was not an agriculturist. The mortgagor a non-agriculturist thus ceased to have any interest in the hypotheca. In a suit by the mortgagee impleading *X* and *Y*, a preliminary decree for sale was passed on 16—8—1937 for Rs. 37,772; when Madras Act IV of 1938 came into force, on an application by *X*, the decree was amended, so far as *X* concerned, by scaling down the amount declared due to Rs. 6,638-8-3, including costs, the rest of the decree being left in tact. A final decree was passed in November, 1939 and the mortgagee thereafter applied for sale against *X* and *Y*. Pending execution, *X* deposited in Court the sum of Rs. 6,638-8-3, and the execution costs for payment to the mortgagee on condition that he was allowed to redeem the whole of the mortgage security, so as to enable him to claim contribution from *Y* for a rateable proportion of the amount paid. He also fild an application for entering satisfaction of the decree as a whole. Held, (1) that *X* was not, on payment of the scaled down amount, entitled to redeem the whole mortgage, as the security must be deemed to be split up in such cases in order to give effect to the provisions of the Act which would benefit only agriculturist debtors and would not affect remendies against debtors who were not agriculturists; (2) that the principle, that where an agriculturist debtor redeems the mortgage by paying the mortgage money as scaled down under the Act, a purchaser of

a portion of the hypothea is also benefited under the general law by reason of the whole property being relieved of the incumbrance, although such purchaser is not an agriculturist and cannot himself claim the benefit of the Act, could not be extended to a case like the present where the mortgagor was not an agriculturist, and the question arose between purchasers of different portions of the hypotheca, some of whom were, and others were not, agriculturists; (3) that the mortgagee's right to recover the full amount of the debt from the properties in the hands of *Y* could not be nullified in order to safeguard *X's* possible right of recovering contribution from *Y*; (4) that though in certain circumstances the relief provided in the Agriculturists Relief Act might be of no practical benefit to an agriculrurist debtor, the latter could not claim in seeking relief that the creditor's rights should be prejudiced to a greater extent than the provisions of the Act clearly warrant. I. L. R. (1943) Mad. 665: 207 I. C. 253: 55 L. W. 741; 1942 M. W. N. 798: A. I. R. 1943 Mad. 196: (1942) 2 M. L. J. 531. *See also* 1948 M. W. N. 393: (1948) 2 M. L. J. 28: (1942) 1 M. L. J. 510.

SCALING DOWN AT INSTANCE OF MORTGAGOR—MORTGAGED PROPERTY PURCHASED BY NON-AGRICULTURIST CANNOT BE PROCEEDED AGAINST FOR MORE THAN SCALED DOWN AMOUNT.—Where a mortgage debt is liable to be scaled down at the instance of the mortgagor who is an agriculturist and claims the benefits of Madras Act IV of 1938, the mortgaged properties purchased by strangers subject to such mortgage can be proceeded against only for the scaled down amount and no more, though the purchasers are not themselves agriculturists. 203 I. C. 417: 55 L. W. 283 (1): A. I. R. 1942 Mad. 527: (1942) 1 M. L. J. 510.

PURCHASER OF PART OF MORTGAGED PROPERTY UNDERTAKING TO PAY DEBT.—The purchaser of a part of mortgaged property who was directed to pay off the mortgage debt failed to do so, and therefore the whole mortgage debt remained due when Madras Act IV of 1938 came into force. The mortgagor brought a suit for redemption of the mortgage claiming the benefit of the Act as an agriculturist and depositing in Court the amount which he alleged to be due under the mortgage when scaled down under the Act Held, that the mortgage money being liable to be scaled down under the Act, the mortgagee was entitled, on payment of the scaled down amount, to call upon the mortgagee to deliver up the mortgage deed duly discharged, *i. e.*, to redeem the mortgage as a whole in spite of the fact that the purchaser was not an "agriculturist." Held, further, that the Court by allowing the mortgagor to redeem the mortgage as a whole, was not conferring the benefit of the Act on the non-agriculturist purchaser, because the latter would have to refund to his vendor (the mortgagor) the purchase money reserved with him,

which, as a result of the scaling down, he would not have to pay to the mortgagee. 202 I. C. 402: 55 L. W. 280: 1942 M. W. N. 365: A. I. R. 1942 Mad. 525: (1942) 1 M. L. J. 506.

PERSONAL REMEDY BARRED BEFORE ACT—PURCHASER OF EQUITY OF REDEMPTION AFTER ACT—SCALING DOWN.—In laying down the procedure for the scaling down of debts under the Act, the Legislature had in mind the protection of agriculturists from the claims of creditors in respect of debts payable and recoverable by process of law and it was not concerned with the making of mere declarations regarding the amount of debt which the creditors could not recover. Where, before the commencement of the Act, the personal remedy of the mortgagee against the mortgagor under a mortgage had become barred by limitation, and subsequently when the mortgage is sought to be enforced, a person who has purchased the equity of redemption and who claims to be an agriculturist claims the benefit of the Act, the Act cannot apply as at the time of the commencement of the Act there was no enforceable debt in respect of which the benefit of the Act can be claimed. 215 I. C. 293: 56 L. W. 623: 1943 M. W. N. 667: A. I. R. 1944 Mad. 82: (1943) 2 M. L. J. 434.

AGRICULTURIST AND NON-AGRICULTURIST MORTGAGORS—SCALING DOWN AND DISCHARGE AS REGARDS FORMER—EFFECT ON LIABILITY OF LATTER.—If one of two mortgagors happens to be an agriculturist and the other a non-agriculturist, discharge of the debt scaled down by the former would not extinguish the debt against the latter also. I. L. R. (1954) Mad. 158: A. I. R. 1954 Mad. 383: (1954) 1 M. L. J. 97 (F. B.). *See also* (1951) 2 S. C. R. 292.

AGRICULTURIST MORTGAGOR LOSING INTEREST IN PROPERTY—RIGHT OF TRANSFEREE TO BENEFIT OF SCALING DOWN.—If the mortgagor is entitled to the benefit of scaling down of the mortgage debt under the Act that benefit would also enure to the transferee of the hypotheca in whole or in part, whether he is or is not an agriculturist. The benefit so enures under the general law, by reason of the property being relieved of the burden or the scaling down of the debt at the instance of the agriculturist mortgagor.

If, however, the mortgagor is not an agriculturist and the question arises between purchasers of different portions of the hypotheca, the fact that one of such purchasers is an agriculturist entitled to the benefit of the Act would not enable the other purchasers who are not agriculturists to claim such benefit.

Where the agriculturist mortgagor is not himself entitled to the benefit because the personal remedy against him is barred by

limitation and he has lost all interest in the hypotheca by alienation, the non-agriculturist purchaser or purchasers of the hypotheca, in whole or in part, are not entitled to claim that the debt should be scaled down. Though the mortgagor in such a case might be entitled to redeem the mortgage, that circumstance would not entitle him to claim the benefit of the scaling down provisions of the Act. I. L. R. (1954) Mad. 329: 1953 M.W. N. 706: 1954 Mad. 264. *See also* on this point the decision in (1951) 1 M. L. J. 560 (S. C.).

MORTGAGE WITH POWER OF SALE—ATTEMPT TO EXERCISE POWER OF SALE WITHOUT SCALING DOWN DEBT—TEMPORARY INJUNCTION TO RESTRAIN SALE.—It is implied in Section 7 of the Act that it is the duty of the creditor to scale down the amounts due to him by his debtors. There is nothing in the section indicating that the scaling down must necessarily be the act of a Court. It will be only in a case in which the creditor does not scale down his claim in accordance with the provisions of the Act that the intervention of the Court will be necessary. If a creditor attempts to exercise his power of selling the debtor's property mortgaged to him reserved to him under the mortgage deed without scaling down the debt in accordance with the Act, that would be an act of injury, which the Court would prevent by issuing a temporary injunction on application by the debtor. 1938 M. W. N. 949: 48 L. W. 531: (1938) 2 M. L. J. 920: 1939 Mad. 56.

SEC. 7 (ii) (*a*)—APPLICABILITY—TRANSFER OF RIGHTS *inter se* AMONG MORTGAGORS—EFFECT.—The policy of the Act is to confer a right to have the mortgage debt scale down primarily on the mortgagor and to deny the relief to persons who have obtained transfers from the mortgagor during the period specified in Section 7 (ii) (*a*), the transferees being third parties. Where, however, the transfer is by one mortgagor to his co-mortgagor, the transferee mortgagor's right, to which he would otherwise be entitled cannot be held to be lost or extinguished by reason of the transfer to him by his co-mortgagor. So that a transfer of rights *inter se* among the mortgagors is not one falling within Section 7 (ii) (*a*). 1954 M. W. N. 166: (1954) 1 M. L. J. 548.

Where the creditor in exercise of his power of sale under Section 69 of the Transfer of Property Act, 1882, was about to recover by sale of the debtor's property mortgaged to him the full amount of the debt, that is to say, without deducting the amount by which it had become reduced by the operation of the Madras Agriculturists Relief Act, 1938, and the debtor thereupon sued for an injunction to prevent the creditor from proceeding with the sale: *Held*, that the suit was competent and that as the sale was imminent the Court might properly grant an interim

8. Debts incurred before the 1st October, 1932, shall be scaled down in the manner mentioned hereunder namely :—

Provision for debts incurred before 1st October 1932.

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injunction. It is no answer in such a case to say that under Section 69 of the Transfer of Property Act the debtor will be entitled to recover damages if the mortgagee exercised his power of sale in an improper or irregular manner. (1938) 2 M. L. J. 918.

Notes under Section 8.

SEC. 8.—Sections 8 and 9 lay down the method and extent of scaling down. A distinction is made between debts incurred before 1st October, 1932, and those incurred after that date, *i.e.*, debts incurred during the pre-depression period and those incurred after the depression became acute. The former is dealt with in Section 8 and the latter in Section 9.

"ALL INTEREST OUTSTANDING".—This need not necessarily be interest contracted for by the parties. Even *post diem* interest and interest which courts sometimes award as damages for wrongful withholding of monies would come under this section and be deemed to be discharged—except perhaps in the case of persons occupying the position of trustees, express or constructive, (as) executors, administrators, guardians of minors, receivers appointed by order of court, agents, and managers of temple funds mishandling monies coming into their hands in their fiduciary capacity. [*See* Section 4 (f)]. *See* (1942) 1 M. L. J. 453 : 1942 Mad. 551 : 55 L. W. 201 : (1942) 2 M. L. J. 753. The new definition of interest in Section 3 (iii-A) has very largely enlarged the scope of the term [*See* Notes under Section 3 (iii-*a*).]

"DEBT INCURRED BEFORE 1ST OCTOBER, 1932".—If a document is executed before 1st October, 1932, and the amount or any portion of the same is actually advanced to the creditor after 1st October, 1932, it would evidently be a debt incurred after 1st October, 1932. The mere execution of the document would not create any liability, and no debt would be incurred by the mere execution. The incurring of the liability and the commencement of the debt will only be from the date of the payment of the amount to the debtor or to another on his behalf. The date of payment and not the date of the document will determine the date on which the debt is incurred.

"Incur" is defined to mean "become liable or subject to" (as) to incur a debt. (Webs.). "To have liabilities cast upon one by act of parties or operation of law" (Bouvier).

Such cases often arise in this Province with regard to transactions with Banks, Nattukkottai Chettiars, Marwaries and other professional money-lenders. The borrower executes a security bond on landed property for a fixed amount—say Rs. 3,000, on condition that he will borrow on promissory notes up to that amount, from time to time, and that the property should stand security for all sums that may become due on the promissory notes up to Rs. 3,000. In such a case the security bond may be executed before 1st October, 1932, and sums may actually be advanced after 1st October, 1932. In such cases, the date of the actual advancement of the loan and not the date of the document would be the real test to determine the time of actual "incurring of the debt". *See* (1940) 2 M. L. J. 575: 1940 M. 943.

"IN FAVOUR OF THE SAME CREDITOR".—If a loan is raised from a third party to repay a previous loan, the principal amount in respect of this transaction would naturally be the sums advanced by this third party and secured by the new document.

[Note the new Amendment by the Amending Act 23 of 1948 and the futher amendment made by Act XXIV of 1950.]

SS. 8 & 9—SUMMARY OF CASES—APPLICABILITY AND SCOPE—SUIT DISMISSED—APPEAL—JUDGMENT ALLOWING APPEAL—APPLICATION FOR SCALING DOWN DEBT.—Where a suit is dismissed by the trial Court but is decreed on appeal after the passing of the Madras Agriculturists Relief Act, it is only after the judgment is pronounced in the appeal allowing the claim, that any necessity could arise for making an application for scaling down the debt or to move the Court even orally to consider the question of scaling down the debt under Sections 7 and 8 of the Act, before a decree is made. The omission to make an application before judgment is pronounced cannot debar the debtor from making an application as early as possible after the judgment is pronounced and before the decree is actually drawn up. 1940 M. W. N. 412: 51 L. W. 606: A. I. R. 1940 Mad. 478.

RENEWAL OF DEBT.—The law on this point has been completely altered by the Amending Act of 1948. The additional words "whether by the same or a different debtor, or whether in favour of the same or a different creditor" have rendered most of the cases decided before the Amendment obsolete. The following is a summary of cases decided before the amendment by Act 23 of 1948.

CASES DECIDED BEFORE THE AMENDMENT—RENAWAL OF DEBT—MORTGAGE DEED.—A person who by reason of purchase of property bound by a mortgage is under a liability to discharge that mortgage and subsequently discharges that liability by the execution of a fresh mortgage can be said to be renewing his own pre-existing liability.

It is immaterial whether or not the debtor had the character of an agriculturist when the debt was originally incurred if it was incurred prior to 1—10—1937. A person purchasing property subject to a mortgage becomes a debtor to the mortgagee to the extent of the liability under the existing mortgage binding that property, and when he discharges that liability by executing a fresh mortgage to the same mortgagee, he can claim that the original principal of the earlier mortgage was included in the principal of the fresh mortgage to the extent to which the amount due under the earlier mortgage contributes to the consideration of the fresh mortgage. The fact that the fresh mortgage comprises other property not covered by the pre-existing mortgage is immaterial. Nor would the question be affected by the fact that the later mortgage comprises an additional consideration besides the discharge of the earlier mortgage. The portion of consideration which is made up of the discharge of the earlier mortgage will be scaled down on the basis of the principal of that mortgage. 208 I. C. 160: 1942 M. W. N. 717: 55 L. W. 779: A. I. R, 1943 Mad. 127: (1942) 2 M. L. J. 720. [*See* notes under Section 8, Expl, *infra*.]

RENEWAL OF PROMISSORY NOTE—HAVALA.—Amount due under previous note not scaled down—Suit on later note—Right of debtor to relief. *See* 223 I. C. 598: A. I. R. 1940 Mad. 111.

PROMISSORY NOTE—Suit by endorsee—Plea that part consideration represented interest on prior mortgage— If open—Negotiable Instruments Act, Section 120. *See* (1941) 2 M. L. J. 808.

Where by a tripartite agreement known as "havala" a debt due by *A* to *B* is cancelled and for it is substituted a debt due by *A* to *C*, there being also a discharge of *B's* separate obligation to *C*, this cannot clearly enable *A* to claim under Section 8 that his debt to *C* is a renewal of the debt to *B*. *C* is not the same creditor as *B*, nor is he an assignee of *B* in respect of *A's* original debt. 199 I. C. 290: 54 L. W. 471: 1941 M. W. N. 946: A. I. R. 1942 Mad. 12: (1941) 2 M. L. J. 566. *See also* (1940) 2 M. L. J. 517.

The purchaser of property bound by a mortgage, seeking to scale down his "property liability" can go back to an antecedent mortgage by the same mortgagor over the same property, the date of the "property liability" being regarded as the date when the property originally became bound by the antecedent debt. But where the mortgage which binds the property is traced back only to a simple money debt due from the mortgagor, the antecedent debt cannot in any sense be regarded as binding the property purchased, and the purchaser cannot claim that his liability is a renewal of the previous money debt due from the mortgagor. The liability cannot be scaled down with reference to the antecedent promissory notes evidencing the money debt. 201 I. C. 709: 55 L. W. 226: 1942 M. W. N. 213: A. I. R. 1942 Mad. 412: (1942) 1 M. L. J. 329.

Where it was contended that when an individual coparcener makes himself personally liable for a joint family debt, it must be deemed that there are two liabilities due from two persons, one the liability due from the joint family 'person' and the other the liability due from the individual coparcener becoming liable under a subsequent note, and hence he cannot claim that his liability was in renewal of the earlier joint family liability. *Held*, that spart from the pious obligation theory, when a junior coparcener joins in the execution of a document in renewal of a family debt for which he was previously liable only as a member of the joint family, he is entitled to have the debt scaled down as a renewal of the previous liability binding on himself. [(1940) 2 M. L. J. 786 and (1941) 1 M. L. J. 39, Foll.] 215 I. C. 104: 55 L. W. 27: 1942 M. W. N. 96: A. I. R. 1942 Mad. 298: (1942) 1 M. L. J. 88.

SECS. 8 AND 9—COMPROMISE DECREE—SCALING DOWN—BASIS OF—WHEN TO BE SCALED DOWN AS RENEWAL OF PRE-EXISTING LIABILITY:—Where a compromise which formed the basis of a decree was demonstrably a renewal of an anterior debt, the Court can scale down the debt on the basis of the principal of the amount originally advanced together with the amount of any sums subsequently advanced. Whether a compromise is or is not a renewal of a pre-existing liability is, to a large extent, a question of fact. Where a compromise is the result of mutual concessions and advantages which together make up an agreement from which it would be extremely difficult to disentangle that part which is a renewal of the original debt, it becomes impossible to regard the transaction in any sense as a renewal of the original debt. In such a case it is impossible to demonstrate that the compromise to any known extent is a renewal of the antecedent liability. In such circumstances the only practicable course is to scale down the debt as one arising for the first time under the compromise decree. 216 I. C. 179: 17 R. M. 201: 1943 M. W. N. 594; 56 L. W. 545: A. I. R. 1944 Mad. 13: (1943) 2 M. L. J. 367. *See also* 1941 Mad. 62; 52 L. W. 607: 1940 M. W. N. 1081: (1940) 2 M. L. J. 685.

SECS. 8 AND 19.—Compromise decree—Scaling down—If can be scaled down on basis or original principal amount as renewal of pre-existing liability. A. I. R. 1941 Mad. 62. *See also* (1941) 2 M. L. J. 658.

A mortgage bond in favour of the stake-holder was executed on 16th July, 1923, for payment of Rs. 9,000 in 18 instalments of Rs. 500 each payable every eight months in respect of future subscriptions for one ticket in a chit fund. A suit on the mortgage was compromised, the plaintiff agreeing to accept payment of a smaller sum in five instalments in full satisfaction of the claim, and a decree

in terms was passed on 14th April, 1936. In an application for scaling down the compromise decree: *Held*, that the liability must be considered to have been incurred on the date of the mortgage and regarded as renewed or at all events included in a fresh document under the compromise on which the decree was based and the decree must be scaled down accordingly. 52 L. W. 857: (1940) 2 M. L. J. 927: 1941 Mad. 231: 1941 M. W. N. 76.

"SAME CREDITOR"—PROMISSORY NOTE—PRIOR NOTE IN NAME OF GUARDIAN.—The term "creditor" does not include a person beneficially entitled to the amount lent. In the case of a decree of 1931 on a promissory note which can be traced back through a series of renewals in favour of the same persons as far as 1919, when the note discharged was one in favour of another as guardian for the payees under the notes of 1919 and thereafter (who were minors till then), the intervention of the guardian must be held to break the series of renewals, for the guardian is not the same creditor as the payees in the later notes. The debt can therefore be traced back only as far as 1919 and cannot be traced back earlier. 1942 M.W.N. 711: 55 L. W. 785: 205 I. C. 428: A. I. R. 1943 Mad. 168.

"ALL INTEREST OUTSTANDING"—MEANING.—The word "outstanding" in Section 8 (i) is used in its ordinary sense of "unpaid". Although a date is fixed in a document for the payment of interest, it must be deemed to accrue due from day to day. Where, in a mortgage deed, interest for the year ending March, 1938, was payable on 10th March, 1938, it must be held that interest from 10th March, 1937, up to 1—10—1938 had accrued and was outstanding within the meaning of Section 8 (1) of Act IV of 1938 (though it was not payable until 10th March, 1938 and was not overdue) liable to be cancelled under Section 8 (1). 203 I. C. 598; 55 L. W. 201: 1942 M. W. N. 235; A. I. R. 1942 Mad. 551: (1942) 1 M. L. J. 453.

Where the mode of dealing between a creditor and a debtor, adopted by the parties, is what is usually followed between a banker and customer, and at the end of each year's operations the account is settled by the parties and the resulting balance is treated as the principal carrying interest during the next year, the interest accruing due each year and dealt with in such manner does not come within the mischief of Section 8 (1). The interest in such a case must be deemed to have been paid and discharged and to be no longer outstanding to be wiped out under Section 8 (1). 207 I. C. 413: 1942 M. W. N. 737: 55 L. W. 805: A. I. R. 1943 Mad. 157: (1942) 2 M. L J. 753. *See also* 1945 Mad. 342: (1945) 1 M. L. J. 391.

DEBT SCALED DOWN—DATE FROM WHICH INTEREST IS TO RUN.—Reading Section 8 as a whole, the dade mentioned in sub-Section (1) is the date up to which all debts, falling under that section have to be scaled down, and the balance due after scaling down should

carry interest from 1—10—1937, at the rate mentioned in Section 12. 52 L. W. 788: 1940 M. W. N. 1222: (1940) 2 M. L. J. 870.

Promissory note in 1937 for interest due under mortgage—Decree in suit on promissory note—Scaling down—Procedure—Debt incurred before or after 1932. *See* 52 L. W. 830: 1940 M. W. N. 1249: (1940) 2 M. L. J. 874: 1941 M. 193.

"INTEREST"—MORTGAGE IN 1930 FOR ADVANCE OF RS. 2,500—STIPULATION FOR RE-PAYMENT OF RS. 4,837-8-0 IN 9 YEARS IN INSTALMENTS OF RS. 537-8-0 PER YEAR—APPLICATION FOR SCALING DOWN—EXCESS OVER RS. 2,500—Is to be cancelled as on 1—10—1937, as "interest." 52 L. W. 22: 1944 M. W. N. 119: A. I. R. 1944 Mad. 243: (1944) 1 M. L. J. 52.

Where it is shown that a previous transaction (a mortgage) is excluded from the operation of the Act by Section 4 (*d*), it follows that a promissory note by the same debtor cannot be scaled down as a renewal of that transaction under Section 8 in so far as it embodies the interest thereon. 205 I. C. 29: 55 L. W. 609: 1942 M. W. N. 744: A. I. R. 1943 Mad. 53; (1942) 2 M. L. J. 420.

SEC. 8 (2):—"PAYMENT"—SET OFF OF ANOTHER DEBT DUE TO DEBTOR.—A set off of another debt due to the debtor from the creditor can properly be regarded as a payment for the purpose of Section 8. 58 L. W. 575: 1945 M. W. N. 693: A. I. R. 1946 Mad. 137: (1945) 2 M. L. J. 429.

The payment that is contemplated in Section 8 (2) must be a payment by the agriculturist and not one by a non-agriculturist debtor. The payment must also be a payment in cash or in kind by an agriculturist or on his behalf.

The legal effect of a purchase by the mortgagee of the equity of redemption in a part of the mortgaged property is to discharge that portion of the mortgage debt which was chargeable on this part of the mortgaged property purchased and though it would operate as a discharge of the mortgage 'debt' the discharge is not the result of a payment made by the debtor mortgagor.

Further, after the sale of the equity of redemption the mortgagor-debtor ceases to have any interest in it and any reduction of the liability under the mortgage by appropriation of the rateable value fixed under Section 82, T. P. Act, does not enure to the benefit of the mortgagor. The amount so appropriated is not a payment within the meaning of Section 8 (2).

"Refund"—Meaning of—Appropriations made after 1st October, 1937—Can be re-opened. A. I. R. 1941 Mad. 226: 52 L. W. 484; (1940) 2 M. L. J. 547.

(1) All interest outstanding on the 1st October, 1937, in favour of any creditor of an agriculturist, whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date.

(2) Where an agriculturist has paid to any creditor twice the amount of the principal, whether by way of principal or interest or both, such debt, including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable.

When there is a debt incurred before 1st October, 1932, which has ripened into a decree after 1st October, 1932, the scaling down must be governed by Section 8 and not by Section 9. When the decree merely enforces the payment of a pre-existing debt bearing interest, that pre-existing debt must be regarded as the liability which will govern the section to be applied. 52 L. W. 173: 1940 M. W. N. 770: (1940) 2 M. L. J. 235: 1941 Mad. 67: I. L. R. (1940) Mad. 943.

PROMISSORY NOTE OF 1931—LETTER OF GUARANTEE IN 1933—COMPROMISE DECREE ON—SCALING DOWN—LIABILITY OF SURETY—IF TO BE SCALED DOWN UNDER SECTION 8 OR SECTION 9—SCALING DOWN AS AGAINST PRINCIPAL DEBTOR—PROCEDURE—COSTS—IF CAN BE ALLOCATED.—Held, (1) that as the surety becomes liable under the letter of guarantee only on 7—8—1933, he was entitled to have his liability scaled down with reference to Section 9 and not under Section 8, although under the general law he may have a right to resist execution on the ground that the full amount due from the principal debtors have been paid; (2) that a decree on a compromise was substantially the same as a decree on any other contract and to the extent to which the compromise was a renewal of a pre-existing debt, the decree had to be scaled down on the basis of the original principal; (3) that since the compromise did not separately allocate any portion of the amount towards the costs in the suit, it was not proper for the Court to reopen the compromise, tax the costs and treat the payment of the sum so taxed as the amount first to be provided for under the proviso to Section 19 of the Act, which

(4) Subject to the provisions of sections 22 to 25, nothing contained in sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amonnt which would have been payable by him if this Act had not been passed.

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related only to costs as originally decreed to the creditor; (4) that the proviso to Section 19 applied only to costs as decreed and to costs in execution, and the Court should not therefore direct payment to be made towards execution costs before the scaling down process was to start. 201 I. C. 15: 54 L. W. 461: 1941 M. W. N. 922: A. I. R. 1942 Mad. 133: (1941) 2 M. L J. 658.

Pro-note of 1929—Endorsement by payee in 1933—Suit by endorsee—Decree against executant and endorser—Application by endorser for scaling down—Procedure—Debt, if incurred before or after 1—10—1932. 1940 Mad. 943: 52 L. W. 518: (1940) 2 M. L. J. 575.

ABORTIVE SALE OF TREES IN 1931—SUIT FOR REFUND OF PURCHASE MONEY BY VENDEE IN 1934—DECREE—APPLICATION FOR SCALING DOWN—DATE OF LIABILITY.— Held, whatever be the nature of liability to pay the principal, whether it originated in contract or tort, the compensation awarded for the wrongful withholding of its payment could appropriately be regarded as 'interest' and was thus liable to be scaled down. The suit for recovery of the purchase money paid under the abortive sale was one for money had and received to his account, and the sale having failed *ab initio* the liability to refund the same arose when it was received by the vendor (29th April, 1931), and therefore fell under Section 8 of the Act. I. L. R. (1940) Mad. 864: 52 L. W. 289: 1940 M. W. N. 884: A. I. R. 1940 Mad. 794: (1940) 2 M. L. J. 273.

MORTGAGEE PURCHASING PART OF HYPOTHECA IN PRO TANTO DISCHARGE OF DEBT.—By the fact of the mortgagee purchasing part of the hypotheca in pro tanto discharge of the debt, the debt itself cannot be considered to have been split up so as to be liable to be scaled down on the analogy of cases relating to the splitting up of debts by the debtors executing different documents for portions thereof. There is a mere reduction of the debt by transfer of a portion of the hypotheca to the creditor himself, and the balance remaining due is the same old debt reduced by a payment. The identity of the debt or its liability to be scaled down as before is not affected. 218 I. C. 485: 57 L. W. 458: 1944 M. W. N. 523 (1): A. I. R. 1944 Mad. 549: (1944) 2 M.L.J. 140.

MORTGAGE OF 1927—ORAL AGREEMENT IN 1934 TO SELL LAND TO MORTGAGEE WITH URDERTAKING TO EXECUTE SALE DEED WHEN DEMANDED—EFFECT OF—SUIT FOR SPECIFIC PERFORMANCE—PLEA THAT DEBT WAS STILL ALIVE AND LIABLE TO BE SCALED DOWN—MAINTAINABILITY.—Held, (1) that the contract followed by delivery of possession was intended to operate and did operate as a conditional discharge of the debt; and the respondent not having put an end to the contract and claimed payment of the debt, there could be no question of scaling down the debt under this Act, as there was no debt; (2) that the suit was not barred by limitation as it was well within three years of the refusal to perform when a reply denying the contract was sent to the respondent, from which date the period of limitation had to be computed. I.L.R. (1944) Mad. 742: 215 I.C. 310: 56 L.W. 679: 1943 M.W.N. 718: A.I.R. 1944 Mad. 218: (1943) 2 M.L.J. 584.

APPROPRIATION OF PAYMENTS.—The previous cases relating to appropriation of payments have now to be read in connection with Explanation I of S. 8 newly added by the Amending Act of 1948. Most of the cases decided on what the intention of the parties was or could have been are not now good law. Under Expl. 1, every payment made by the debtor should be credited towards the principal, unless he has expressly stated in writing that the payment should be in reduction of interest.

CASES DECIDED BEFORE AMENDING ACT OF 1948.—If there has been an appropriation of payment made towards interest before 1st October, 1937, to the extent of that appropriation there cannot be any cancellation of interest and the appropriation will stand. Any appropriation made after 1st October, 1937, and before the commencement of this Act, must be deemed to be available for re-adjustment under this Act. 52 L.W. 431: 1940 M.W.N. 957; *see also* 1940 M.W.N. 329: (1940) 2 M.L.J. 550: 53 L.W. 227: 1941 M. 433: (1941) 1 M.L.J. 296.

When on open payments made in 1932, counter-interest was awarded and a fresh promissory note was executed in 1934, after deducting the payment with counter-interest: Held, (1) that the mere fact that counter-interest was awarded on open payments does not indicate that the payments should be treated as payments towards principal; (2) that when a fresh promissory note was executed after deducting the payments with counter-interest, it must be deemed that the appropriation was made at the time of the fresh promissory note; (3) that the interest outstanding at the time of the fresh promissory note must be deemed to have been satisfied by the payment, the balance if any appropriated towards principal; and (4) that the onus lies heavily on the debtor to prove that the interest was outstanding on 1st October, 1937, to get the benefit of S. 8. 199 I.C. 704: 1941 M.W.N. 188: 53 L.W. 240: A.I.R. 1941 Mad. 479: (1941) 1 M.L.J. 316.

[*Explanation I*—In determining the amount repayable by a debtor under this section, every payment made by him shall be credited towards the principal, unless he has expressly stated in writing that such payment shall be in reduction of interest.

Where at the time of payment by a debtor to a creditor there is an amount due towards interest, and the creditor after appropriating the amount paid towards interest and principal, claims the balance, he must be deemed to have appropriated the amount first in payment of interest and then payment of the principal, when there has been no indication by the debtor as to the mode of appropriation. 1940 M.W.N. 329: 52 L.W. 295: A.I.R. 1940 Mad. 485: (1940) 1 M.L. J. 860.

EXPLANATION I.— See also notes under S. 19, *infra*. The rule of appropriation provided for in Expl. I cannot be applied to a case of receipt of money from *Court* under directions contained in a decree. (1950) 1 M.L.J. 224. Appropriations made by a creditor as part of a settlement are not liable to be re-opened under Expl. I, where there has in fact been an appropriation according to the terms of the deed and over-payment. Where, however, there is substantial evidence to show that the debtor, at the time he made the payment, intended to pay interest in accordance with the rate mentioned in the document and not according to the statutory rate laid down in the Act, the Court must take it that the debtor must have intended to act according to the provisions of the law rather than against it. A creditor is therefore not entitled to retain payments made after 1-10-1937 towards interest in excess of that payable under the Act without adjusting them towards the principal. As much out of the payment made as would satisfy the interest should be appropriated towards that amount, and the balance must remain in the hands of the creditor, for the purpose of being appropriated towards the principal amount due. (1953) 2 M.L.J. 520.

EXPLANATION I does not give any new right. If there was a right to be exercised for the first time after the amending Act XXIII of 1941, it would be open to the debtor applicant to invoke the provision of Expl. I. and apply them towards appropriation and not leave the matter to be decided according to the general law on the ground that the case was one prior to the amending Act. *See* (1952) 2 M.L.J. 430.

SCOPE AND OBJECT OF:—The object of Explanation I is to take away the right of the creditor to appropriate payments towards interest unilaterally, as he would be entitled to under S. 60 of the Contract Act, and to nullify the effect of the

Explanation II.—Where the principal was borrowed in cash with an agreement to repay it in kind, the debtor shall, notwithstanding such agreement, be entitled to repay the debt in cash, after deducting the value of all payments made by him in kind, at the rate, if any, stipulated in such agreement, or if there is no such stipulation, at the market rate prevailing at the time of each payment.—[*Explanations I and II inserted by Amending Act XXIII of* 1948.]

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decision in 1948 Mad. 434. To attract the Explanation there must be, on the one hand, arrears of interest outstanding and payable, and on the other hand, payments, open and unappropriated; the Explanation provides how in that contingency the payments are to be appropriated. If there has in fact been a settlement of accounts, and a fresh document has been executed by the debtor, that must necessarily have the effect of discharging the interest on the one hand and of appropriating the payment on the other. Such a transaction is outside the scope of the Explanation. That is to say, appropriations made by a debtor as part of a settlement are not liable to be reopend under Explanation I. (1953) Mad. 295 : (1953) 1 M.L.J. 267.

Appropriation is the indication of an intention that the money would be applied in a particular way. The most ordinary way of proving the intention is by proof of a statement made either orally or in writing. But that is not the only kind of proof possible. It may be proved by circumstantial evidence also, as is recognised in S. 60 of the Contract Act. Where a debtor paid his creditor in 1936, a sum of money which was greater by several hundreds of rupees than the interest then due, endorsing the payment generally as paid towards the debt under a promissory note of 1934 executed in renewal of a note of 1931 and there is nothing to suggest that he did not know the extent of his indebtedness or the amount of interest due, or that he intended only to pay interest and not principal, it can and ought to be held that the debtor on that occasion did intend to pay off part of the principal of his debt and indicate that intention by the very act of the payment, and the debt has to be scaled down on that basis and not as if the entire amount paid was made in reduction of the principal and as if all the interest was outstanding on 1-10-1937, so as to be wiped out under S. 8 (1). I.L.R. 1943 Mad. 563 : 55 L.W. 842 : 1942 M. W. N. 779 : A.I.R. 1943 Mad. 236 : (1942) 2 M L.J. 724.

Where in a plaint field by the creditor before 1st October, 1937, the creditor has appropriated all the payments towards interest, such appropriations cannot be ignored for the purpose of S. 8 (1). The

debt has to be scaled down on the basis of the amount claimed in the plaint as the principal. 52 L. W. 579 : (1940) 2 M. L. J. 654.

The provisions of S. 8 (1) clearly give the debtor the option to claim relief either under sub-S. (1) or sub-S. (2) of that section. Where relief is claimed by the debtors under S. 8 (1), the Court is not justified in proceeding under S. 8 (2) instead of under S. 8 (1) without giving reasons for it. A payment "towards principal and Interest" of a debt is to be treated as an open payment for the purpose of scaling down the debt under the Act and wiping out arrears of interest under S. 8 (1). 59 L. W. 203: 1946 M. W. N. 415: A. I. R. 1946 Mad. 380: (1946) 1 M. L. J. 272: 227 I. C. 564.

Ss. 8 (2) and 10 (2).—S. 10 (2) (i) does not require that the rate of interest per cent. should be specified in the mortgage deed. Where the deed provides not only that the income of the mortgaged properties is to be taken by the mortgagee in possession in lieu of interest without any liability to account but also that the mortgagor should in addition pay annually a certain sum till redemption, the amount cannot be regarded as anything but interest on the principal money. The appropriation by the mortgagee in terms of the bond in such a case cannot however be deemed to be constructive payments by the mortgagor for purposes of S. 8 (2). I.L.R. (1943) Mad. 195: 207 I. C. 137: 55 L. W. 570: 1942 M. W. N. 635: A. I. R. 1943 Mad. 100 : (1942) 2 M. L. J. 398. *See also* (1941) 1 M. L. J. 197.

Usufructuary mortgage—Mortgagee enjoying produce—If payment by mortgagor to mortgagee. *See* (1941) 1 M. L. J. 197.

Usufructuary mortgage—Term of 60 years fixed—Annual rent fixed on basis of agreed rate of interest—Mortgagee to enjoy for 60 years and to surrender possession on expiry on payment of principal amount—Receipt of profits—If payment by mortgagor under S. 8 (2)—Clog on equity. 57 L. W. 483 : 1944 M. W. N. 586 : A. I. R. 1944 Mad. 501 : (1944) 2 M. L. J. 144. *See also* 1943 M. 100 : (1942) 2 M. L. J. 398.

S. 8 (3)—Debt scaled down—Date from which interest is to run. *See* 1941 Mad. 288.

Ss. 8 (3) AND 8 (4).—Scope and effect—If affect right to obtain restitution under S. 144, C. P. C. *See* (1945) 1 M. L. J. 386.

S. 8 (4)—Scope of. — S. 8 (4) saves excess payment from the operation of sub-sections (1), (2) and (3) of S. 8. Under this subsection, the creditor is enabled to retain any excess payments paid to him. The terms of this sub-section are clear and unambiguous and the language is couched in general terms. The operation of this sub-section is not limited expressly or by necessary implication to excess payments made before 1st October, 1937. (1945) 1 M. L. J. 386, dissented

from. 1949 M. W. N. 605 : 5 D.L.R. (Mad.) 69: A.I.R. 1950 Mad. 98 : (1949) 2 M.L.J. 394.

Ss. 8 (4) and 9 (2).—RIGHT OF CREDITOR TO RETAIN EXCESS PAYMENTS MADE TOWARDS INTEREST AFTER 1-10-1437. A creditor is not entitled to retain payments made after 1-10-1937 towards interest in excess of that payable under the Act without adjusting the same towards the principal. The principle is the same whether the debt is one falling under S. 8 or under S. 9. I. L. R. (1951) Mad. 645: (1951) 1 M. L. J. 42 (F.B.) OVERRULING (1940) 2 M. L. J. 185 and (1941) 1 M. L. J. 250.

Where towards a promissory note an open payment is made in August, 1937, towards the debt generally and it has not been appropriated by the debtor or the creditor towards the principal or interest, the creditor is not entitled, after the debtor has sought relief under the Madras Act IV of 1938 to treat the payment as appropriated towards interest. The payment has to be appropriated towards the principal. 52 L. W. 580: 1940 M. W. N. 1053: (1940) 2 M. L. J. 648.

BURDEN OF PROOF.— Where it is conceded that certain payments made by the debtor had been adjusted towards the debt prior to 1st October, 1937, and the adjusments must have been in reduction of either interest or principal. If the debtor is not able to show that they are in reduction of principal leaving interest outstanding on 1st October, 1937, he must fail, as the burden is on him to show that interest was outstanding on 1st October, 1937, and was wiped out by S. 8 of the Act. In this respect there is no difference in principle between the case of bankers charging simple interest and other creditors' charging simple interest. 53 L. W. 24: 1941 M. W. N. 326: A. I. R. 1941 Mad. 403: (1941) 1 M. L. J. 9. *See also* (1941) 1 M. L. J. 316: 1941 M 479.

SEPARATE DEBTS CONSOLIDATED INTO SINGLE DEBT—SEPARATE PAYMENTS TO SEPARATE DEBTS BEFORE CONSOLIDATION—SCALING DOWN—PROCEDURE.—In aplying the *damdupat* rule in sub-Ss. (2) and (3) of S. 8 to a debt which is the result of clubbing together of pre-existing debts due to the same creditor by the same debtor when payments have been made towards the separate debts before the clubbing took place, the proper procedure is to scale down the debt as it stood at the commencement of the Act, having regard to the principal sum orginally advanced and any further advances made thereafter. All the advances and all the payments must be clubbed together treating them as a single transaction. It was not the intention of the Legislature to refuse the relief contemplated by Cls. 2 and 3 of S. 8 merely because the separate debts have come to be consolidated by agreement of parties. 209 I. C. 460 : 1943 M. W. N. 219 : 56 L. W. 249 : A. I. R. 1943 Mad. 479 : (1943) M. L. J. 321.

[*Explanation III.*—Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, [1][whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf, or in his interest and whether in favour of the same creditor or of any other person acting on his behalf or in his interest,] the principal orginally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.] [*Substituted by Amending Act. XXIII of 1948.*]

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1. Substituted by Amending Act XXIV of 1950.

EXPLANATION III— APPLICABILITY—RENEWAL OF PROMISSORY NOTE.—When the promissory note in 1930 was executed in renewal of the note of 1927, proper words were used in order to indicate that the consideration for the promissory note of 1930 was the discharge of the earlier note. The endorsement on the promissory note of 1930 was that it was discharged according to law. The discharge was effected in 1939 after the Agriculturists' Relief Act came into force and on the same date another promissory note was executed reciting that cash consideration had been paid on that date for that note.

Held, that the parties with knowledge of the provisions of the Agriculturists' Relief Act clearly intended to effect a severance between the promissory note of 1930 and the new promissory note, executed in 1939. There was nothing in the Agriculturists' Relief Act which prevented this intention of the parties expressed in so unambiguous and unequivocal terms being given effect to. The effect of the transaction was really as if the promissor discharged the promissory note of 1930 by a cash payment and received back the same or different amount of cash on the same date as consideration for the new transaction. 68 Mad. W.N. 847: (1955) 2 M.L.J. 577.

EXPLANATION III has no application to a debt incurred after the Act which falls under S. 13 of the Act and which is not liable to be scaled down by tracing back to the earlier debt of which it is a renewal. It is, however, open to a debtor who is sued on such a debt to plead that the document sued on is a mere voucher acknowledging an existing debt incurred prior to the Act, and if that is established, the excess over the amount legally due under the prior document may be treated as an amount in respect of which there is an absence or failure of consideration. In such a case the debtor gets relief not

[*Explanation IV.*—Where a debt has been split up, whether before or after the commencement of this Act, among the heirs, legal representatives or assigns of a debtor or of a creditor and fresh documents have been executed in respect of the different portions of such debt, the provisions of this section shall continue to apply in respect of each of the different portions.] [*Added by Amending Act XXIV of 1950*]

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under S. 13 but under the ordinary law as upon a failure of consideration. The later documents sued on must be held not to be supported by consideration to the extent of the excess over the sum legally recoverable under the earlier one, calculating interest at the rate provided in the Act. 1955 An. W. R. 870.

EXPLANATION III—CONSTRUCTION.—Though the Legislature would have done well to have included also the conjunctive word "and" in addition to the disjunctive word "or" in Explanation III to S. 8, it does not appear that the Legislature intended to exclude joint creditors or those creditors who combine in them more capacities than one from the scope of the Amending Acts XXIII of 1948 and XXIV of 1950. The purpose of the amending Acts was to provide for situations where the same creditor continues to claim the debt or a different creditor takes his place either in a single role or a combined or a joint role, so far as the claim for the debt is concerned. If creditor *A* becomes joint with creditor *B*, he becomes a different creditor from *A*, and he will then come within the meaning of the term "different creditor" interpreted in its wider sense. If may therefore be assumed that the Legislature intended that the words "same or a different creditor" should embrace all categories of creditors whether they were joint or whether they were single at the time of the scaling down of the debt. (1954) Mad. 891 : (1954) 2 M. L. J. 724.

SUIT AGAINST MORTGAGOR AS WELL AS COURT AUCTION-PURCHASER OF EQUITY OF REDEMPTION—APPLICATION BY MORTGAGOR FOR SCALING DOWN—RIGHT OF MORTGAGEE TO CLAIM DECREE FOR FULL AMOUNT AGAINST PURCHASER.—A mortgagee who sues to enforce his mortgage is not entitled to a decree for the whole amount due under the mortgage against a non-agriculturist Court auction-purchaser of the mortgaged property, when the agriculturist mortgagor claims to have the debt scaled down under Madras Act IV of 1938. It is true that agriculturist debtors alone are entitled to the relief provided in the Act which does not contemplate any scaling down of debts due by others, but it does not

follow that a non-agriculturist debtor can in no circumstances be benefited by the sealing down of a debt under the Act. The properties in the hands of the purchaser are liable only as security for the debt due, and if, as a result of the Act, there is a statutory discharge or reduction of the debt, the properties cannot be proceeded against for anything more than the scaled down amount of the debt. If the burden on the property purchased by the purchaser is reduced without payment by reason of the provisions of S. 8 of the Act, the purchase proves to that extent an advantageous one, and there is nothing in the Act to deprive him of the fruits of his lucky purchase even though he is not an agriculturist. He gets the benefit of the scaling down not because the Act applies to him, but because such benefit is a necessary incident of his purchase under the general law and the Act does not deprive him of it. The mortgagee's relinquishment of his right to a personal decree against the mortgagor after the coming into force of the Act and the mortgagor's application for relief under the Act cannot affect the position arising under the Act with reference to a date long prior to such relinquishment. I.L.R. (1941) Mad. 930: 200 I.C. 517: 1941 M.W.N. 390: 53 L.W. 515: A.I.R. 1941 Mad. 584: (1941) 1M.L.J. 561. *See also* 48 L. W. 954: (1938) 2 M.L.J. 1068.

Benefit of scaling down—Right to Sale of mortgaged property free of mortgage—Money left with vendee to pay off mortgage—Non-payment—Madras Act IV of 1938 coming into force—Vendor can claim to recover amount left with vendee—Right to interest. *See* (1943) 1 M.L.J. 279.

ASSIGNEE OF MORTGAGE DEBT TRANSFERRING RIGHTS TO ANOTHER—SUIT BY LATTER—DECREE AGAINST HEIRS OF ASSIGNEE—BASIS FOR SCALING DOWN.—*M* executed two mortgages to *T* one for Rs. 2,000 in 1921 and another for Rs. 1,000 in 1922. In 1928 *T* having purchased certain properties from *R*, assigned to *R*, her rights under the two mortgages from *M* by way of making up part of the sale price due to *R*, the value of the mortgages being estimated at Rs. 5,290 at the time. In 1931 *R* assigned his rights under these two mortgages to the appellant, who in 1935 brought a suit to enforce the mortgages as against the heirs of *M*, and against the heirs of *T* on the basis of the covenants of title contained in the deeds of assignment. The Court found that *M* had no title to the lands mortgaged and dismissed the suit as against his heirs, but passed a decree for Rs. 5,290 against the heir of *T* on the ground of breach of covenants of title contained in the assignment deeds by *T*. After the coming into force of Madras Act IV of 1938, one of the heirs of *T* applied ueder S. 19 of the Act to scale down the decree debt. *Held*, that the (ability of the heirs of *T* could not be traced to the original mortgages by *M*, but only to the assignment by *T*, and the basis for scaling down the decree debt was not the original

principal of the two mortgage deeds by *M* but Rs. 5,290, the amount for which the assignments by *T* were made to *R*. 200 I. C. 163 : 54 L.W. 281 : A.I.R. 1941 Mad. 886 : (1941) 2 M.L.J. 360.

APPLICABILITY AND CONSTRUCTION.—The Explanation speaks first of a renewal which is obviously by the same debtor. Then come the words "or included in a fresh document". Inclusion in a fresh document must be obviously by the same debtor. The effect of the Explanation is that when the debtor merely renews the debt or includes in a fresh document the sum due under the old document, the scaling down provision would apply. 50 L.W. 523 : 1939 M. W. N. 990 : (1940) M. 419 : (1939) 2 M. L. J. 609 (2). *See also* (1941) 2 M. L. J. 261 ; 1941 M. 58. (*See* new Expl. III which makes no difference whether the renewal is by the same debtor or a different debtor, or whether it is in favour of the same creditor or in favour of a different creditor).

(AS AMENDED)—SCOPE OF.—Explanation III to S. 8 of the Madras Agriculturists' Relief Act, 1938, as it stands now, after the Amendments of 1948 and 1950 emphasises the identity of the debt. So long as the identity can be traced, any change or alteration in the debtor or the creditor would not take the case away from the Explanation. The renewed document may be by a person other than the original debtor and in favour of a person other than the original creditor. (1940) 2 M.L.J. 517 : I.L.R. (1941) Mad. 128 and (1950) 1 M.L.J. 224, distinguished and explained as decided before the amendment.

The word 'assign' in the EXPLANATION does not mean 'heir'. It means a person substituted for another by an act of some kind or other. Though ordinarily we only speak of assignment of rights, in law there can be an assignment of liabilities as well. In every case where with the consent of the creditor another debtor is substituted for the original debtor, there is in effect an assignment of liability. The new debtor would be an assign of the original debtor so long as the identity of the debt is maintained. The expression is wide enough to include a person executing a fresh document in pursuance of an undertaking to do so on behalf of the original debtor.

Difficulty of construction of the words 'in his interest' in the EXPLANATION pointed out—History of Legislation traced. (1956) 1 M.L.J. 319.

"RENEWAL"—MEANING.—The Explanation to S. 8 contemplates the renewal or inclusion in a fresh document of a debt.

It could not be laid down absolutely that where a fresh document is executed for a part of a pre-existing debt, that fresh

document can be treated as a renewal of the part of the debt on which it originates. Ordinarily a renewal is a fresh contract between the same parties with reference to the same debt with the addition of interest accrued on that debt. If the total liability due on a pre-existing debt be split up into two fresh liabilities differing from each other and from the original in their terms and a fresh contract be executed with reference to each of those parts, it would be improper, in the absence of special circumstance, to treat either of the fresh contracts as a part of the pre-existing liability. A partial inclusion of any portion of a pre-existing debt in one of several new contracts with different terms could not be regarded as a renewal under S. 8. 210 I.C. 234: 56 L.W. 82 (2): (1943) M.W.N. 120: A.I.R. 1943 Mad. 338: (1943) 1 M. L. J. 190.

Where a sale of immovable property is in theory anterior to a fresh mortgage executed by the vendee to the original mortgagee who had a mortgage from the vendor, but in point of fact, they are both part of a single transaction carried through on the same day, and it has not been in the contemplation of the parties that the mortgage executed by the vendee should discharge any pre-existing liability of the vendee himself, it cannot be said that on the completion of the sale there is created a liability in the vendee himself to discharge his vendor's mortgage and that on that ground this liability has been renewed or included in a fresh document by the execution of his own mortgage. The vendee cannot therefore claim under the explanation to S. 8 to treat his mortgage as a renewal of his vendor's mortgage, which he has discharged. 1940 M. W. N. 1217 : 52 L. W. 764: (1940) 2 M. L. J. 837: 1941 Mad. 60.

The term "*renewed or included in a fresh document*" in the Explanation to S. 8 would not cover the case in which a debt due by *A* is discharged or a debt due by *B* to the same creditor being substituted for it. The explanation is intended to cover the case of a debt due by *A* in favour of *X* renewed by another debt by *A* in favour of *X* or included in a fresh document executed by *A* in favour of *X* for the original plus some further sum. 52 L. W. 500: 1940 M. W. N. 1007: (1940) 2 M. L. J. 517; *see also* (1941) 2 M. L. J. 566; 1941 M. 58.

There is a difference between a promissory note executed in renewal of a debt and a fresh note. Where the effect of the subsequent transaction is to discharge a previous note as if by cash payment and the same or a different amount of cash is taken on the same date as consideration for a new note, legal effect must be given to the new transaction and it cannot be traced back to any earlier transaction which has been closed. (1955) 2 M. L. J. 577.

At first sight Explanation III to S. 8 appears to make a distinction between the case of the debtor and that of a creditor. In the case of a debtor, it expressly applies the same rule to his heirs, legal representatives or assigns, But, in the case of a creditor, those three categories of persons are omitted. In view of the definition of the word "creditor" and because of the non-definition of the word "debtor" in the Act it became necessary for the Legislature, while using the word "creditor" in the Explanation to add the words "heirs, legal representatives or assigns" in the case of a debtor, for the word "creditor" itself by reason of the definition takes in the other three categories of persons, whereas the use of the word "debtor" may not take in those categories. When the word "creditor" as defined in S. 3 (*v*) is given an inclusive meaning, a creditor's heirs, legal representatives or assigns are also creditors. If so read, whether a person is the original creditor or his legal representative or assign, he is "the same creditor" within the meaning of the Explanation. Further, without doing violence to the language used in the Explanation, the words "the same creditor", by reason of the definition, may be read as "the same creditor or his heirs, legal representatives or assigns": (1951) 2 M. L. J. 400, Ref. to. 1956 Andhra W. R. 623.

Where the debt for which a purchaser of mortgaged property is liable is essentially the same debt of the original mortgagor, and the later debt (a compromise decree) is a renewal of the earlier debt in favour of the same creditor, the purchaser will be entitled to claim that the liability which he has incurred is a renewal, and that the principal must be the principal originally advanced. When both the purchaser and the mortgagor are agriculturists, the purchaser can claim to have the debt scaled down on the basis that the mortgage debt for which he has become liable is itself a renewal of an earlier debt in favour of the same creditor. 1940 M. W. N. 1081 : 52 L.W. 607 : (1940) 2 M. L. J. 685.

Although it had been held that a son was estopped from disputting the liability of his property under a mortgage by his father after partition by reason of his attestation of the mortgage, it cannot be said that a fresh mortgage executed by the son alone binding only his own property and discharging his father's mortgage is merely a renewal of the son's own liability. There is a complete *novatio* which cannot be treated as a renewal by the same debtor. 200 I. C. 283 : 53 L. W. 225 : 1941 M. W. N. 186 (2) : A. I. R. (1941) Mad. 495 : (1941) 1 M. L. J. 302.

The Explanation to S. 8 requires that the debt must continue in substance to be the same though the amount and the parties under the various documents given as vouchers for it need not strictly be identical. This requiremeut cannot be satisfied when the debt is divided among the heirs of the criditor and the debtor executes a

fresh document for a part of the debt in favour of each of such heirs. Where at a partition between the sons of the creditor after the latter's death, the debt is split up into unequal parts and the sons of the deceased creditor get the debtor to execute separate vouchers for the portions of the debt allotted to each of them, it cannot be said that the documents executed by the debtor separately in favour of the sons of the original creditor for the portions of the original debt allotted to them at the partition represent a renewal of the original debt or its inclution in fresh documents within the meaning of the Explanation to S. 8, although the sums. for which the documents are given are equal in the aggregate to the amount of the original debt. 52 L. W. 963 : 1941 M. W. N. 54 : A. I. R. 1941 Mad. 356 : (1941) 1 M. L. J. 39.

"SAME CREDITOR" An assignee of a creditor would be a creditor as defined in the Act, and a member of a joint family to whom the entire debt has been allotted at a partltion would be an "assignee" within the meaning of Explanation III. 1956 An. W. R. 809.

Where a mortgage in favour of *A* and *B*, is superseded by another mortgage in favour of *A* alone, the second debt is not in favour of the same creditor as the first and cannot be treated as a renewal for purpose of Explanation to S. 8. 219 I. C. 512 : A. I. R. 1945 Mad. 113 : (1944) 2 M. L J. 390 (1). *See also* 1940 M. 58.

PERSON BENEFICIALLY ENTITLED IN MONEY LENT—IF CREDITOR —DEBT UNDER PROMISSORY NOTE BY FATHER RENEWED BY MORTGAGE BY SON.—The definition of "creditor", in S. 3 (*v*), though it expressly includes his heirs, legal representatives and assigns, does not include the person beneficially entitled to the amount lent. Hence where there is a debt in favour of *A* discharged by a mortgage in favour of *B*, it will not be open to the debtor to adduce evidence to show that the money which he owes to *B* is really the money of *A* so as to bring into force Explanation to S. 8. Where a mortgage is exeeuted by a Hindu son in discharge of prepartition debts evidenced by a promissory note executed by his father, the debtors in respect of the two debts are not the same. 201 I.C. 67: 54 L.W. 517: 1941 M.W.N. 1070: A.I.R. 1942 Mad. 143: (1941) 2 M.L.J. 703; 1941 M. 58 *See also* (1941) 1 M. L. J. 302: 1941 M. 495.

PROMISSORY NOTE IN FAVOUR OF TWO PARTNERS—DISSOLUTION OF PARTNERSHIP—NOTE FALLING TO SHARE OF ONE—MORTGAGE IN FAVOUR OF LATTER—IF RENEWAL.—In deciding the question who is the creditor under a promissory note or other instrument, regard must be had not only to the power to grant a valid discharge, but also the power to enforce performance of the contract. Where a promissory note executed in favour of two persons, who are members of an unregistered partnership, falls to the share of one of them on their becoming divided, the partnership being

dissolved, but there is no assignment or endorsement of the promissory note as such, and the debtor executes a mortgage in favour of the person who has become entitled to the promissory note for the amount due under the note and for other sums, it cannot be said that there is a renewal in favour of the same creditor so as to attract the operation of the Explanation to S. 8. The antecedent promissory note which could be enforced only by the two promisees jointly must be regarded as a debt the creditor of which was two persons and not one; the mortgage in favour of one of them alone is not to the same creditor as the creditor under the antecedent promissory note. 57 L.W. 457: 1944 M.W.N. 519: A.I.R. 1944 Mad. 499: (1944) 2M.L.J. 142.

DEBT DUE BY HINDU JOINT FAMILY UNDER PROMISSORY NOTE BY TWO MEMBERS—PARTITION—RENEWAL.—Where there is a debt due by a Hindu joint family, which is a "person" under S. 3 (1) of the Madras Act IV of 1938, for which is substituted another debt due by an individual who formerly constituted part of that statutory person, there is a different debtor, and it would be carrying the theory of property liability too far to treat this different debtor as merely renewing his own liability which had resulted from an interest in the joint family property. 196 I.C. 474: 53 L.W. 673: 1941 M.W.N. 487: A.I.R. 1941 Mad. 663: (1941) 1 M.L.J. 773. *See also* (1941) 1 M.L.J. 302; (1941) 1 M.L.J. 39; (1941) 2 M.L.J. 703; 52 L.W. 582: (1940) 2 M.L.J. 651; 1941 Mad. 202; 1941 Mad, 59; 1941 M. 628: (1941) 1 M.L.J. 718.

The plaintiff sued on a note executed by the second defendant in favour of the plaintiff's brother, the first defendant, on 14th April, 1933, which was assigned to the plaintiff on 2nd August, 1937. It was found that the second defendant was an Agriculturist. It was in evidence that the suit note of 1933 actually discharged an earlier note of about the year 1931, executed in favour of the plaintiff himself at a time when the family of the plaintiff and first defendant was undivided, the partition being in 1932. The lower appellate Court found that the creditor had not fulfilled his duty of putting before the Court the materials necessary for scaling down the debt because of the non-production of the prior document of 1931 and that in the absence of proof of the documents necessary in order to ascertain the original principal no decree could be given against the second defendant. On revision, *Held*, that no doubt, in a case in which it can be shown that the creditor has wilfully failed to produce earlier documents which ought to be looked into for the purpose of scaling down the debt the Court would be entitled to draw an inference adverse to the creditor from the non-production of those documents. But as the suit note itself was executed in favour of the first defendant in discharge of an earlier note executed in favour of the plaintiff the fact that the suit note was subsequently

assigned to the plaintiff would not make the note a renewal of an earlier debt in favour of the same creditor. As the first note was executed in favour of the plaintiff as representing the joint family and the second one was executed in favour of the first defendant as a member of that family to whom the debt had been assigned on partition, it could not be said that the creditors were the same in the two transactions. If the note of 1931 had been assigned to plaintiff before it was discharged by the note of 1933, there would be a renewal in favour of the same creditor but no such case was pleaded. Accordingly the suit ought not to be dismissed solely for the reason that plaintfff had not produced the materials necessary to scale down the debt but must be decreed as scaled down under S. 9 of the Act. 201 I.C. 284: A.I.R. 1942 Mad. 280: (1941) 2 M.L.J. 1085.

Under the Explanation to S. 8, the renewal of a debt or its inclusion in a fresh document must be by the same debtor. When a member of a joint Hindu family executes a fresh document for a pre-existing liability binding on the family but incurred on its behalf by another member, such previous debt can be regarded as renewed or included in a fresh document within the meaning of the Explanation to S. 8 as the debtor in each case is the same person, namely, the joint family ("person" under S. 3. (1) including joint Hindu family). It is not necessary for the application of S. 8 that the parties to the earlier and the later debts should be absolutely identical. There may be cases in which a debt due jointly and severally from *A* and *B* is included in a fresh document executed by *A* alone or cases in which a debt solely due by *A* is included in a fresh document executed by *A* and *B*. The explanation to S. 8 would apply to cases of that sort when the applicant for sealing down is the same person who is a debtor under both the instruments. Even if the transaction in such cases cannot be deemed to be a renewal in the strict sense of the term, it would amount to an inclusion of the pre-existing liability of the common debtor in a later document. 52 L.W. 678: 1940 M.W.N. 1135: (1940) 2 M.L.J. 786: 1941 M. 202

For the interest due on a mortgage of 1926 executed in favour of *A*, a promissory note was executed by the debtor in favour of *A's* son, *B*, on 12—4—1932. The debtor claimed that the debt under the promissory note representing the interest on the earlier mortgage must be deemed to be wiped out by reason of the Explanation (now Explanation III) to S. 8 of Madras Act IV of 1938. *Held*, that the creditor under the mortgage and the creditor under the promissory note were not the same but different persons, because in view of Ss. 8 and 78 of the Negotiable Instruments Act, the father *A*, could not be regarded as the creditor under the promissory note in favour of his son *B*, though as betweeen the family *A*, and *B*, the family might be beneficially entitled to the money, and when a decree had been

passed in favour of *B*, neither *A*, nor the family could be regarded as the decree-holder. The debt could therefore be scaled down as a debt of 1932, the promissory note having been executed on 12—4—1932. "Creditor" for the purposes of the Act would not include a person beneficially entitled to the amount of the debt. 52 L. W. 595 : 1940 M. W. N. 1067 : (1940) 2 M. L. J. 664.

Promissory note in favour of mother—Suit on, and decree—Mortgage in favour of sons in discharge of decree—If in favour of same creditor—Right to apply for scaling down on basis of promissory note—Plea that mother was benamidar for sons—If open. 192 I. C. 838 : A. I. R. 1941 Mad. 87 : 52 L. W. 673 : (1940) 2 M. L. J. 756.

Person beneficially entitled to debt—If creditor—Mortgage in favour of Hindu father in 1926—Promissory note in favour of son of mortgagee in 1932 for interest due on mortgage—Decree in favour of son on promissory note—Creditor, if same—Procedure for Scaling down. I. L. R. (1941) Mad. 248 ; 195 I. C. 776.

Where a debt due to *A* and another debt due by the same debtors to *B* have been discharged by a joint mortgage executed by the debtors in favour of *A* and *B* there is no renewal in favour of the same creditor. The two joint creditors cannot be deemed to be the same creditors as either or both of the two individual creditors acting separately and independently of each other. There can be no renewal of an anterior debt in favour of a different creditor. The question of benami cannot be gone into. 58 L. W. 565 : (1945) M. W. N. 688 : A. I. R. 1946 Mad. 154 : (1945) 2 M. L. J. 411.

DEBT INCURRED BY *karnavan* OF MALABAR TARWAD UNDER PROMISSORY NOTE IN 1923—SUBSEQUENT RENEWALS BY SUCCEEDING *karnavans*—LIABILITY, IF CAN BE TRACED TO ORIGINAL TRANSACTION. —Where there is a family debt due by a Malabar tarwad under a promissory note by the present *karnavan* of the tarwad executed by him in renewal of earlier promissory notes dating back to 1923, when the debt was originally incurred under a promissory note by the then *karnavan*, the present *karnavan* who is liable for the debt, as also the junior members of the tarwad, may get the debt scaled down on the basis of the original liability. There is no warrant for holding that the executant *karnavan* is not entitled to trace his liability back to the earlier documents under which he was liable not as executant but as a member of the debtor tarwad. Not only the non-executant junior members but also the executant *karnavan* who has renewed the promissory note can trace back the liability to the original transaction of debt. 55 L. W. 151 : 1942 M. W. N. 284 : A. I. R. 1942 Mad. 412 : (1942) 2 M. L. J. 41.

RENEWAL OF PROMISSORY NOTE—AMOUNT DUE UNDER PREVIOUS NOTE SCALED DOWN—SUIT ON LATER NOTE—RIGHT OF DEBTOR TO RELIEF.—In a suit on a debt incurred after the commencement of the Madras Agriculturists Relief Act, the defendant can plead that the document executed after the commencement of the Act was a mere voucher acknowledging a debt incurred prior to the commencement of the Act to which S. 8 or 9 would apply. If so much is pleaded and established, the excess over the amount due under the prior document on applying S. 8 or 9 may be treated as an amount in respect of which there is failure of consideration. Hence where a promissory note is renewed after the Act for the full amount due without taking into account the relief due under the Act and a suit is filed on the renewed note, the debtor could be made liable only for the amount which would have been due by him on a proper scaling down of the debt as on the date of the execution of the suit pronote. 1945 M. W. N. 748: 58 L. W. 638: A. I. R. 1946 Mad. 111 :(1945) 2 M. L. J. 565.

Promissory note in renewal of earlier notes—Payments specifically made towards interest and for principal—If can be re-opened —Mode of scaling down.— *See* 53 L. W. 103 : 1941 M. 397: (1941) 1 M. L. J. 256.

DEBT DUE BY NON-AGRICULTURIST INCURRED IN 1926—RENEWAL BY HEIR IN 1930—HEIR AGRICULTURIST—SCALING DOWN. —The position of an heir of a deceased debtor under the Explanation to S. 8 (now Expl. III) of Madras Act IV of 1938 is different from that of a legatee. While the legatee cannot be said to be under a direct liability to discharge the debts of the deceased testator merely by reason of his acceptance of a legacy, the heir, on the other hand, when once he has taken up his inheritance, can be directly made liable for the debts of the deceased holder of the property to the extent of the inheritance in his hands. The heir is thus under a property liability coming within the definition of 'debt' under the Act, provided he is an agriculturist. On 26-1-1930, defendant, as heir of his deceased father, executed a promissory note to the plaintiff in discharge of a previous promissory note dated 1-7-1926, executed to the plaintiff by the defendant's father. *Held*, that the defendant, when he executed the promissory note of 1930, in discharge of his deceased father's note of 1926, was in fact and in substance discharging not his father's debt, but his own debt imposed upon him by the inheritance which he had taken up. To that extent he was clearly entitled to say that his debt under the promissory note of 1926 was renewed by the note of 1930. But the debt could not be traced further back, as the defendant's father did not live long enough to qualify for the status of an agriculturist by the process stated in the Act. The promissory note of 1926, though

executed by a non-agriculturist, became the liability of an agriculturist, by the inheritance of the properties of the deceased by the defendant (an agriculturist) imposing upon him the liability to discharge the deceased's debts. 212 I.C. 258: 56 L.W. 415: 1943 M.W.N. 550: A.I.R. 1943 Mad. 664: (1943) 2 M.L.J. 155. Explanation III applies to the whole of S. 8 and not merely to Cl. (1) thereof. 1943 Mad. 479: 1943 M. W. N. 219: 56 L. W. 249: (1943) 1 M.L.J. 321.

SECTION 8 (AS AMENDED) EXPLANATION III:—"DIFFERENT CREDITOR".—The expression "different creditor" in Expl. III to Section 8 of the Act, added by the amending Act of 1948, would not include a third person in whose favour the debtor has executed a document requesting him to discharge an earlier debt. The meaning of the words "different creditor" must necessarily be controlled by the clause, "where a debt has been renewed or included in a fresh document." The fundamental idea of renewal and inclusion in a fresh document is that the new contract also must be between the same parties or substantially the same parties, and this established meaning of "renewal" cannot be ignored unless the words used are absolutely clear and unambiguous. The expression "different creditor" would not therefore apply to a creditor from whom amounts were borrowed under a different document for the purpose of discharging earlier debts. (1950) 1 M.L.J. 224. (*See* the amendment effected in Expl. III by the amending Act of 1950.)

Where a debt is split up and the debtors execute separate promissory notes for their respective portions of the debt the continuity of the debt is lost. This is so even under Expl. III substituted by the amending Act of 1948. The purpose of this amendment was only to make the debt a continuous one notwithstanding a change in the creditor or debtor. The amendment did not affect the law with regard to the splitting up of a debt. (1949) 2 M. L. J. 768—See *now Expl. IV added by the amending Act, 1950, which deals with the case of splitting up of debts.*

PERIOD FOR DETERMINING WHETHER DEBTOR IS AN "AGRICULTURIST".—*Held*, that the relevant period apart from the date of the suit, when a debtor has to be an agriculturist in order to claim the benefit of the Explanation to S. 8 of the Act, would be the period from and after the 1st October, 1937, having regard to the proviso to Section 3 (*ii*) of the Act. 200 I. C. 321: 54 L.W. 181: 1942 M. W. N. 1041: A.I.R. 1941 Mad. 829: (1941) 2 M. L. J. 257.

APPLICABILITY TO SCALING DOWN UNDER S. 9, WHEN DEBT NOT INCURRED BEFORE 1-10-1932.—The Explanation to S. 8 which enables the Court to treat as principal the amount advanced under an earlier debt applies only to proceedings under that section. There is nothing in S. 9 of the Act which would justify the importation of

that rule into the process of scaling down of a debt no portion of which was incurred before 1-10-1932. The obvious intention of the Legislature in enacting the proviso to S, 9 (1) was merely to give a rule for the classification of debts into those to which S. 8 would apply and those to which S. 9 would apply. Therefore, in a given case, where no portion of the debt had been incurred before 1-10-1932, even if the date of the debt is to be deemed to be some date earlier than that on which the contract was actually executed, there is no relief which the debtor is entitled to get under S. 9 in respect of that debt except the relief of reducing the rate of interest as provided therein. 210 I.C. 231: 1943 M.W.N. 419: 56 L.W. 154: A. I. R. 1943 Mad. 344: (1943) 1 M.L.J. 231.

Promissory note on 1-7-1933 in renewal of earlier one—Payment of interest and portion of principal on 4-9-1934—If can be re-opened in suit in 1937—Basis of calculation for scaling down. 53 L. W. 144: 1941 M. W. N. 267: A.I.R. 1941 Mad. 550: (1941) 1 M. L. J. 216.

SECTION 8 (AS AMENDED) EXPLS. III & IV—APPLICABILITY AND SCOPE:—Under Expl. IV to S. 8 of the Act as amended in 1950, a debt which has been split up and allotted to the shares of different members of an erstwhile joint family can be traced back to its origin. But if a debt has not been split up but has only been assigned to one of the sharers at a partition, it would not be covered by Expl. III. In order to fall within Expl. III, the debt should be renewed in favour of a creditor or of any other person acting on his behalf and in his interests. A promissory note executed in favour of a person who separates himself from the rest of the family cannot be said to be executed in favour of the same creditor, that is to say, the family or on behalf of the family or in the interests of the family. Such a person does not come under any of the categories of persons particularised in Expl. III. Nor does Expl. IV in terms apply to such a case. *See* 1951 M.W.N. 747: 60 L.W. 836: (1951) 2 M.L.J. 400. It was observed in the above case that there was a clear lacuna in the amendment effected by the Amending Act XXIV of 1950.

Explanation 4 contemplates a splitting up of the debt amongst the heirs, legal representatives or assigns of a debtor. Where either because of the family partition or as a result of a decree in a particular suit, the debt is allotted to the share of an individual member, such person could certainly be regarded as an assign. But, the position is different where several persons execute a promissory note in favour of a person and later divide the liability amongst themselves and each executes a separate promissory note for his share. If the intention of the legislature was to bring in several of the debtors amongst whom the debt has been split up, the language employed in the Explanation would have been different. As it is, the language

of the *Explanation* cannot cover the case of the division of a debt amongst several of the debtors. *Kurapati Subba Reddi v. Vinjam Chenchiah Naidu.* 1956 Andhra L.T. 363 = 1956 Andhra W.R.559.

If the debt in substance continues to be the same, the fact that there are two documents where there was originally one as evidence of the debt and acknowledgment of the liability would not prevent the application of the Explanation to S. 8. Thus where the same debtors that were liable under a promissory note executed a mortgage and a promissory note to the same creditor, the mortgage being in renewal of one-half of the liability in respect of the principal and the entire liability for the outstanding interest and the promissory note for the balance of the principal money, and the two contracts were identical in terms with the original promissory note:

Held, that the effect of the two documents was in substance a renewal of the previous debt covered by the original promissory note and that continuity of the debt was not broken in any manner. DUPADA MADAPPA v. ALAMPALLI ATHMARAMAYYA SETTI. 1954 Mad. W.N. 455: (1954) 2 M.L.J. 319: 67 Mad. L.W. 1123: A.I.R. 1954 Mad. 981 (D. B.)

Explanation IV applies only when there is a splitting up of the debt as among the heirs, legal representatives or assigns, and not when there is a splitting up of the debt between the debtor and his assigns, even on the assumption that the word *or* in the expression "the debtor or his assigns" must be read as meaning "and." 1955 Andhra W.R. 66.

The language of Explanation IV to S. 8 of the Madras Agriculturists Relief Act warrants only the construction that if an existing debt becomes split up and allotted either to the heirs or to the legal representatives or to those who do not come within these two categories but may fall within the last category, namely, assigns, such heirs, legal representatives or assigns should get the benefits of the scaling down under the section and nothing more. The categories of persons among whom the debt may be split up and to whom the benefit of section would still be available, could either belong to the category of debtors or creditors and the Explanation contemplates the splitting up of a debt not merely as a liability but also of a debt as an asset.

Where a debt due by a Hindu joint family was split up in a partition of the joint family and each of the members were to discharge a portion of the debt there is a legal assignment of a portion of the debt to one of the erstwhile co-parceners to be discharged by him as contemplated in Explanation IV to S. 8 of the Madras Agriculturists Relief Act. Where the creditor takes a fresh

document from the person to whom a portion of the debt has been assigned on partition (oral or written) he is deemed to have agreed to the assignment and the fact that the creditor seeks to enforce his right under the fresh document does not make any difference to the principle. MUTHA MADALI v. KUPPANNA GOUNDAN. (1956) 12 M.L.J. 168.

When a member of the family takes over the entire debt or a part of it on partition, if he is an agriculturist, he should still derive the benefit under the Explanation and if he is regarded as a different creditor. *Ibid.*

SECTIONS 8, 9 & 10—MORTGAGE DEBT—ASSIGNMENT BY REGISTERED DEED OF PARTITION—CONTINUANCE OF IDENTITY OF DEBT—SCALING DOWN OF DEBT—USUFRUCTUARY MORTGAGE OVER CERTAIN ITEMS AND HYPOTHECATION OVER OTHERS—DEBT IF SEVERABLE.—The appellant who had a kanom over certain jenm properties borrowed a certain amount from and executed a promissory note in favour of one *A* who was the manager of a joint Hindu family. Subsequently he executed a deed of simple mortgage hypothecating eighteen items of property to *A* to cover the amount due under the promissory note and a further cash advance. Then there was a partition in *A's* family and the same was evidenced by a registered deed of partition which allotted the mortgage to the share of the respondent. Later on a fresh document of mortgage was executed by the appellant in favour of the respondent covering all the items, but out of them only fifteen items were placed in the possession of the mortgagee wile the remaining three continued in the possesslon of the mortgagor. The jenmi gave a melcharth over the properties covered by the appellant's kanom to a third person who filed a suit for redemption of the kanom impleading the appellant and the respondent. A decree was passed in favour of the plaintiff directing possession to be delivered on paying the value of the improvements. There was also a direction that the respondent should be paid the amount due to him out of the sum to be deposited by the melcharthdar. The appellant who was an agriculturist having contended that the debt due to the respondent should be scaled down under Madras Act IV of 1938: *Held*, that under the circumstances of the case there was an assignment of the debt under the deed of partition, that the identity of the debt, the creditor and the debtor continued notwithstanding the subsequent cash advance and that the debt was consequently liable to be scaled down. *Held, further*, that the debt was one and indivisible notwithstand ng the fact that in relation thereto there was a usufructuary mortgage over certain items and a hypothecation over certain other items. 61 L.W. 730: (1948) 2 M.L.J, 463.

SECTIONS 8, 9 & 13—PROMISSORY NOTE EXECUTED AFTER THE ACT CAME INTO FORCE—PLEA THAT IT WAS A MERE VOUCHER OF PRIOR

BORROWING—MAINTAINABILITY—ALLEGATION OF MISREPRESENTATIONS—ADMISSIBILITY OF ORAL EVIDENCE.—The suit promissory note was of 1940 after Act IV of 1938 came into force and was the last of a series of renewals, the original borrowing having been in 1922. The defendant raised the plea that it was not supported by consideration and was merely intended to serve as a voucher for the previous borrowing and that the plaintiff made fraudulent misrepresentation and prevailed upon the defendant to execute the note making him believe that it would not be enforced if it was found that nothing was due under the Act or that only such sum as would be legally found due would be taken. On a question as to the maintainability of the plea and admissibility of oral evidence in support of it: *Held*, that such a plea was open to the defendant and that oral evidence of the fraudulent misrepresentations would be admissible. 61 L.W. 595: 1948 M.W.N. 619: (1948) 2 M.L.J. 282.

SECTIONS 8, 9, 16 AND 19—DECREE FOR RENT—AWARD OF COSTS—INTEREST ON COSTS—IF CAN BE SCALED DOWN.—Although the definition of "rent" includes rent covered by a decree, the terms of S. 16 of Act IV of 1938 make it quite clear that costs awarded in a decree for rent are something quite apart from the rent, and the decree for costs is liable to be scaled down under Ss. 8 and 9, as regards interest. Even apart from the claim of an applicant to be entitled to the benefits of the Act under S. 15 as regards rent, he would be entitled to the benefits of the Act under Ss. 8 and 9 as regards interest on costs. 199 I. C. 591: 1941 M. W. N. 96: 53 L. W. 86: A. I. R. 1941 Mad. 500: (1941) 1 M. L. J. 156.

SECS. 8, 9 AND 19, PROVISO—Decree on promissory note of 1933 for principal; interest and costs—Execution sale before Act realising more than sufficient to cover all interest and costs and part of principal—Effect—Right of judgment-debtor. 200 I.C. 333: 53 L.W. 190: 1941 M.W.N. 204 (2): A.I.R. 1941 Mad. 571: (1941) 1 M.L.J. 295.

SECTIONS. 8 AND 14—RELATIVE SCOPE.—The cause of action for an application under Section 8 and the relief claimed therein are different from those under Section 14 of the Act; and an order passed on an application under Section 8 will not therefore operate as *res judicata* in an application under Section 14. I.L.R. (1951) Mad. 729: (1951) 1 M.L.J. 153 (F.B.)

It has also to be noted that relief under the Usurious Loans Act must be claimed and obtained before the decree is made and the debtor is not entitled to such relief in an application under Section 14. *Ibid.*

PURCHASER IN MAY, 1940, OF PROPERTY BOUND BY MORTGAGE DECREE.—A purchaser in May, 1940, of property bound by a

mortgage decree would not be a debtor at all when Madras Act IV of 1938 came into force and there can be no question of his calling in aid Section 19 to apply Sections 8 and 9 to the debt, as if it was a debt falling under either of those sections, whatever may be the result if the mortgagor got the decree scaled down on his own application. 213 I.C. 168: 56 L.W. 692 (1): 1943 M.W.N. 766: A.I.R. 1944 Mad. 128: (1943) 2 M.L.J. 531.

The respondents who had executed a mortgage to the petitioner in 1914 sued for redemption of the mortgage joining as co-plaintiffs the purchasers of portions of the hypotheca, and obtained a preliminary decree. The petitioners were agriculturists, but the other decree-holders (purchasers) were not agriculturists. The respondents applied for scaling down the decree under Sections 8 and 19 of Madras Act IV of 1938. It was found that the amount already paid to the decree-holder was more than twice the principal sum payable by the respondents under the mortgage and the Court therefore ordered under Section 19 read with Section 8 of the Act full satisfaction of the decree as a whole to be entered. The petitioner decree-holder contended, in revision, that since some of the other judgment-debtors who were purchasers of portions of the hypotheca were not agriculturists, the Court below should not have entered full satisfaction of the decree even as against them as they were not entitled to the benefits of the Act. *Held*, that the order entering full satisfaction was correct; by entering satisfaction of the decree as a whole the Court was only allowing to the agriculturist mortgagor the full benefits of the Act and not necessarily benefiting the non-agriculturist purchasers of portions of the hypotheca. 200 I.C. 245: 1941 M.W.N. 386: 53 L.W. 490: A.I.R. 1941 Mad. 557: (1941) 1 M.L.J. 547.

The first defendant and another were indebted under a contract which was anterior to 1932 and which ripened into a decree in 1933. To discharge this decree a fresh promissory note was executed by the 1st defendant, and the second defendant who was not concerned in the earlier debt. Both the defendants were agriculturists and applied for scaling down the debt *Held*, that so far as the 1st defendant was concerned, the debt was to be scaled down under Section 8 on the basis of its being a renewal of the original liability under the Explanation to Section 8, but that as regards the second defendant, the Explanation to Section 8 did not apply and that he could claim relief only under Section 9 in the matter of interest under the promissory note of 1933. 201 I.C. 161: 54 L.W. 105: 1941 M.W.N. 927: A.I.R. 1942 Mad. 134: (1941) 2 M.L.J. 340.

Promissory note of 1920—Decree on in 1930—Death of maker in 1936—Heirs impleaded in execution—Application for scaling down after Act—Competency—Father disqualified from

claiming relief—Effect—Crucial date to determine status—Procedure for scaling down.—*Held*, (1) that the petitioners who were agriculturists were entitled to claim relief under the Act as agriculturists though their father whose liability they had inherited was himself not an agriculturist; (2) that the liability sought to be scaled down was the liability incurred under the promissory note of 1920, and the petitioners' succession to their father's estate on his death in 1936 could not be the basis of any new liability; (3) that it was immaterial whether or not the debtor had the agriculturist character when the debt was actually incurred where it was incurred before 1—10—1937, and the material dates with reference to which such character had to be determined for purposes of Section 19, were 1—10—1937 and 22—3—1938 (date of commencement of the Act) and the date of the application; (4) the decree should therefore be scaled down under Section 8 of the Act. 207 I.C. 205: 55 L.W. 729: A.I.R. 1943 Mad. 87: (1942) 2 M.L.J. 506.

[*See also* Notes under Sections 8, 10 and 19.]

SECTION EXPLAINED.—With reference to this section, the Select Committee observed as follows:—"The Bill as introduced had provided that in all cases, interest should run only from October 1, 1937, at a rate not exceeding six per cent. per annum.

The Committee has come to the conclusion that a distinction should be made between debts incurred during the pre-depression period when the value of money was very much less than now and debts incurred after the depression became acute.

In the case of the former, a greater extent of scaling down is considered justifiable than in the case of the latter.

It has accordingly limited the provisions which had been made in the bill for the wiping out of arrears of interest, only to debts incurred before October 1, 1932.

As regards debts incurred on or after October 1, 1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent. in all cases where it is higher than 5 per cent. Where a debt incurred after October 1, 1932, is found to be wholly or in part a renewal of a debt incurred prior to that date, that debt or any part of it which may constitute such renewal will be dealt with as a debt incurred before October 1, 1932. What has been compendiously described as the *damdupat* principle has been retained.

"In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to October 1, 1932, the invoking of that principle is unnecessary in respect of such debts and has

therefore been expressly provided for only in the case of debts incurred prior to October 1, 1932.

The Committee considers that these provisions which it has made for the scaling down of old and new debts will go a great length to meeting the objection which has been raised to the provision in the bill as introduced, for the wiping out of all interest on all debts outstanding on October 1, 1937."

PRE-DEPRESSION DEBTS.—The Prime Minister said that they had to treat very old debts in a different manner from recent debts. It was for that reason that the Select Committee had made a distinction. In the case of the older debts a more drastic method was needed than in the case of the recent debts. Again, in the older days things had different values from what they had now. There was no question about that. Even if the old rates of interest were not considered bad, the man had still to discharge the burden. They had now different values for the land and the crops, and therefore it was that they had to take drastic methods in dealing with those debts. (Proceedings in Council.)

"RENEWAL".—The proviso deals with renewal of debts. The words used are "*any part of the debt which is found to be a renewal of a prior debt.*" Amounts borrowed *bona fide* from a third party to pay an existing debt will not be a renewal. It would be a *new loan.*

[The word "*renew*" in the sence in which it is used in this section has been defined by Winchester as follows: "To grant or obtain an extension of, to continue in force for a fresh period, (as) to renew a note or lease." Bouvier in his Law Dictionary defines "Renewal" as a change of something old for something new; as, "*renewal*" of a note or lease.]

"REFUND ANY SUM WHICH HAS BEEN PAID:—If a debtor has paid to his creditor interest in excess of the scaled down amount he would not be entitled to a refund of the excess amount. This will apply to payments made whether before or after the commencement of this Act. (*See* Notes under S. 7, *supra*). *See* (1941) 1 M.L.J. 25.

SCOPE—PAYMENTS TOWARDS INTEREST IN EXCESS OF AMOUNT DUE AS SCALED DOWN INTEREST—RIGHT OF CREDITOR TO RETAIN EXCESS—If in scaling down a debt under S. 9 it is found that the payments made towards interest are in excess of the amount of interest as scaled down, that excess amount will be retained by the creditor and will not be adjusted in reduction of principal. There is nothing contrary to general principles in allowing a creditor to retain that which has been willingly paid to him. 196 I.C. 251:

1941 M.W.N. 39: 53 L.W. 67: A.I.R. 1941 Mad. 382: (1941) 1 M.L.J. 25. *See also* 1940 M.W.N. 329.

As to appropriation of payments towards interest or principal, *see* 1940 M.W.V. 329: 1949 M.W.N. 957: 52 L.W. 431 and cases noted under S. 8, *supra*.

All debts incurred after the commencement of Madras Act IV of 1938 whether they be in discharge of prior debts or not will fall only under S. 13 and S. 9 is not applicable to such debts. 54 L.W. 222: I.L.R. 1142 Mad. 57: 197 I.C. 790: 1941 M.W.N. 800: A.I.R. 1941 Mad. 799 (2): (1941) 2 M.L.J. 307. *See also* (1940) 2 M.L.J. 174.

ACCOUNT COMMENCING AFTER 1ST OCTOBER, 1932—SETTLEMENT AT THE END OF EVERY YEAR—IF CAN BE RE-OPENED.—Unless a debt falling under S. 9 relates back to a debt incurred before 1st October, 1932, so as to invoke the provisions of S. 8, there is nothing in S. 9 to justify the re-opening of settlements or the re-appropriation of payments on the basis of a bypothetical original principal. In such a case the creditor is entitled to a decree on the basis of the last settlement with interest thereon at 5 per cent. per annum. 205 I.C. 149: 55 L.W. 33 (1): 1942 M.W.N. 120 (2): A.I.R. 1942 Mad. 297: (1942) 1 M.L.J. 86.

Where the original debt was not one due from the agriculturist, a debtor cannot call in aid S. 9 of the Act on the ground that the debt sued on is in renewal of a prior debt. The prior debt also must fall within the definition of "debt" in S. 3. In other words both the prior debt snd the debt sued on must be debts due from an agriculturist. 52 L.W 140: 1940 M.W.N. 722: (1940) 2 M.L.J. 174. *See also* 193 I.C. 470.

PROMISSORY NOTE IN APRIL, 1937, IN SETTLEMENT OF ACCOUNTS OF DEALINGS DATING BACK TO FEBRUARY, 1932—SCALING DOWN—APPROPRIATION OF PAYMENTS.—A promissory note was executed on 11—4—1937 for Rs. 415-7-3, in settlement of accounts of dealings going back to 14—2—1932. In 1939 a suit was brought to recover Rs. 232-11-0 being the balance due under that note and subsequent dealings. The indebtedness thus started early in 1932 and by 1—10—1932, a sum of Rs. 327-15-6 had been advaneed. Between 1—10—1932 and the commencement of Madras Act IV of 1938, further advances amounting in all to Rs. 792-14-3 had been made. By this time, however, the principal amount due had become reduced to a littte more than the amount of principal outstanding on 1—10—1932, thus indicating payments towards the principal amounting to far more than the principal sum outstanding on 1—10—1932. *Held*, that applying the general rule

Provision for debts incurred on or after 1st October, 1932.

9. (1) Debts incurred on or after the 1st October 1932, shall be scaled down in the manner mentioned hereunder, namely:—

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that payments towards principal will be deemed to have been appropriated first to the earliest advance, the whole of the sums advanced before 1—10—1932 must be deemed to have been discharged before the Act came into force, and there could therefore be no question of scaling down the debt on the basis of renewals and taking it back to a date anterior to 1—10—1932. For the purpose of the Act, the debt therefore started only on 11—4—1937 and S. 9 of the Act would apply. 205 I.C. 237: 55 L.W. 458: 1942 M.W.N. 445: A.I.R. 1942 Mad. 673. *See also* 52 L.W. 674: 1940 Mad. 940: (1940) 2 M.L.J. 758.

[*See* now Explanation I to S. 8.]

PROMISSORY NOTE FOR ARREARS OF RENT.—A decree passed on a promissory note executed for arrears of rent is a decree for a debt and not for rent. The decree does not fall under S. 15 but under Ss. 9 and 19. 52 L.W. 735: 1940 M.W.N. 1155: (1940) 2 M.L.J. 825: 1941 Mad. 116.

PROMISSORY NOTE AND CONTRACT OF SALE OF LAND.—Contract reciting that, in default of conveyance being executed, amount under promissory note may be recovered—Debt under note—Scaling down. *See* (1944) 2 M.L.J. 187.

"INCURRED" "DEBT"—MEANING OF.—Though the word "incurred" in S. 9 suggests the idea of a liability voluntarily incurred, the terms of cl. (1) of that section indicate that the section refers not only to contractual liability, but even to liabilities under law, custom or decree of Court. I.L.R. (1939) Mad. 525: 1939 M.W.N. 279: 49 L.W. 391: A.I.R. 1939 Mad. 471: (1939) 1 M.L.J. 528.

DONEE OF HYPOTHECA—RIGHT TO RELIEF WHEN HE IS NOT AGRICULTURIST.—A non-agriculturist donee of hypotheca is not entitled to relief in respect of. the mortgage debt under the Act, when the agriculturist mortgagor was not, a person liable to discharge the mortgage debt. (1950) 1 M.L.J. 414.

Notes under section 9.

S. 9—(N.B.—*See* notes under S. 8, *supra*)

9 (1). "ALL SUMS PAID"—meaning of—usufructuary mortgage—Receipt of profits—Effect of where the applicant for relief

Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of court under which it arises or at five per eent. per annum simple interest whichever is less, and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due.

Provided that any part of the debt which is found to be a renewal of a prior debt [1][whether by the same or a different debtor, and whether in favour of the same or different creditor] shall be deemed to be a debt contracted on the date on which such prior debt was incurred and if such debt had been contracted prior to the 1st October, 1932, shall be dealt with under the provisions of section 8.

LEG. REF.

1. Inserted by Amending Act XXIII of 1948.

himself describes the mortgage as a usufructuary mortgage and a term of the mortgage was that the mortgagee was to enjoy the profits of the properties, though the mortgagee was also enpowered to collect the rent from the tenants, it cannot be said that the possession was not legally with him, and the perception of profits would not amout to payment to the creditor by the debtor within the meaning of S. 9 (1): (1954) 1 M.L.J. 101.

DEBTS INCURRED AFTER THE ACT—APPLICABILITY OF SECTION 9.—Neither S. 8 nor S. 9 was applicable to debts incurred after 22nd March, 1931, prior to the amending Act XXIII of 1948, and the debt under S. 9 could not be traced back to the earlier debt. The position as regards debts under S. 8 was altered by the Amending Act, as a result of the substituted Explanation III, but there has been no change with respect to the tracing back of a debt under S. 9. Though the amending Act, inserted the words "whether by the same or a different debtor and whether in favour of the same or a different creditor" nothing has been said about debts renewed after the Act came into force. (1952) 1 M.L.J. 638.

S. 9 (1) PROVISO—In scaling down a debt under S. 9 (1) of the Act, the proviso to that section can be applied more than once until the debt is traced back to the principal amount originally advanced. There is nothing in the language of the proviso to suggest that it can be applied but once in the process of the scaling down.

(2) Subject to the provisions of sections 22 to 25, nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

It directs that if any part of the debt sought to be scaled down is found to be a renewal of a prior debt, that part should be deemed to be a debt contracted on the earlier date and scaled down accordingly, but in doing so, if it is itself a renewal in part or in whole of a still earlier debt, the proviso comes into operation again, for it is an Integral part of the mode of scaling down prescribed under the section. The object of the Legislature in enacting this provision is plainly to require the Court to trace the debt back through various renewals to the principal sum or sums originally advanced and scale it down under S. 9 or S. 2 as the case may be. 52 L.W. 294: 1940 M.W.N. 800: (1940) 2 M.L.J. 232: 192 I.C. 378.

CONSTRUCTION—PROMISSORY NOTE IN 1937 FOR BALANCE DUE ON MORTGAGE EXECUTED AFTER 1—10—1932—SCALING DOWN—BASIS OF.—There is nothing in section 9 which justifies the treatment of the principal of a debt as anything different from the principal of the contract actually sued on or as warranting a procedure analogous to that of Section 8 of the Act, which Section 9 does not seem to contemplate except for the specific purposes of reducing debts which originated before 1st October, 1932. In a suit on a promissory note dated 22—9—1937, executed for the balance due under a prior mortgage in favour of the same creditor executed on 19—12—1932, the defendant cannot claim to have the debt scaled down on the basis of the original mortgage advance; the Court cannot import into the first part of the proviso to Section 9 (1) the Explanation to Section 8 which treats the original principal as the principal for the purposes of Section 8. Where the prior debt was not contracted before 1—10—1932, the last part of the proviso has no application. There can, under Section 9, be, therefore, no recalculation of interest on the antecedent debt, and re-appropriation of payments towards interest made under the antecedent debt. 201 I.C. 324: 1941 M.W.N. 995: 54 L.W. 551: A.I.R. 1942 Mad. 204 (2): (1941) 2 M.L.J. 795. *See also* (1943) 1 M.L.J. 231.

NOTES UNDER SECTION 9-A. AMENDING ACT XXIII OF 1948, EXPLAINED—Section 9-A was the most important section in the Amending Act XXIII of 1948. It enacted some special provisions in respect of usufructuary mortgages, which, to a large (extent) were exempt from the operation of the original Act. (*Vide*

Special provision in respect of usufructuary mortgages.

[1]9-A. (1) This section applies to all mortgages executed at any time before the 30th september, 1947, and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof—

LEG REF.

1. Substituted by Madras Act XXIV of 1950

Section 10, Column (2).) The basis of this section is the assumption that, by possession and enjoyment of the mortgaged property for a period of thirty years, the mortgagee should have realized the principal amount advanced and at least an equal amount by way of rents and profits, *i.e.*, double the principal amount of the debt; and as such the rule of damdupat can safely be applied. This assumption is to some extent justified on account of the prevailing high prices of agricultural produce during the last ten years, *i.e.*, the war period and after. The original Bill contained a simple section which stated that an enjoyment of twenty-five years of the property mortgaged operates as an automatic discharge of the mortgage. When the Bill was referred to the Select Committee, it was found that such a single comprehensive provision would cause great hardship in several cases, especially in respect of transactions entered into under the original Agriculturist Relief Act and before the introduction of the new Amending Act of 1948; and it was considered that any new change in the law should not prejudice the rights of persons who acquired any interest in usufructuary mortgages on the faith of the protection afforded by the law as it stood in that intervening period, (*i.e.*,) from 30th September, 1937 to 30th January, 1948.

The Select Committee consequently enlarged the section. "A usufructuary mortgage" under this section has not the same meaning that it has under the Transfer of Property Act. The explanation to section 9-A of this Act enacts that a "usufructuary mortgage" as used in this section means any mortgage by virtue of which the mortgagee is in possession of the property mortgaged, where no rate of *interest* is stipulated as due to the "mortgagee" and "*interest*" is defined in Section 3 (iii) (*a*). Both these terms "usufructuary mortgage" and "interest" have therefore a special meaning in this Act.

APPLICABILITY:—Usufructuary mortgage—Preliminary decree for redumption in 1944—Subsequent coming into force of Section 9-A, inserted by Act XXIII of 1948—Application for scaling down—Competency. *See* (1955) 1 M.L.J. 215 cited under Section 3 (i) *infra*.

(*a*) where no rate of interest is stipulated for as due to the mortgagee, or

(*b*) where a rate of interest is stipulated for as due to the mortgagee in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such.

SECTION 9-A—APPLICABILITY AND SCOPE—CASES UNDER THE ORIGINAL SECTION.—In the case of a usufructuary mortgage and lease back of the properties to the mortgagor, in a suit by the mortgagee against the mortgagor for recovery of rent on the basis of the lease, it is not open to the mortgagor to plead that he is liable only to pay interest on the mortgage debt and not the rent stipulated in the lease. The mortgagee is entitled to a decree for the entire amount claimed as rent. If the mortgagor does not apply for redemption, there is nothing in the section or in the Act which would preclude the mortgagee from maintaining a suit for the rents legally due to him under the lease. (1951) 2 M.L.J. 589.

Where the mortgagee is in possession under a usufructuary mortgage of 1927 containing a condition that in case the mortgage debt was not redeemed within five years, the mortgagee would become the owner, the condition being a clog on the equity of redemption, the mortgagee's possession after 1932 would only be that of a mortgagee and not that of a vendee, so that, Section 9-A of the Act would be directly applicable to the case. The animus of the mortgagee that he was in possession as a vendee is not the decisive factor for the application of Section 9-A. (1952) 1 M.L.J. 619.

SECTION 9-A—IF CONFERS NEW RIGHTS.—It is no doubt true that a party to a suit or a proceeding can acquire a new right by reason of an Amending Act. But where the new right depends upon a question of fact, namely, whether a document evidencing the transaction is a usufructuary mortgage deed or not, if the party has once got relief from the court under Sections 8 and 9 on the basis that the document was not a usufructuary mortgage falling under Section 10 (2) of the Act, he cannot afterwards claim relief on under the new Section 9. A, introduced by the Amending Act of 1948, on the ground that the document is a usufructuary mortgage. No party can be permitted to take up inconsistent positions and seek relief thereto. The principle of approbate and reprobate will apply to the case. (1952) 1 M.L.J. 834.

Explanation :—A mortgagee shall be deemed to be in possession of the property mortgaged to him or any portion thereof, notwithstanding that he has leased it to the mortgagor or any other person.

(2) The mortgagor shall be entitled to redeem the whole of the property mortgaged, notwithstanding that the time, if any, in the mortgage deed for redeeming the mortgage has not arrived.

(3) Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of less than thirty years, the mortgagor shall not be entitled to redeem the mortgage, unless he pays to the mortgagee—

As to the applicability of section 9-A to family settlements, *see* (1954) 1 M.L.J. 548.

SECTION 9-A. (3)—JURISDICTION OF APPELLATE COURT.—In an appeal against a decree for redemption it is within the jurisdiction and province of the appellate court to deal with an application for scaling down and find out the amount that is exactly due. It may either itself do it or refer the matter to the lower court and get its report and incorporate the same in the decree to be passed by it. So long as the decree for redemption has not been executed and there has not been any satisfaction of the decree apart from its being executed, it is competent for the mortgagor to apply under section 16 of the Amending Act of 1948 to have the debt scaled down. (1954) 1 M.L.J. 537. *See also* (1955) 1 M.L.J. 215 cited under section 3 (iii).

SECTION 9-A (4)—USUFRUCTUARY MORTGAGEE—RIGHT TO IMPROVEMENTS.—A usufructuary mortgagee is entitled to the value of improvements under section 63-A, T.P. Act, and such value is necessarily a sum due to the mortgagee in his capacity as such. Without an ascertainment of the value of the improvements, no declaration of discharge can be made even though the mortgagee has been in possession for an aggregate period of 30 years or more. The improvements referred to in section 9-A are not any improvements effected while the mortgagee has been in possession, but only such improvements as a mortgagee in possession can claim under section 63-A (2), T.P. Act, *e.g.*, putting up a new building for proper conservation of the land, either to prevent the security from becoming insufficient or to preserve the property from destruction. *See* (1955) 2 M.L.J. 30, following (1953) 2 M.L.J. 454: 1953 Mad. 89. But the costs of a suit by the mortgagee for possession of property cannot be claimed as costs of improvements. *Ibid.*

(i) the difference between the principal amount secured by the mortgage and an amount bearing to the principal amount the same proportion as the period during which the mortgagee has been in possession bears to thirty years;

(ii) where any interest on the principal amount secured by the mortgage or any portion thereof has been stipulated for, in addition to the usufruct from the property, the arrears of such interest as scaled down under section 8 or 9 read with section 12, or under section 13, as the case may be; and

(iii) all other sums payable to the mortgagee by the mortgagor in his capacity as such, together with the interest, if any, due thereon.

(4) Where the mortgagee has been in possession of only a portion of the property mortgaged to him for an aggregate period of less than thirty years, the mortgagor shall not be entitled to redeem the mortgage, unless he pays to the mortgagee—

SECTION 9-A (7) (ii) (AS AMENDED BY ACT XXIII OF 1948).— On 2nd July, 1925, one *S* acting for himself and on behalf of his minor son *V* executed a usufructuary mortgage for Rs. 1,000 in favour of *N*. It comprised 27 items. A few of these items were sold subsequently by *S* to one *K* by a sale deed dated 30th November, 1935. The purchaser was directed to discharge the mortgage. *K* in his turn conveyed the properties purchased by him to *V*, the son of *S*, by a deed 17th June, 1943. *V* filed a petition under section 9-A and section 19-A of the Madras Agriculturists Relief Act praying that the debt due to *N*, the usufructuary mortgagee, may be scaled down and the amount due may be determined. *Held*, that the case fell outside the scope of sub-section (7) (ii) (*a*). There was in this case first a transfer of a part of the equity of redemption by the mortgagor before the period mentioned and that transfer would therefore fall outside the scope of clause (*a*). There was next, further, another transfer by the transferee from the mortgagor to *V*. This devolution had taken place no doubt during the material period by a transfer *inter vivos*. This transfer however was not from the original mortgagor.

There was thus no devolution from the original mortgagor during the material period between 30th September, 1937, and 30th January, 1948. The devolution during this period was from a person deriving title from the mortgagor by a transfer *inter vivos*. In terms of the section there was no devolution from a person deriving title from the mortgagor otherwise than by a transfer *inter vivos*. Therefore, the petition under section 9-A for reliefs other than that mentioned in sub-section (1) was maintainable. 1954 Mad. 829: (1954) 1 M.L.J. 578, approving 1953 Mad. 704.

SECTION 9-A, CLAUSE (7) (ii) (*a*)—APPLICABILITY AND SCOPE—*[Transfer of Property Act (1882), Section 43.]*.—After a decree for possession on the basis of a usufructuary mortgage was passed, the equity of redemption was brought to sale by the Official Receiver and purchased by one *N* in 1933 without executing a sale-deed. After *N's* death his wife *C* sold it to *S* on 30—9—47. It was then realised that there was no legal transference of title from the Official Receiver to *N* and therefore from *C* to *S*. So *C* obtained a sale-deed from the Official Receiver on 7—3—1949. Subsequently *S* applied for scaling down the decree. The defence was that as the transfer by *C* in favour of *S* was in between the dates mentioned in Cl. (7) (ii) (*a*) of section 9-A, the beneficial provisions of the Act did not apply to the usufructuary mortgage.

Held, that neither *N* nor his wife *C* had any legal and conveyable title on 30—9—1947, when *C* purported to sell the equity of redemption to *S* and therefore there was no transfer *inter vivos* of the equity of redemption in favour of *S* between the dates as required by Cl. (7) (ii) (*a*) of section 9-A. The date of subsequent sale-deed executed by Official Receiver in 1949 was beyond the relevant period and it did not clothe *S* with title with effect from 1947 because under section 43, Transfer of Property Act, it was on the interest and title that *C* acquired in 1949 that the sale in favour of *S* by *C* in 1947 could operate and not before 7—3—1949. Thus the transfer of the equity of redemption in favour of *S* took effect only from 7—3—1949. Therefore, the exception in favour of usufructuary mortgage under section 9-A was of no avail and *S* was entitled to the benefit of the provisions of the Act and to have the decree scaled down. SANKARI AMMAL *v.* RAMACHANDRA AYYAR. (1954) 2 M.L.J. 569: I.L.R. (1954) Mad. 791: 1954 Mad. W.N. 300: 67 Mad. L.W. 577: A.I.R. 1954 Mad. 861.

SECTION 9-A (7)—SCOPE AND APPLICABILITY.—In order to get an exemption under section 9-A (7) a person must have acquired title to the equity of redemption by a transfer *inter vivos* from

(i) the difference between that portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee and an amount bearing to that portion of the principal amount the same proportion as the period during which the mortgagee has been in possession bears to thirty years:

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another person who in his turn acquired a right to the same by one of the modes enumerated, namely, succession, survivorship, court-sale, etc. The transaction, to be hit by the section, should have been a transfer *inter vivos* from the original mortgagor between the two dates mentioned. The clause will not apply if the transfer effected between these dates is from a transferee from the original mortgagor prior to 30—9—1937. *See* 1953 Mad. 704: (1953) 1 M.L.J. 496.

SECTION 9-A (7) (ii) (*a*)—APPLICABILITY.—Where property subject to a usufructuary mortgage was sold in 1941, the vendor himself undertaking to discharge the mortgage out of the sale consideration and to give possession of the property to the vendee, section 9-A (7) (ii) (*a*) would apply and the vendor would not be entitled to scale down the mortgage debt. The fact that part of the consideration was kept with the vendor or that he agreed to put the vendee in possession after payment of the amount to the mortgagee would not confer on him any interest in the property. 1953 Mad. 557: (1953) 1 M.L.J. 96.

SECTION 9-A (7) (ii) (*c*)—APPLICABILITY, SCOPE AND OBJECT.—Section 9-A (7) (ii) (*c*) applies not only to a case where the mortgagee's interest was in the first instance created in favour of two or more persons but also to a case where the mortgagee's interest was created only in favour of one person to start with and there was later an assignment of that interest in favour of two or more persons, the condition, however, being that the assignment must have taken place before the date of the partition. The main object of this sub-clause (*c*) is to protect partitions effected during the particular period just as clause (*b*) is intended for the protection of *bona fide* transfers for value of the interest of the mortgagee. (1953) Mad. 1200: (1953) 2 M.L.J. 103.

SECTION 9-A. (8):—Where, with the consent of all parties interested in the mortgage including the mortgagee, the amount due under the mortgage liability was apportioned between two sets of properties—2/5th share owned by the plaintiffs and 3/5th share owned by the second defendant, thereby, in effect and substance, constituting what was one mortgage originally into two distinct and separate mortgages,

(ii) where any interest has been stipulated for, in addition to the usufruct from the property, the arrears of interest on the portion of the principal amount referred to in clause (i), such arrears being scaled down under Section 8 or 9 read with section 12 or under Section 13, as the case may be:

(iii) the balance of the debt as scaled down under section 8 or 9 read with section 12, or under section 13, as the case may be; and

(iv) all other sums payable to the mortgagee by the mortgagor in his capacity as such, together with the interest, if any, due thereon.

5 (*a*). Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of thirty years or more, then, notwithstanding anything contained in sections 8, 9, 12 and 13, the mortgage debt shall be deemed to have been wholly discharged with effect from the expiry of the period of thirty years or where such period expired before the commencement of the Madras Agriculturists Relief (Amendment) Act, 1948, with effect from the commencement of that Act.

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it was *held* that the second defendant was no longer a co-mortgagor with the plaintiffs entitled to redeem the entire mortgage, as contemplated by S. 9-A (8), and hence the plaintiffs would be entitled to have the mortgage debt scaled down. The principles of S. 60, T. P. Act, would not apply to such a case.

66.L.W. 588 : 1954 Mad. 818.

SECTION 9-A (10) (ii) (*b*)—TRANSFER—Meaning of the word "transfer" in section 9-A (10) (ii) (*b*) means and implies that it is the result of an act of parties. A court auction-purchaser is not covered by the exception and is outside the scope of the sub-clause. (1954) 1 M.L.J. 537.

NOTES UNDER section 9-A, AS SUBSTITUTED BY THE AMENDING ACT OF 1950—AMENDING ACT section 9—SCOPE AND EFFECT OF—EFFECT ON PENDING PROCEEDINGS.—section 9 of the Amending Act of 1950 gives retrospective operation to the amendments made by that Act and makes them apply to all suits in which the decree has not

(i) if no interest has been stipulated for on the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property ;

(ii) where such interest has been stipulated for, if no arrears of interest are due from the mortgagor ; and

(iii) if no other sums or interest thereon are due to the mortgagee by the mortgagor in his capacity as such.

(b) Where the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of thirty years or more, then, in cases not covered by clause (*a*), the mortgagor shall not be entitled to redeem the mortgage unless he pays to the mortgagee—

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become final. The decree contemplated under the section is the whole decree and not portions of it. A decree does not become final when it is the subject-matter of a second appeal. Hence where at the time of the commencement of the Amending Act the decree in the suit of the mortgagor to redeem the mortgage had not become final, the mortgagor would be entitled to the benefit of the Amending Act. If, however, the mortgagor had unconditionally deposited the full amount of the principal money and the mortgagee had withdrawn that amount, then under the proviso to section 9 of the Amending Act the mortgagor would clearly not be entitled to a refund as the mortgagee could not be required to refund any amount paid to him before the commencement of the Amending Act. *See* (1950) Mad. 1230 : (1954) 1 M.L.J. 19.

SECTION 9-A—APPLICABILITY AND SCOPE.—section 9-A can come into play only where in the case of an usufructuary mortgage, the mortgagor seeks to redeem. It certainly has no effect where there is a combination of a simple and an usufructuary mortgage and the mortgagee taking advantage of the covenant by the mortgagor to pay the sum, files a suit for realisation of the principal sum by sale of the mortgaged property.

Where in such a case a preliminary decree for sale has been passed on the footing of the reduced amount in pursuance of section 9-A it would be open to the mortgagor to invoke his right to redeem by depositing this amount, in which case he has complied with the provisions of section 9-A and the plaintiff would not be entitled to sell the property if the correct amount as scaled down is deposited. THIRUPATHY v. RAJAGOPALA NAIDU. (1956) 1 M.L.J. 1 : 18 Mad. L.W. 843 : 1955 Mad. W.N. 862.

(i) the arrears of interest stipulated for in addition to the usufruct from the property, as scaled down under section 8 or 9 read with section 12, or under section 13, as the case may be; and

(ii) all other sums due to the mortgagee by the mortgagor in his capacity as such and referred to in sub-clause (iii) of clause (*a*) together with any interest due thereon.

SECTION 9-A—APPLICABILITY TO OTHIS IN MALABAR—MALABAR LAW—OTHI—IF A USUFRUCTUARY MORTGAGE WITHIN section 9-A OF THE MADRAS ACT (IV OF 1938).—An 'othi' in Malabar is no doubt a mortgage with possession, the mortgagee enjoying the entire produce of the land, the landlord merely retaining the proprietary title and the power to redeem. It carries with it a right of pre-emption in favour of the mortgagee. There are other incidents peculiar to an othi in Malabar, which is not associated with the usufructuary mortgagee as normally understood. Section 9-A of the Madras Agriculturists Relief Act, 1938, contemplates only usufructuary mortgages as defined under section 58 (*d*) of the Transfer of Property Act. The incidents of a Malabar othi is more akin to an anomalous mortgage covered by section 58 (*g*) of the Transfer of Proe perty Act. It is not a usufructuary mortgage simpliciter as contemplated by S. 9-A of the Madras Act (IV of 1938). (1956) 2 M.L.J. 46.

SCOPE—RETROSPECTIVE OPERATION—This section has been given retrospective operation by section 9 of the Amending Act of 1950. The amended section is to govern not only all suits and proceedings commenced after the Amending Act, but also all pending suits and proceedings in which no decree or order has been passed or in which the decree or order passed has not yet become final and to all suits and proceedings in which the decree or order, though already passed has not been executed or satisfied in full before the coming into force of the Amending Act. But the proviso to the section provides that no creditor is required to refund any amount which had been paid to or realised by him before the Amending Act came into force.

SECTION 9-A (10) (2) (*b*)—VALUABLE CONSIDERATION.—There is no warrant for the contention that the expression "valuable consideration" connotes payment of money or its equivalent in kind and not the discharge of a liability. The expression "valuable consideration" has been defined by various authors.

In Bouviers Law Dictionary, Volume I, at page 402, we find the following discussion:

"Valuable considerations are either some benefit conferred upon the party by whom the promise is made, or upon a third

party at his instance or request; or some detriment sustained at the instance of the party promising by the party in whose favour the promise is made. Chit. Contr. 7 Doct. and Stud. 179, 2 Pet. 182; 5 Cra. 142. 150, 1 Litt. 183, 3. Johns, 100, 8 N.Y. 207; 6 Mass 58; 2 Bibb. 30; 2 J. J. Marsh 222: 2. N H 97..... The detriment to the promisee must be a detriment into the contract and not from the breach of it. 2 Miss. Rep 293. "A valuable consideration may consist either in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other". L.R. 10 Ex. 162. *See* 5 Bick, 380. A valuable consideration is usually in some way pecuniary or convertible into money; and a very slight consideration, provided it be valuable and free from fraud, will support a contract. 2 How 426, 12 Mass 365; 12 Vt. 259; 29. Ala N.S. 188.....Valuable considerations are divided by the civilians into four classes which are given with literal translations *Do ut des* (I give that you may give) *Facio ut facias* (I do that you may do) *Facio ut des* (I do that you may give) *Do ut facias* (I give that you may do)."

In Law Dictionary (second edition) by Ballentine the meaning given to the expression "valuable consideration" is as follows:

"A consideration which may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other party to the contract (7 Am. Jur. 925).

To constitute a sufficient conveyance by way of bargain and sale, there must be a valuable consideration expressed in the deed or proved independently of it, that is, a consideration founded on something valuable as distinguished from good consideration which is founded on natural love and affection; and a good consideration is personal, whereas a valuable consideration may be paid to the bargainer for and on account of another. *See* 16 Am. Jur. 475.'

In Stroud's Judicial Dictionary (3rd edition), Vol. IV, page 3196, the expression "valuable consideration" with regard to the various statutes is considered. In "Words and Phrases Judicially defined," Vol. V, by Roland Burrows at page 413, it is stated as follows:—

"A valuable consideration, in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. *Currie* v. *Misa* [1] affirmed sub nom *Misa* v. *Currie*." [2]

1. (1875) L.R. 10 Exch. 153 at page 162.
2. L.R. (1875) 1 A.C. 554.

From these passages it is abundantly clear that valuable consideration does not necessarily mean the payment of money or in kind. Cases where this expression has been defined have also been brought to our notice. In *Currie* v. *Misa* [1] Lush, J., defines the expression "valuable consideration" thus:—

"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other."

This definition has been approved and accepted by their Lordships of the Judicial Committee in *Fleming* v. *Bank of New Zealand* [2]. Lord Lindley delivering the Judgment of the Privy Council observed as follows:

"In *Currie* v. *Misa* [1] the question arose whether a cheque drawn by the defendant and made payable to Lizardi & Co., was given for consideration or not, and whether the plaintiffs were holders of the cheque for value. The case is an important authority on the meaning of consideration. Lush, J. giving the judgment of the Exchequer Chamber said 'A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other: Com. Dig. Action on the case *assumpsit* B-1-15'. This definition has been constantly accepted as correct. Their Lordships so treat it; and if correct it covers this case so far as some consideration is concerned".

In *Ramacharya Venkataramanacharya* v. *Srinivasacharya Venkataramanacharya* [3], Sir Stanley Batchelor, *Kt.* Acting C. J. and Kemp, J., were of the opinion that setting apart of properties for the performance of religious ceremonies can be said to be for valuable consideration. Where the managers of a temple made a gift of the temple property to certain individuals in consideration of the latter performing certain religious services at the temple, it was held that these donees and their heirs were tranferees for valuable consideration, the performance of services being the consideration for the gift. The learned Judge (Batchelor, J.) observed as follows:

1. (1875) L.R. 10 Exch. 153 at page 162.
2. L.R. (1900) A.C. 557 at 586.
3. (1918) 46 I.C. 19 at 20.

"The only possible question raised upon the application of the Article turned upon the phrase for "valuable consideration", and there I am clear that the condition required by the Article is in this case satisfied. The transfer to the defendant's predecessors is expressed to have been in consideration that they shall accept the responsibility and discharge the duty of performing these recurrent religious cermonies, which are regarded among Hindus as matters of transcendant importance. That being so, I am of opinion that the consideration is a valuable consideration within the meaning of that phrase as recognised by the law. This meaning is explained in *Currie* v. *Misa* [1] where Mr. Justice Lush in delivering the judgment of the Court says:

"A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. I cannot doubt that in this case the consideration recited by the deed of transfer falls within this comprehensive description".

These pronouncement leave no room for doubt that where the transferor has suffered some detriment or loss, or responsibility undertaken or forbears from doing a certain thing, it is valuable consideration; likewise where the transferee gets some interest, right, profit or benefit, then also it is valuable consideration. *See* (1956) 1 M.L.J. 503.

The words "transferred wholly or in part the mortgagee's rights" in section 9-A (10) (ii) (*b*) would mean absolute conveyance or renunciation of the whole bundle of rights, in the entire property or part of it. The execution of a sub-mortgage by the usufructuary mortgage cannot constitute a transfer in part of the mortgagee's rights in the property within the meaning of section 9-A (10) (ii) (*b*) of the Act as amended by the Amending Act of 1950. (1956) 1 M.L.J. 589.

Section 9-A (10) (ii) (*b*) and (*c*) APPLICABILITY—"PARTITION"—"TRANSFER FOR VALUABLE CONSIDERATION."—The word "partition" in section 9-A (10) (ii) (*c*) of the Madras Agriculturists Relief Act cannot be construed as having different meanings as and when applied to persons or families following different systems of law. An unequivocal declaration of intention by one member of a joint Hindu family to get his share in the joint family properties ascertained and divided, communicated to other members of the family, though effecting a severance in status so far as the family is concerned, cannot be considered to effect a partition so as to bring the exception in section 9-A (10) (ii) (*c*) into play.

1. (1875) L.R. 10 Exch 153 at page 162.

(6) Where the mortgagee has been in possession of only a portion of the property mortgaged to him for an aggregate period of thirty years or more, the mortgagor shall not be entitled to redeem the mortgage unless he pays to the mortgagee—

"Partition" contemplates vesting in one of the erstwhile coparceners or tenants in common specific property by allotment. The conversion of a coparcenary into a tenancy in common cannot be considered as a partition within the meaning of paragraph (*c*) of section 9-A (10) (ii) of the Act.

When there has been no division of a mortgage belonging to a family at a partition, but it is included in a separate schedule among the properties kept in common to be enjoyed by all the members, it must be held that there has been no partition so as to attract the application of section 9-A (10) (ii) (*c*) of the Act. The expression "a partition has taken place among such persons" in the clause refers to an actual division and allotment to one of the coparceners.

Where a mortgage belonged to the family, and there is a division among the members of the family by which the whole or part of it is set apart to one of the erstwhile coparceners, then in such a case paragraph (*c*) can be attracted; when there is no such allotment to one individual but there is a transfer of the ownership in the mortgage to a different entity, namely, to a trust or family charity which is to be managed by the seniormost individual among the members for the time being, paragraph (*c*) cannot be applied.

Where there is a transfer of the mortgagee's rights in the property in favour of the trust, and it is a *bona fide* transfer, *i.e.*, is a change of ownership from the joint family to the trust, and the character of the trust impressed upon the mortgagee's interest, paragraph (*b*) of the clause will apply to the case. "Valuable consideration" in paragraph (*b*) of the clause does not necessarily mean the payment of money or in kind. It may consist either in some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. Setting apart of properties for the performance of religious ceremonies or charities can be held to be for valuable consideration, the performance of services being the consideration for the gift.

Where the transferor has suffered some detriment, or loss or responsibility undertaken, or forbears from doing a certain thing, it is valuable consideration. Likewise where the transferee gets some interest, right, profit or benefit, then also it is valuable consideration. The joint family having lost the mortgage interest

(i) where, in addition to the usufruct from the property, any interest has been stipulated for, the arrears of interest on that portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee, such arrears being scaled down under section 8 or 9 read with section 12 or under section 13, as the case may be;

(ii) the balance of the debt not attributable to such portion of the property as scaled down under section 8 or 9 read with section 12, or under section 13, as the case may be; and

(iii) all the sums payable to the mortgagee by the mortgagor in his capacity as such, together with the interest, if any, due thereon.

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the transfer must be deemed to be for valuable consideration, so as to attract paragraph (*b*) of section 9-A (10) (ii) of Madras Act IV of 1938. A discharge of one liability by another would amount to a transfer. *See* (1956) 1 M.L.J. 503.

SECTIONS 9-A AND 19-A—SCOPE—MORTGAGE DEBT.—A mortgage debt is not as such excluded from the operation of section 19-A. There is nothing to show that section 9-A is an overriding provision and otherwise self-contained. The language of section 9-A does not provide that the right could be agitated only in a suit for redemption and not otherwise, so long as a mortgage debt is not outside the scope of section 19-A. Nor is there anything in section 19-A which could be said to bar an application by a mortgagor who is entitled to rights of scaling down under section 9-A and to obtain a declaration of discharge of the mortgage. No doubt any further remedy which the mortgagor might claim to have, as and by way of recovery of possession or otherwise, could be had not in a proceeding under section 19-A, but by other modes open to him under law, ordinarily by way of suit. A.I.R. 1956 Mad. 259: C.L.R. 1956 Mad. 83: (1956) 1 M.L.J. 427.

SECTIONS 9-A AND 19-A—RELATIVE SCOPE—FORMER, IF SELF-CONTAINED AND OVERRIDES SECTION 19-A.—There is nothing in the language of section 9-A excluding the possibility of the application of any other provision of the Act, unless the application of such a provision could be inconsistent with the right conferred on a mortgagor under section 9-A. The language of section 9-A does not provide that the right could be agitated only in a suit for redemption and not otherwise, so long as a mortgage debt is not

(7) For the purposes of this section, the portion of the principal amount secured by the mortgage which is attributable to the portion of the property in the possession of the mortgagee shall be determined in the manner prescribed by rules made under this Act.

(8) The mortgagor shall not be entitled to redeem a mortgage under sub-section (2) or obtain possession of the mortgaged property by virtue of sub-section (5) (*a*) unless he pays to the mortgagee the cost of the improvements, if any, effected by him to the mortgaged property.

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outside the scope of section 19-A. Again, there is nothing in section 19-A which could be said to bar an application by a mortgagor, who is entitled to rights of scaling down under section 9-A to obtain a declaration of discharge of the mortgage. Such declaration would certainly not entitle him to recover possession of the property, since sub-section (8) of section 9-A provides that unless he pays to the mortgagee the cost of the improvements, he cannot obtain possession. Even apart, the order which a Court could pass under section 19-A, sub-section (4) (*a*), is only an order declaring that the debt is discharged, in this case, the mortgage debt. Any further remedy which the mortgagor might claim to have, as and by way of recovery of possession or otherwise, could be had not in a proceeding under section 19-A but by the other modes open to him under law, ordinarily by way of a suit.

A creditor applying under section 19-A for a declaration as to the amount due under the provisions of the Act can have only an order for declaration and if he desires to have a decree, he has to pay the necessary Court-fee. Further, it may be noted that section 19-A is a general provision under Chapter IV relating to procedure, whereas section 9-A is included in Chapter II relating to the scaling down of debts and future rate of interest. Chapter II deals with the rights granted to agriculturists, while Chapter IV relates to the procedure under which the rights could be enforced in the manner in which the Act provides. There is therefore nothing to show that section 9-A is an overriding provision and otherwise self-contained having no relation whatever with the procedure laid in the Act for enforcing the rights of the agriculturists. *See* (1955) 2 M.L.J. 30.

Right of Mortgagee for costs of improvement.—As to costs of improvement made to the mortgaged property, section 63-A, T.P. Act, provides as follows:—

(9) (*a*) (i) Except in cases falling under sub-section (5) (*a*), where the mortgaged property or, as the case may be, the portion thereof in the possession of the mortgagee has been leased back to the mortgagor by the mortgagee, the rent due to the mortgagee under the lease (after deducting from such rent any revenue, tax or cess paid or payable by the mortgagee in respect of the property) shall be deemed to be the interest on the mortgage debt or the portion thereof attributable to the portion of the property aforesaid and the provisions of section 8 or 9 read with section 12, or section 13, as the case may be, shall apply to the entire debt

(ii) Nothing contained in sub-section (3) or sub-section (4) shall apply to any debt falling under clause (i).

(*b*) In cases falling under sub-section (5) (a) where the property has been leased back to the mortgagor by the mortgagee, nothing contained in that sub-section shall affect the right of the mortgagee to recover any rents due to him under the lease for any period before the date on which the mortgage debt is deemed to have been wholly discharged by virtue of that sub-section, if such rents have not become barred by limitation under any law for the time being in force.

63-A. (1)—IMPROVEMENTS TO MORTGAGED PROPERTY.—Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine

(10) Nothing contained in this section, except sub-sections (1) and (2), shall apply to any mortgage :

(i) in respect of property situated in the South Kanara district or in the taluks of Chirakkal, Kottayam, Kurumbranad and Wynad in the Malabar district;

(ii) in respect of property situated in any other area in the cases mentioned below :—

(*a*) Where during the period after the 30th September, 1937, and before the 30th January, 1948, the equity of redemption in the property subject to the mortgage has devolved either wholly or in part on a person, by or through a transfer *inter vivos* either from the original mortgagor or from a person deriving title from or through such mortgagor otherwise than by a transfer *inter vivos*, then to the whole of such part, as the case my be ;

(*b*) Where, during the period aforesaid, the mortgagee or any of his successors-in-interest has transferred either wholly or in part the mortgagees's rights in the property *bona fide* and for valuable consideration then, to the whole or such part, as the case may be.

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per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

The mortgagee would not be entitled to compensation for a "Kacha", kotha built by him on the mortgaged property. He can only remove the materials. 1934 Lah. 242 : 149 I.C. 969.

Liabilities of mortgagee in possession.—There are also corresponding liabilities on the mortgagee in possession, which are enumerated in sections 76 and 77, T.P. Act which runs as follows.—

SECTION 76.—LIABILITY OF MORTGAGEE IN POSSESSION.—When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own ;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

Provided that the transferee of a mortgagee shall not be entitled to recover in respect of such mortgage, anything more than the value of the consideration for the transfer; but nothing herein contained shall, in cases where the property or portion thereof has been leased back to the mortgagor, affect the right of the transferee to recover the rents, if any, due under the lease, if such rents have not become barred by limitation under any Law for the time being in force.

(c) Where the mortgagee's interest in the property subject to the mortgage or any part of such interest belonged to, or devolved on, two or more persons and during the period, aforesaid, a partition has taken place among such persons, then, to the whole or such part of the interest, as the case may be.

(11) Where the equity of redemption in the property subject to the mortgage belonged to, or devolved on, two or more persons and any one of them or any person claiming under any one of them has, during the period referred to in sub-section (10), clause (ii) (a), redeemed the entire mortgage, nothing contained in this section shall affect the rights or the reliefs to which the person redeeming the mortgage might be entitled to under any other law for the time being in force as against the other persons aforesaid.] (*Substituted by Madras Act XXIV of 1950*).

(c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in cl. (c) and the interest on the principal money,

(e) he must not commit any act which is destructive or permanently injurious to the property,

(f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in cls. (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest [* *] and so far as such receipts exceed any interest due in reduction or discharge of the mortgage-money, the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his [* *] receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property,

If the mortgagee fails to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

SECTION 77.—RECEIPTS IN LIEU OF INTEREST,—Nothing in section 76, clauses (*b*), (*d*), (*g*) and (*h*) applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Section 76 (*d*).—The duty to make the necessary repairs is a paramount one and he will be held accountable to the mortgagor for loss caused by non-repair at time of redemption. 15 M. 290.

Mortgagee can recover reasonable *costs for improvements* effected. 43 B. 69 : 20 Bom. L.R. 895 : 47 I.C. 751. *Failure to keep accounts* of repairs will not be fatal to a claim for compensation. 37 I.C. 125 : 99 P.R. 1916. The price of old meterials should be reduced from the cost of improvements. 28 I.C. 375 : 105 P.L.R. 1915. Usufructuary mortgagee of a house cannot claim sums spent by him for ordinary repairs, because he is bound to pay all normal expenses from rents and profits. 1929 A. 348. An usufructuary mortgagee who claimed compensation in respect of improvements effected by him such as building of a granary, payment of increased water-tax and introduction of water pipes, is not entitled to the same. 15 M.L.T. 375 : 22 I.C. 635.

SECTION 76 : (*e*): WASTE.—The question of waste cannot be gone into in an application for restitution nor can be the subject-matter of a separate suit. 88 I.C. 521 : 1925 O. 654. *See also* 8 I.C. 466 (Bur.) A mortgagee in possession is entitled to cut down trees which he had planted on the land after entering into possessions, unless his act is destructive or permanently injurious to the property. 28 Bom. L.R. 1258 : 50 B. 692. Mortgagee cutting trees—Suit for damages by mortgagor—Maintainability. *See* 112 I.C. 34 (Oudh). This rule being based on equity and reason applies also to cases not governed by the T. P. Act. 24 M. 47 (F.B.)

SECTION 76 (*g*) : ACCOUNTS.—The liability of the mortgagee to render accounts was well recognized even before the coming into force of the T.P. Act. 155 I.C. 22 : 1935 P. 148, clause (*g*) and (*h*), section 76, are not qualified by any such proviso as 'in the absence of a contract to the contraray'; therefore they apply in all cases, contract or no contract to the contrary, excepting those in which section 77 makes them inapplicable. Hence every mortgagee in possession is bound to account under section 76 (*h*), unless he establishes a contract in terms of section 77 (*Ibid.*) But it cannot be laid down as a hard and fast rule that whenever a mortgagee has failed in the obligation imposed on him by section 76, clause (*g*), he must necessarily be made liable on the basis of the gross rental. It is conceivable that there may be cases in which the raising of a presumption that all the tenants have paid their rents may not be justified, The presumption should not be carried beyond reasonable limits. When the mortgagee is made liable for the rental, he should be allowed the costs of the collection. (1932 O. 123 and 255, Ref.) 9. Luck. 456 : 1934 O. 104. Mortgage with possession — Mortgagee to hold possession in lieu of interest—Rate of interest not specified—Mortgage not liable to account. 1937 A.L.J. 304 : 1937 A. 317. *Nature and extent of mortgagee's duty to account.* 9 O.W.N. 60 : 1932 O. 123. As to presumption regarding the same, *see* 9 O.W.N. 253. Duty to keep accounts cannot be contracted against. 1923 A. 175. But *see* 25 M.L.J. 561 ; 47 I.C. 161 : 5 O.L.J. 263 : 1924 O. 92.

See also 28 O.C. 100: 1925 O. 114; 2 Luck. 564: 1927 O. 199. In the absence of accounts, every presumption will be made against the mortgagee. 44 I.C. 9; 47 I.C. 21; 37 P.L.R. 567. *See also* 30 Punj. L.R. 431. But this would not justify the Court in accepting without any examination any evidence which may be offered by the mortgagor. 63 I.C. 598. Where an usufructuary mortgagee failed to keep such accounts as are required of a mortgagee in possession, the Court is justified, in view of the provisions of section 76 (*g*), in disallowing *in toto* his claim for interest. 37 C.W.N. 429: 1933 P.C. 85: 64 M.L.J. 298 (P.C.). The accounts must be separate for each mortgage. 14 B. 19. As to scrutiny and examination of accounts, *see* 26 B. 363; 11 B. 78.

Section 76 (*h*).—*See* 1935 P. 148, noted under (*g*) *supra*, section applies only when the mortgagee is in possession *qua mortgagee*. 19 O.C. 328: 37 I.C. 23. *See also* 5 Pat. L.J. 492: 58 I.C. 291. The liability of mortgagee in possession under section 76 (*h*) to give credit for the receipts.

Section 77.—Section is to be construed strictly. *See* 6 M. 74; 53 I.C. 59. *See also* 5 A. 419. *Covenant for appropriation of the receipts of mortgaged property towards interest* ceased to operate after the deposit by the mortgagor of the money due into Court; and clauses (*b*), (*d*), (*g*) and (*h*) of section 76 become applicable to the mortgagee. 47 M. 7. As to application of the section to specific cases, *see* 82 I.C. 406: 1925 O. 114; 7 A.L.J. 787. Under section 77, the parties can enter into a contract that there is to be no accounting between them. In that case it is wholly unnecessary to mention the rate of interest. It would be sufficient to say that the profits will go in discharge of interest. 11 O.W.N. 524: 1934 O. 220. section 77 only comes in where the mortgagor is from the outset safe from being confronted at the time of redemption with a demand for anything more than the principal sum advanced. It does not cover the case in which only a part of the interest is to be paid out of the usufruct. 155 I.C. 22: 1935 P. 148. A provision for payment of portion of income to mortgagor is valid, legal and binding. 41 M. 959: 55 M.L.J. 489. So also a provision that the mortgagee must pay the land revenue whether profit or loss occurs. 23 I.C. 131: 10 N.L.R. 9. *See also* 46 A. 63. A usufructuary mortgage deed provided that the mortgagee would be entitled to appropriate in lieu of interest the profits remaining after the payment of Government revenue and *malikhana* to the *malikhanadars* and that all profits from increased income would go to the mortgagee. The mortgagee made profits by not paying *malikhana* to the *malikhanadars*. In a suit for redumption of the mortgage, *held*, that the mortgagee was not bound to account in respect of the *malikhana*. 7 P. 44. *See also* 46 A. 633: 12 A.L.J. 579: 1924 A. 591; 114 I.C. 473: 1929 P. 37.

Clause (5) provides that possession of the property by a lessee of the mortgagee, whether he be the mortgagor himself or a stranger, would be deemed to be possession by the mortgagee himself, for the purpose of this section.

Clause (6) makes some special provisions for cases where the mortgagee, instead of taking possession of the mortgaged property leases back the property to the mortgagor himself. In such a case (1) the rent reserved under the lease should be deemed to represent the interest on the mortgage debt; and (2) the mortgage debt would be liable to be scaled down by the application of sections 8 and 9 of the Act.

(3) Even in such a case the continuation of the lease for an aggregate period of thirty years would operate as a discharge.

(4) If there is any arrear of rent due to the mortgagee, he is entitled to recover them, provided the same is not barred by limitation and there is no legal implement for its recovery.

Clause (7) exempts some cases of usufructuary mortgages from the operation of this section, except sub-section (1) which confers a right to redeem irrespective of any period fixed for redemption.

Clause (7) (*i*) exempts properties in South Kanara and certain districts of North Malabar from the operation of this section.

SECTION 9-A (7) (*i*)—EXEMPTION OF PROPERTIES IN SOUTH KANARA.—With regard to the effect of the exemption of properties in South Kanara a legal difficulty was raised in the Assembly debates, as will be seen from the following extracts from the Assembly Debates:—

There is another matter which requires the immediate consideration of the Hon. Minister for Agriculture. Now certain provisions of this Bill have been made inapplicable so far as South Kanara and North Malabar are concerned. Supposing there is a document in which some of the properties are situated in North Malabar and certain portions in South Malabar, I do not know under which section will those mortgages be governed and what would become of those documents. Even now, I know that there are a large number of documents in which properties situated in North Malabar as well as South Malabar have been included in one and the same document, and it is not clear how such documents would be affected and what will become of them if this Bill is passed into law. (Extracts from Assembly Debates).

Clause 7 (ii) (*a*).—This sub-clause gives protection to certain cases of devolution or transfer of the equity of redemption.

TRANSFER INTER VIVOS (Lat.) "*inter vivos*" means between living persons, as a gift, or tranfer *inter vivos*, which is a gift or tranfer made by one living person to another. (Bouvier: Law Dictionary).

Section 9-A, clause (7) (ii) (*b*).—This deals with transfers of rights in usufructuary mortgages by the mortgagee or any of his successors-in-interest, wholly or in part, *bona fide* and for valuable consideration. The special protection afforded by this clause is in the nature of an equitable relief given to purchasers for value in good faith and without notice of any defect of title in the property purchased. Similar provisions are to be found in section 53 of the Transfer of Property Act, sections 53 and 54 of the Provincial Insolvency Act and sections 55 and 56 of the Presidency Touns Insolvency Act Cases decided under these Acts may be usually referred to in the interpretation of this section. Decisions of Courts of Equity in England are also referred to as guides in the construction of this section. (*See* 34 Ind. Cas. 778: A.I.R. (1917) Mad. 519; 1921 All. 298: 60 I.C. 896; 25 Bom. 202 (209); 13 Bom. 297).

"BONA FIDE TRANSFEREE AND FOR VALUABLE CONSIDERATION."—This is an exception to the general rule contained in the section about the wiping out of debts under usufructuary mortgages by thirty years' user. The person relying on the exception contained in this clause must specifically state the facts that would bring him under the exception; and the burden of proving those facts also rests on him.

SECTION 9-A.—As a general rule, a vendor, as against persons having a superior title, can convey only such rights as he, in fact, has, and the purchaser takes subject to the rights of such third persons. He who has no title can convey none, and a bad title is not made good by the ignorance of the purchaser of its defects, or his want of knowledge of the superior title. But there are certain special circumstances where a transferee who gets a transfer of property in good faith, for value, and without notice of any defect in title, is given a special protection by way of equitable relief to the extent of his claims under the transfer. *See* 65 C.L.J. 347: 41 C.W.N. 797; Transfer of Property Act, section 41.

CERTAIN TERMS EXPLAINED.—Transferee is a person to whom any property or right is trasferred. (Stroud's Jud. Dict.)

Transfer generally "includes assignment, payment and other disposition; and the execution and performance of every assurance and act to complete a transfer." (Stroud's Jud. Dict).

A transfer for "a valuable consideration" must be for money actually "paid by the person for whose benefit the transfer is made." (Doe d Preece v. Howells, 2 B. and Ad. 744).

"BONA FIDE."—The equivalent of this phrase "*bona fide*" is "honestly". It qualifies things or actions that have relation only to the mind or motive of the individual. *See* R v. Holl, 50 L.J.Q.B. 766; 7 Q.B.D. 575.

For instance the phrase "*bona fide* traveller" ordinarily would mean the same thing as "traveller." Justice Williams said "can any man be said to be a *mala fide* traveller? The only question is "Was he a traveller?" (*See* Atkinson v. Sellers, 28 L.J.M.C. 13). In Penn v. Alexander, (1893), 1 Q.B. 522; 62 L.J.M.C. 65; 68 L.T. 355) the Court held that if a person journeys the prescribed distance of 3 miles only for the purpose of getting a drink during prohibited hours, he is not a *bona fide* traveller." *See also* Parker v. Queen, (1896), 2 I.R. 404.

"Payments really and *bona fide* made" are payments which a party does not intend to reclaim, in any event. Gibson v. Muskett, 11 L.J.C.P. 225.

SHAM TRANSACTION IS NOT BONA FIDE TRANSFER.—The protection afforded by this sub-section does not apply to nominal, sham or simulated transactions in the form of transfers, but which are not really transfers at all in the proper sense of the term; there being in such cases no *animus transferendi* and no real conveyance of any rights in property (*See* A.I.R. 1944 All. 214). As to the distiction between sham and benami transactions, *see* I.L.R. (1914) Nag. 342: 1944 Nag. 44 (54).

BONA FIDE PURCHASER.—"A *bona fide* purchaser" means one who is "really a purchaser, and not merely a donee taking a gift in the form of a purchase." (Vane v. Vane, 42 L.J.Ch. 299; 8 Ch. 383) or one in which the real beneficiary is the grantor himself.

When Courts speak of a "purchaser" in this connection, the term must be understood to include a transferee, mortgagee, or transferee of a mortgage interest in land. Berwick and Co. v. Price, [1905] 1 Ch. 632; 74 L.J.Ch. 249; 92 L.T. 110.

Good faith or *bona fides* would mean "innocent of the knowledge or the means of knowledge," that there is any defect in the title to property which is being purchased. Lucas v. Dicker, 49 L.J.C.P. 415; 6 Q.B.D. 84.

A thing is deemed to be done in good faith (or *bona fide*) where it is in fact done honestly, whether it is done negligently or not. This law is founded on the distinction pointed out in Jones v. Gordon, (47 L.J. Bank. 1; 2 App. Cas. 616; 37 L.T. 477) by Lord Blackburn, between the case of one who was 'honestly blundering and careless' and the case of a person who has acted not honestly

that is, not necessarily with the intention to defraud, but not with an honest belief that the transaction was a valid one, and that he was dealing in property with a good title.** "If the facts and circumstances are such that the jury, or whoever has to try the case, came to the conclusion that he was not honestly blundering or careless, but that he must have had a suspicion that there was something wrong, and if I ask questions and make further enquiry, it will be no longer my suspecting it, but my knowing it, and then, I shall not be able to recover,—I think, that is dishonesty." *See also* Per Denman, J., in Tatam v. Hasler, 23 Q.B.D. 345; 58 L.J.Q.B. 433.

WHAT CONSTITUTES BONA FIDE TRANSFEREE OR PURCHASER FOR VALUABLE CONSIDERATION.—"To constitute one a purchaser for value without notice, the whole consideration must actually be paid before notice; and it is not enough that the consideration is merely secured to be paid." Bouvier's Law Dict., Vol. III, p. 2772.

To constitute one a *bona fide* purchaser and entitle him to protection as such, he must have purchased not only without notice of defects in the title but also for a valuable consideration, and he cannot be considered as a *bona fide* purchaser until he has actually paid the purchase-price or become irrevocably bound for its payment. (Cyc. of Law and Pro., Vol. 35, pp. 350-354).

PURCHASER WITH NOTICE FROM PURCHASER WITHOUT NOTICE.—As a general rule, if one is entitled to protection as a *bona fide* purcheser he may convey a good title to a subsequent purchaser irrespective of notice on the part of the latter of defects in the title; in other words, a purchaser with notice from a *bona fide* purchaser without notice succeeds to the rights of the latter and occupies the position of a *bona fide* purchaser. The reason for this is to prevent a stagnation of property, and because the first purchaser, being entitled to hold and enjoy, must be equally entitled to transfer his rights in the property. [Boone v. Chiles, U. S. (L.Ed.) 388: Sweet v. Green, 19 Ame. Dec. 442. *See also* 21 Eng. Rul. Cas. 725].

"Though a *bona fide* purchaser of land has taken it free from unknown equities, still, if the prior grantor in whose hands the land was charged with an equity, and through whose conveyance to a *bona fide* purchaser it was discharged, re-acquires title from or under such *bona fide* purchaser, the equity will re-attach to the land in his hands." (Simson v. Montgomery, 99 Ame. Dec. 228).

VALUABLE CONSIDERATION.—To constitute a valuable consideration within the application of the above rule it is necessary that the purchaser should part with something of value, incur some new obligation, relinquish some security, or do some act on the faith of

the purchase which cannot be retracted, and which would leave the buyer in a worse position if his purchase should be set aside. (*See* Cyc. of Law and Pro.,' Vol. 35, pp. 350–354).

The consideration to be valuable, may be other than the payment of money. [Stanley v. Schinally, 40 U.S. (L.Ed.) 960].

In this connection, the consideration of marriage may be a valuable consideration as much as money paid, and is frequently spoken of by the courts as a "consideration of the highest value," [Stanley v. Schinally, 40 U.S. (L.Ed.) 960].

INADEQUACY OF CONSIDERATION.—While the mere inadequacy of the consideration may not be sufficient to deprive one of his position as a purchaser for value, an offer by a vendor to sell for a grossly inadequate price or that the vendor himself acquired the property for a very low price, is a circumstance which should place the purchaser on his guard; and may be such as to require that he should make a reasonable inquiry as to the circumstances of such gross inadequacy of consideration and also as to the title of the vendor as disclosed by the records. (Knapp. v. Bailey, 1 A.S.R. 295; Wisconsin Riner Land Co. v. Seloner, 16 L.R.A. (N.S.) 1073; 23 Ame. Dec. 52. Note; Ten Yeak v. Witheck, 31 A.S.R. 809; Cyc. of Law and Pro., Vol. 35, pp. 350–354.

Where the consideration is inadequate and the transaction is not in the usual course of business or there are other suspicious circumstances sufficient to put the buyer on notice, he cannot claim protection as a *bona fide* purchaser.

If the sum which the transferor is willing to take is grossly disproportionate to the value of the right which is the subject-matter of the transfer, or if there was great inadequacy of consideration in a previous transaction, it is a strong proof of a defective title, and sufficient to put a prudent man upon inquiry, and if the purchaser neglects to prosecute such inquiry diligently he may not be awarded the standing of or protection given to a *bona fide* purchaser. (Ten Eyck v, Wetheik, 31 A.S.R. 809).

Where the inadequacy of the price paid for the transfer is not so great as to shock the moral sense, such inadequacy, by itself, is no evidence of fraud; nor would it be a ground to set aside the transfer, but it would be otherwise if the inadequacy is so great as to shock the conscience. 40 Cal. W.N. 561 (Mitter, J.), on this point *see also* 26 Bom. 543; 18 I. C. 691; 1924 Nag. 124.

WHAT WOULD CONSTITUTE CONSIDERATION—ASSUMPTION OF INDEBTEDNESS TO THIRD PERSON.—Whether the assumption by the

purchaser of a debt of his vendor due to a third person is a sufficient consideration to make him a *bona fide* purchaser depends upon whether or not, by the assumption of such debt, he has placed himself in a worse position than if he had not assumed it; that is, whether he has so obligated himself that, even if he should on account of defect of titles lose the property in question, he would still be called upon to discharge the obligation he has assumed. If he has placed himself in such position, he will be protected. On the other hand, if the purchaser is in such position that he can be relieved from his promise to pay the same, he wil not be deemed a *bona fide* purchaser. [Wasserman v. Metzger, 7 L.R.A. (N.S.) 1019; 7 L.R.A. (N.S.) 1020].

GIVING PROMISSORY NOTE TO VENDER OR TRANSFEROR.—If the transferee of the right has given his promissory or other negotiable note for the transfer and the note has been negotiated and is enforceable against him in the hands of a *bona fide* holder in due course, this will be equivalent to payment in so far as his protection as a *bona fide* purchaser is concerned, and his rights cannot be affected by notice thereafter received and before the note is actually paid. (Tillman v. Heller, 11 L.R.A. 628, Thorn v. Newson, 53 Ame. Ref. 747.)

It is otherwise, however, if the note remains in the hands of the transferor and the transferee is able to protect himself against its enforcement. (Fluegal v. Henschel, 66 A.S.R. 642).

One who makes payment by note is not a *bona fide* purchaser unless the note is negotiable, and even where a negotiable note is given for the purchsse-price it must have been paid or assigned to an innocent holder in due course before notice. (Cyc. of Law and Pro., Vol. 35, pp. 350-354).

ADJUSTMENT OF PRE-EXISTING INDEBTEDNESS:—As to whether one who purchases a right in satisfaction of pre-existing indebtedness is entitled to protection as a *bona fide* purchaser, it has been held that as such a purchaser parts with nothing at the time of his purchase, he is not, in the proper sense, a purchaser for value, and therefore is not entitled to protection. Western Grocer Co. v. Alleman, 27 L.R.A. (N.S.) 620.

The ground on which this is placed is that the creditor does not pay anything actually, or irrevocably lose anything except his bargain; and that, if he is compelled to surrender the property, the debt will revive, and he will still have his claim, and will be in no worse condition than he was before. (Dickerson v. Tillenghast, 25 Ame. Dec. 528, *see also* 40 Am. Dec. 232.)

Where one takes a transfer in payment of a pre-existing debt the rule is that this is not a valuable consideration and the purchaser is not to be regarded as a *bona fide* purchaser. (Cyc. of Law and Pro., Vol. 35, pp. 350-354).

MORTGAGE TO SECURE PRE-EXISTING DEBT.—If the rule prevails that one who takes an absolute transfer or conveyance in payment and satisfaction of a pre-existing debt is not entitled to protection, naturally, one who takes a mortgage as security for or in discharge of a pre-existing debt is not to be deemed a purchaser for value or valuable consideration, and, as such is not entitled to the protection given to *bona fide* purchasers for value. (Dickerson v. Tillinghart, 25 Ame. Dec. 528; Note to 62 A.S.R. 503).

One who takes a mortgage or hands over property or title deeds as security for a pre-existing debt, without otherwise changing his position, is, as a general rule, denied protection; and this is true though the security is given in the form of an absolute deed of conveyance, if in fact it is given merely as security for the pre-existing debt. [Donaldson v. Cape Feer Bank, 18 Ame. Dec. 577; Note to 27 L.R.A. (N.S.) 621-622 Adams v. Venderleek. 62 A.S.R. 497.]

AGREEMENT TO PAY.—A mere agreement to pay by the transferee which he can avoid in case his title proves defective is insufficient to give protection to the transferee. (Cyc. of Law and Pro., Vol. 35, pp. 350-354).

A mere promise to pay the consideration in cash or otherwise is not equivalent to actual payment and is not sufficient to constitute the buyer a *bona fide* purchaser. (*Ibid.*, pp. 354-359).

To constitute one a *bona fide* transferee the payment of the consideration must be made at the time of transfer, and consequently if the transfer of the right is on credit the transfer cannot be regarded as a *bona fide* transaction.

PROOF OF CONSIDERATION GENERALLY.—According to the general view one claiming protection as a *bona fide* purchaser for value must show by affirmative proof that he has in fact paid such a consideration. "Payment is an affirmative fact peculiarly within the knowledge of the party making it or claiming advantage from it. It is therefore easy for him to prove it. On the other hand, the opposite party, who is a stranger to the transaction, might have insuperable difficulties in proving a negative. It is against all the reason and life of the law that such a burden should be imposed upon him." [Lloyd v. Lynch, 70 Ame. Dec. 137].

BURDEN OF PROOF.—Where the plaintiff has established his claim, the defence that the defendant is a *bona fide* purchaser for value and without notice is an affirmative defence which must be proved by him and the Court will not act on his mere allegation in the answer or written statement that he is such a purchaser. [Boone v. Chiles, 9 U.S. (L. Ed.) 388].

On this point *see also* section 41, T.P. Act; 44 Mad. 237; 1934 Pat. 67; 1934 Oudh 165; 1930 All. 847; 1944 All. 470.

Consideration and good faith alone are not sufficient. The defendant must also prove that he made reasonable enquiries as to title. Entry in the public records is not in itself sufficient to constitute basis of his enquiries. I.L.R. (1936) Nag. 177: 1936 Nag. 214.

RECITAL IN DEED OF RECEIPT OF CONSIDERATION.—As a general rule the purchaser cannot rely merely on the acknowledgment in his deed of the receipt by the grantor of the valuable consideration recited, as proof that he is a purchaser for value. Such an acknowledgment or receipt is only evidence of payment as between the parties to the deed and not as against strangers. (Galland v. Jacknan, 85 Ame. Dec. 549; Brown v. Welch, 68 Ame. Dec. 549; Gure v. Conklive, 36 L.R.A. (N.S.) 1124).

PURCHASE MUST BE WITHOUT NOTICE OF DEFECT.—To entitle one to protection as a *bona fide* purchaser as against outstanding debts his purchaser must have been made without notice, actual or constructive. [Lewis v. Phillips, 70 Ame. Dec. 457; Blanchand v. Tyler, 86 Ame. Dec. 57].

On this point *see* the definition of "Notice" under section 3 of the Transfer of Property Act and Notes thereunder in the Civil Court Manual, compiled by the Madras Law Journal Office.

Notice to be effective to deprive the purchaser of protection must be acquired before the transaction is completed. If, however, the notice is acquired before the consideration is paid it is sufficient. Melms v. Pahst Breming Co., 57 A.S.R. 899; Carter v. Champion, 21 Ame. Dec. 695.

Notice within the application of the rule above stated is not synonymous with and need not necessarily amount to actual knowledge. The notice may be either actual or constructive and a knowledge of facts sufficient to put the buyer upon inquiry is equivalent to notice of such facts as the inquiry would have disclosed. (Cyc. of Law and Pro., Vol. 35, pp. 347-350).

The rule with respect to the consequence of a purchaser abstaining from making inquiries, does not depend exclusively on

a fraudulent motive for such abstinence. When the circumstances of a case put a purchaser on inquiry, a false answer or a reasonable answer given to any inquiry, may dispense with the necessity of further inquiry; but where no inquiry has been made, it is impossible to conclude that a false answer would have been given if an inquiry had been made, or such as would have precluded the necessity for any further inquiry. Jones v. Williams, (1857) 24 Beav. 47; 30 L.T.O S. 110; 3 Jur. N.S. 1066; 5 W.R. 775; 53 E.R. 274.

"Constructive notice I take to be in its nature no more than evidence of notice, the presumptions of which are so violent that the Court will not allow even of its being controverted. Thus, if a mortgagee has a deed put into his hands which recites another deed which shows a title in some other person, the Court will presume him to have notice and will not permit any evidence to disprove it." Plumb v. Fluitt, (1791) 2 Anst. 432, 145 E.R. 926. Chitaley, T.P. Act, Notes under section 3.

"Constructive notice, properly so called, is the knowledge which the Courts impute to a person upon a presumption, so strong, of the existence of the knowledge, that it cannot be allowed to be rebutted, either from his knowing something which ought to have put him upon further inquiry, or from his wilfully abstaining from inquiry, to avoid notice. I should therefore prefer calling the knowledge which a person has, either by himself or through his agent, actual knowledge; or if it is necessary to make a distinction between the knowledge which a person possesses himself, and that which is known to his agent, the latter might be called imputed knowledge." Espin v. Pemberton, (1859) 3 De. G. and J. 547; 28 L.J.Ch. 311; 32 L.T.O.S. 345; 5 Jur. N.S. 157; 7 W.R. 221; 44 E.R. 1380, L.C.

No general rule can well be laid down as to what will or will not be sufficient to put the buyer upon inquiry in any particular case, but the facts and circumstances must be sufficient to arouse the suspicion of an ordinarily prudent person, and the buyer is chargeable with notice only of such facts as by the use of ordinary care and diligence he would probably have discovered. (Cyc. of Law and Pro., Vol. 35, pp. 347–350).

Inadequacy of price is also an element to be considered in determining whether the purchase was in good faith and without notice, particularly where the purchase is made out of the usual course of trade or there are other suspicious circumstances connected with the transaction. (*Ibid.*).

It is not essential that the purchaser should have actual notice of defects in the title, but such notice may be constructive as by

knowledge of facts sufficient to put the purchaser on inquiry or by notice to some person standing in such relation to the buyer that the notice to him is equivalent to notice to the buyer.

Knowledge on the part of the purchaser of facts and circumstances which ought reasonably to excite suspicion and put him on inquiry is sufficient to charge him with notice of facts that he might have ascertained by the exercise of ordinary diligence. (*Ibid.*)

TIME OF NOTICE GENERALLY.—To deprive one of the protection afforded a *bona fide* purchaser, on account of notice of an outstanding equity or a prior unrecorded deed, it seems that the notice must exist at the time the money is paid. White v. Fisher, 40 Ame. Rep. 287.

NOTICE BEFORE PAYMENT OF PURCHASE MONEY.—To entitle a grantee to protection as a *bona fide* purchaser he must have paid the purchase money as well as have acquired full legal title without notice; notice (of defects of title) before payment is effectual to deprive him of such protection, though he may at the time have acquired the legal title; and it is not sufficient that the purchaser has secured the payment of the purchase money or may have paid a part of it; but if a part of the purchase money is paid before notice, the purchaser, according to the better view, may be entitled to protection to the extent of such payment, and the Court in awarding relief against such a purchaser should make a provision in its decree either making a return of the money paid a condition precedent to any relief at all or declare a lien therefor on the land. (Wormley v. Wormlley, 5 U.S. (L.Ed.) 651; Williamson v. Branch Bank, 42 Am. Dec. 617; Notes to 11 Ame. Dec. 403; 21 Eng. Rul. Cas. 726; Brown v. Welsh, 68 Ame. Dec. 549; Lewis v. Phillips, 79 Ame. Dec. 457; Fisher v. Shorpshire, 37 U.S. (L.Ed.) 109; Notes to 12 Ame. Dec. 212; 36 Ame. Dec. 62; Henri v. Phillips Annual Cases, 1914 A. 39.

LIS PENDENS.—A purchaser *lis pendens* has from an early date been held chargeable with constructive notice of the pending action, with the result therefore that he takes subject to the claims established in such action [Luke v. Smith, 57 U.S. (L.Ed.) 558].

Notice of judgments and other records of Courts is implied as well as notice of the facts that might be disclosed by inquiry based on knowledge of the pendency of a suit affecting title to property. (Cyc. of Law and Pro., Vol. 35, pp. 353–354) *See also* 8 Beng. L.R. 474; 11 Bom. H.C. 24; 11 Bom. H.C. 64.

NOTICE TO AGENT OR ATTORNEY GENERALLY.—"A purchaser under the general principles of agency, in so far as the rights of third persons are concerned, is charged with notice acquired by his agent while acting within the scope of the agency. This includes

notice acquired by his attorney, and the latter may be compelled to disclose whether he in fact acquired notice of the claim in due course of his investigation; information so acquired is not in any way in the nature of confidential communications from his client, and an attorney is not protected from disclosing information he acquires apart from such communications. Sometimes the purchaser employs the same attorney as that employed by the vendor and where such is the case it is held that the purchaser will be affected with notice of whatever knowledge such attorney acquired in his capacity of attorney for either the vendor or purchaser, in the transaction in which he was so employed." [21 Eng. Rul. Cas. 820, 842; Hinter v. Watson 73 Ame. Cas. 543; Jaskrom v. Sharbi, 6 Ame. Dec. 267].

The rule of imputing the agent's notice to his principal is based on the theory that it is his duty to disclose the same to his principal and that he will do so, and it is therefore held, where an agent while engaged in another transaction in which he was guilty of prepetrating a fraud acquired information the disclosure of which would also disclose the fraud, in such a case the principal will not be charged with such notice, as it is certain the agent would not make disclosure to his principal. The same has been held true where the agent was, without the knowledge of the purchaser, in fact interested in the sale as a quasi vendor. (Frenkl v. Hudson, 60 Ame. Dec. 736; Booker v. Booker, 100 A.S.R. 250).

Though the rule of the Court is that notice to the solicitor of a purchaser is notice to the client of any question affecting the validity of the title, this does not apply where the information he obtains from the vendor is such as it may be said shows that the vendor and solicitor were conspiring together to effect a fraud. Where the same solicitor acted for the vendor and purchaser on the sale of property and the vendor had previously told the solicitor that he desired to sell his property in order to avoid paying certain demands against him: Held this was a case in which the Court would not impute to the client, the purchaser, knowledge which his solicitor possessed. In such a case the duty of the solicitor clearly is to refuse to be a party to any arrangement whereby the vendor intends to cheat his creditors; but if unable to do this, he should not act for the purchaser, whom he thus places in a position of peril; and in no case, unless when necessity compels him to do so, should a solicitor, act for both vendor and purchaser in the purchase and sale of property. Driffill v. Goodwin, (1876) 23 Gr. 431.

The fraud of the agent cannot affect the legal effect of his knowledge as regards third persons who had no connection whatever with him in relation to the perpetration of the fraud and no knowledge that it had been perpetrated. [Armstrong v. Ashley.

51 U.S. (L.Ed.) 412]. *See also* 44 Bom. 139: 54 I.C. 121 (P.C.): 46 Ind. App. 250.

NOTICE TO AGENT IS IMPUTED TO PRINCIPAL.—*See* English Empire Digest, Title, "Agency," Vol. I, pp. 610–614 and cases cited therein. Also 1933 All. 810; 1929 Lah. 500.

NOTICE TO COMPANY DIRECTORS AND OFFICIALS IMPUTED TO COMPANY.—*See* Empire Digest, Title, "Companies," Vol. IX, pp. 643–647.

Notice to Solicitors and Solicitors' clerks imputed to principal. *See* Empire Digest, Vol. VIII, p. 463.

NOTICE TO COUNSEL IMPUTED TO CLIENT.—*See* Empire Digest, Title, "Barristers." Vol. III, p. 346. 7 Luck. 131: 1931 Oudh 333.

NOTICE TO PARTNER IMPUTED TO PARTNERSHIP.—*See* Empire Digest, Title. "Bankruptcy," Vol. V, page 769, also Title, "Partnership." *See also* 1931 Lah. 227; 60 Bom. 326; 1936 Bom. 62 at p. 81.

HUSBAND AND WIFE.—Where a married woman claims protection as a *bona fide* purchaser, knowledge on the part of her husband is not necessarily to be imputed to her.

FACTS THAT WOULD PUT A TRANSFEREE ON ENQUIRY.—It is the well settled general rule, in determining whether a transferee had notice so as to preclude him from being entitled to protection as a *bona fide* transferee that if there be circumstances which, in his exercise of common reason and prudence, ought to put a man upon a particular inquiry, he will be presumed to have made that inquiry and will be charged with notice of every fact which that inquiry would give him. The reason on which this rule is based is that notice is imputed because of the negligence of the purchaser in making the inquiry. Vaittier v. Hinde, 8 U.S. (R.Ed.) 587; Galland v. Jacknan, 85 Ame. Dec. 172.

INQUIRY INTO THE CHAIN OF TITLE.—All conveyances in the chain of title from a former owner must be examined in order to protect a *bona fide* purchaser. Wood v. Chapin, 67 Ame. Dec. 62; *See also* 17 Luck. 636: 1942 O.W.N. 127: 1942 Oudh 313.

A purchaser is as a general rule charged with notice of what appears in the deeds or muniments in his grantors' chain of title, and he will be charged with constructive notice of the facts which such deeds disclose, and if the facts so disclosed are sufficient to put the purchaser on inquiry he will be charged with notice of what a proper inquiry would have disclosed. [Summons, etc. v. Doran

35 U S. (L.Ed.) 1063: 21 Eng. Rul. Cas. 752: Note to 23 Ame. Dec. 48; Gallond v. Jackson, 85 Ame. Dec. 172; Giber v. Petcher, 97 Ame. Dec. 785; *see also* 1942 Oudh 313; 1942 N.L.J. 353; 17 Luck. 636; 1942 O.W.N. 127.].

Thus, where a purchaser is informed by any preceding conveyance in his chain of title that the land has been sold on credit, he is bound to inform himself as to whether the purchase money has been paid since the execution of the deed, and if it has not been paid he is charged with notice of the vendor's implied lien. Johnston v. Givathmay, 14 Ame. Dec. 328.

PROOF OF NOTICE.—As want of notice is essential to the status of a *bona fide* purchaser, one claiming protection as such must allege and prove that his purchase was without notice of any outstanding equity. [Bell v. Pleasant, 104 A.S.R. 61; Dundee v. Leanith, 30 L.R.A. (N.S.) 319].

POSSESSION BY THIRD PARTY — NOTICE. — The undisturbed possession of land is generally considered as constructive notice of the rights of the possessor, because the fact of possession being notorious, it is sufficient to put the pucharser on his guard, and to induce him to inquire into the title of the possessor. Landes v. Brant, 13 U.S. (L.Ed.) 449; Morgan v. Morgan, 21 Ame. Dec. 638; 13 P.L.R. 180 at p. 185.

See also A.I.R. (1920) P.C. 274 (276); 12 I.C. 905: 1926 Oudh 330 and cases cited in Civil Court Manual (M.L.J. ed.), Notes under T.P. Act, S. 3.

This principle prevails where the possession is sought to be used for the purpose of charging a purchaser with notice of an outstanding equity or other interest in land, registered. (Landes v. Brant, 13 U.S. (L. Ed.) 449; Dutton v. Warschaner, 82 Ame. Dec. 765.

POSSESSION AS NOTICE.—It is not to be supposed that any man who wishes to purchase land honestly will buy it without knowing what are the claims of a person who is in open possession of it, and it is reasonable, if men will buy in such cases without inquiry, that they should be presumed to have known everything which they might have learned upon due inquiry. Pritchard v. Brown, 17 Ame. Dec. 431.

See also A.I.R. (1920) P.C. 274 (276); 16 M. 148; 10 Cal. 1073: 27 Bom. 452: 16 Cal. 414: 21 Cal. 116.

Actual knowledge of the third person's possession on the part of those sought to be charged with notice on account of such possession is not necessary. Notice, in such cases, is legal

deduction from the fact of possession. For as has been poetically said: "The earth has been described as that universal manuscript open to the eyes of all. When a man proposes to buy or deal with reality his first duty is to read this public manuscript, that is, to look and see who is there upon it, and what are his rights. Tate v. Pensacola,. 53 A.S.R. 251; Wood v. Fahnestock, 44 Ame. Dec. 147.

TIME AND EXTENT OF POSSESSION.—The possession must, as a general rule, exist at the time the purchase is made; a possession prior thereto or one taken after the purchase is not effectual to charge the purchaser with notice of the rights of the possessor; temporary absence from the land will not, however, render the possession ineffective as notice, if indicia of the possession remain. [Hunter v. Watson, 73 Ame. Dec. 543; Note to 13 L.R.A. (N.S.) 83; Thomas v. Burnett, 4 L.R. 222; Note to 13 L.R.A. (N.S.) 841.]

TRANSFEROR CONTINUING IN POSSESSION.—Where, by the terms of the deed of transfer the transferor has not the right of possession, his continuing possession gives notice that he has rights reserved, not expressed in the deed; inasmuch as the records disclose no right of possession, it is but reasonable to conclude that the continuing possession rests upon some right not disclosed by the records, or that the transfer was merely a nominal transaction, not intended as operative, and the reasonableness of such conclusion imposes upon persons about to deal with the land the duty to make the fullest possible inquiry. (Turman v. Bell, 26 A.S.R. 35.)

An absolute deed of transfer divests the transferor of the right of possession as well as of the legal title, and when he is found in possession or attempts to deal with the property after delivery of his deed it is a fact inconsistent with the legal effect of the deed, and is suggestive that the transaction is not real, that it was not intended to be further operative or that the transferor still retains some interest in the property transferred; under such circumstances, a transferee has no right "to give controlling prominence to the legal effect of the deed" in disregard of the other "notorious antagonistic fact" that the transferor remains in possession just as if he had not transferred his rights in the property. (Groff v. State Bank, 36 A.S.R. 640).

Actual possession is not only notice of the rights of possessor but also of all facts connected therewith which a reasonable inquiry would have disclosed. Niles v. Cooper, 13 L.R.A. (N.S.) 49.

NATURE OF INQUIRY.—The inquiry should be made directly of the person in possession, as he is the one interested from whom the proper information will be acquired. It is manifestly

insufficient to make the inquiry as to the possessor's right from the vendor whose interest it is to conceal the true state of facts, and it is likewise insufficient to inquire merely of persons living in the neighbourhood. Note to 13 L.R.A. (N.S.) 67, 135.

Also the purpose of the inquiry should be disclosed to the occupant so as to put him on his guard and allow him to understand the necessity for disclosing his rights. Note to 13 L.R.A. (N.S.) 66.

PLEADINGS.—"The defence of a *bona fide* purchaser is an affirmative defence, and a defendant who would avail himself of such a defence must put it in issue by his pleadings; otherwise the Court cannot consider and allow it, although the evidence may show that he could have maintained that defence had he set it up by his plea or by his answer." Rorer Iron Co. v. Trout, 5 A.S.R. 285; *see also* Ellis v. Temple, 94 Ame. Dec. 200.

The party relying on a plea of *bona fide* purchaser for value without notice must make "a full statement of all the facts and circumstances of his case, so that the Court may be able to do perfect equity between the parties and must state all the essential elements required to establish his status as such a purchaser." Everts v. Agnes, 65 Ame. Dec. 314; Boone v. Chiles, 9 U.S. (L. Ed.) 388; Dosswell v. Buchanan, 23 Ame. Dec. 280.

That the purchase was for a valuable consideration must be alleged, and it should be distinctly averred that the consideration was *bona fide*, truly and actually paid. Union Canal Co. v. Young, 30 Ame. Dec. 212; Boone v. Chiles, 9 U.S. (L. Ed.) 388.

As the actual payment of the consideration must be made before notice of defect in title is received, this also must be alleged; and it is insufficient to allege merely, in general terms, that the defendant was a purchaser for valuable consideration. [Boone v. Chiles, 9 U.S. (L. Ed.), 388, Jewett v. Palmeri; 11 Ame. Dec. 401; Everts v. Agnes; 65 Ame. Dec. 314].

DENIAL OF NOTICE.—In setting up the defence of *bona fide* purchase the defendant must allege that his purchase was without notice of any outstanding claims by third parties; even though notice is not charged in the plaint. Jhonson v. Towlmin, 52 Ame. Dec. 212; Smithel v. Gray, 34 Ame. Dec. 664.

As possession in a third person is constructive notice of his rights, it is held that wherever the land conveyed is one to which possession is incident, and is not a mere dry remainder or reversion, it is indispensably requisite to the validity of a plea of *bona fide* purchaser that it should state that the grantor

was at the time of the conveyance, seized and possessed of the property conveyed. [Boone v. Chiles, 9 U.S. (L. Ed.) 388; Baynand v. Nornis, 46 Ame. Dec. 647].

NECESSITY FOR TRANSFEROR OR TRANSFEREE TO GIVE NOTICE OF TRANSFER TO THE MORTGAGOR.—Although a notice to the mortgagor is not necessary in order to render an assignment of mortgage valid, yet it is well recognised that until the mortgagor receives notice of the transfer, he may validly make payments to the mortgagee (transferor) and to have credit for them against the transferee. The principle of Sections 130 and 131 of T.P. Act, relating to transfers of actionable claims has been applied in effect to transfers of mortgages also (*see* A.I.R. 1920 Mad. 742: 43 Mad. 803: 60 I.C. 255; 1924 Nag. 401: 78 I.C. 127; 2 Mad. 212; Hals. Laws of England, Vol. 21, Section 334; *see also* T.P. Act, Section 3, definition of Notice; Section 131, T.P. Act runs as follows:

Notice to be in writing signed.—Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee. (T.P. Act Section 131). The Proviso to Section 130, T.P. Act, enacts that "every dealing with the debt or other actionable claim by ths debtor or other person, from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer." (T.P. Act, Section 130, Proviso).

Although the title of the transferee becomes perfect on the execution of an instrument of transfer without any notice to the debtor, a dealing by the debtor with the debt without notice of the transfer will be valid against the transferee. (1938 Rang. 1: 175 Ind. Cas. 786; 3 C.P.L.R. 147: 11 Ind. Cas. 964: 1924 Pat. 118; 2 Pat. 754; 12 Cal. 505; 10 All. 20).

A dealing by the debtor after the transfer will not be binding on the transferee only if the debtor was either a party to the transfer or had been given express notice of the transfer. A mere knowledge of the transfer is not sufficient. (*See* C.C.M. (M.L.J.) T.P. Act, Notes under Section 130. 30 I.C. 278: 1923 Cal. 719: 80 Ind. Cas. 632: 1938 Rang. 1; 33 Mad. 123; 4 Ind. Cas. 420.

The notice required must be an express notice conforming to the provisions of Section 131, T.P. Act. If the notice does not confirm to the provisions of that section the debtor is not bound by it and is not debarred from treating the debt as payable to the original creditor. (*See* 30 Ind. Cas. 278; 33 Mad. 123; 1938 Rang. 1; 1923 Cal. 719).

After a notice is given to the debtor of the assignment he cannot make any payment to any one else even under the order of the Court unless the assignee was a party to the proceeding in which the order is passed. *See* 1943 Mad. 244: I.L.R. (1943) Mad. 587.

The notice of transfer must be given to the debtor or some person duly authorised by him to receive such notice. (30 Ind. Cas. 278; 14 Cli. Din. 406).

"SUCCESSOR-IN-INTEREST".—The protection afforded by this sub-section is confined to transfers by the mortgagee or his "Successor-in-interest". The question may arise as to who would be included in the term "Successor-in-interest."

"SUCCESSOR-IN-INTEREST."—In this sub-section means one who succeeds to the interest of the mortgagee in the mortgaged property, by way of succession, testamentary or intestate.

"Successor" includes all persons who have succeeded to any property which was vested in a party deceased at the time of his death.'—See Strond's Jud. Dict., Vol. III, p. 1967, Title "Successor".

"Successor" is one who succeeds; one who takes the place which another has left"—Correlative to "Predecessor." (Cent. Dict.). "I here declare your rightful successor, and heir immediate to my Crown." Dryden, Secret Love, V, 1.

"Succeed" in legal phrasiology means" to become heir; to take the place of one who has died;"—In respect of royalty the word means "to ascend a throne after the removal or death of the occupant" as in "No woman shall succeed in Salique land.—(Shak. Hen. v, 1, 2, 39).

"Succession" is the power or right of coming to the inheritance of ancestors. (Wharton's Law Lex.).

"Succession" comes from the Latin word "*Successio*," which, in civil law, means "the coming in the place of another, on his death; a coming into the estate which a deceased person had at his death." (Cyc. Law Dic.).

"Successor" is one "that followeth or cometh in another's place" (Jacob Law Dict.). "The word successor is an apt and appropriate term to designate one to whom property descends; and

in association with the words "heirs, administrators and assigns" plainly imports a devolution of or charge upon the obligor's estate." (Law Lexicon of Br. India). *See also* 40 M.L.J. 577: 43 All. 297: 48 I.A. 135: 60 I.C. 937.

The word "heir" is often used as synonymous with the word "Successor" especially in its application to a common person, as distinguished from a corporation, in which case the words commonly used are "Successor" or "heirs and Successors." Bouvier Law Dic. Vol. III, p. 3176.

"Succession" is the right and transmission of the rights and obligations of the deceased to his heirs; the estate, rights, and charges which a person leaves at his death. (Bouvier's Law dictionary); (as) in the terms Intestate succession, Testamentary succession; legal succession; Irregular succession; Universal succession; Apostolic succession; Succession to the Crown; Succession duty; Succession tax; Right of Succession; Wars of Succession; Indian Succession Act; Law of Succession etc." "Succession" is often used synonymous with the word "descent." The word denotes "the order of descendants" (as) the law of succession. (Law Lexicon of British India).

"Succession" is the change in legal relations by which one person (called the successor) comes into the enjoyment of, or becomes responsible for, one or more of the rights and liability of another person (called the predecessor), as the son to estate or rank of his father or one king to another. (Webs. Dict.)

"Succession" is the act or right of legal or official investment with a predecessor's office, dignity, possessions or function; also a legal order of succeeding; a series of persons following one another; a lineage; an order of descendants. In the Law of Descent, the coming in of another to take the property of one who dies without disposing of it by will. (Cyc. of Law and Procedure.)

"Succession by law" is the title by which a man on the death of his ancestor intestate, acquires his estate, whether real or personal, by right of representation as his next heir. (Law Lex. of Br. India). ["Succession" defined—*See* Act V of 1855, Section 3 (13).] "King Richard being dead, the right of succession remained in Arthur, son of Geoffery Plantagenet." (Baker: Chronicles, p. 63—Cited in Cent. Dict.).

In a case arising under 16 and 17, Vic. c. 51, Section 2, Lord Westbury said "In framing that Act, the word "succession" was adopted for the purpose of denoting any property passing upon death from one person to another by virtue of any gift or descent, or of any contract, not being a *bona fide* contract of purchase or loan." Floyer v. Banks, 33 L.J. Ch. 3; and it does not include a

Exeeptions

10. (1) The provisions of sections 8 and 9 shall not apply to any person who, though an agriculturist as defined in section 3 (*ii*), did not on the 1st October, 1937, hold an interest in, or a lease or sub-lease of, any land as specified in that section.

(2) Nothing contained in sections 8 and 9 shall affect—

[1] [(*i*) any mortgage of the description referred to in sub-section (1) of section 9 (A) except to the extent provided for in that section ;] or

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conveyance or assignment by way of *bona fide* sale. (Fryer v. Morland, 45 L.J.Ch. 817; 3 Ch.D. 675; A.G. v. Middleton. 27 L.J. Ex. 228; A.G. v. Littledale, 40 L.J. Ex. 241; L.R. 5 H.L. 290 and other cases cited in Stroude's Jud. Dic. Vol. III, p. 1266—Title "Succession."

PROVISO.—The proviso enacts that the transferee is not entitled to get from the debtor or mortgagor anything more than the consideration paid by him for the transfer.

PROVISO—ANALOGOUS PROVISION—OLD SECTION 135, TRANSFER OF PROPERTY ACT.—A provision similar to the law enacted in the proviso was to be found in the old Section 135, T.P. Act, relating to transfers of actionable claims.

Section 135 of the repealed Chapter VIII of the T.P. Act provided that a buyer of an actionable claim could not, except in certain specified cases, claim from the debtor anything more than what he paid for his purchase.

The old Section 135, T.P. Act ran as follows:

"Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it * * * *." [This section was repealed by Act II of 1900].

For decided cases in which this principle was given effect to, *see* 11 Mad. 56; 13 Mad. 225; 9 All. 476; 13 All. 102; 21 Bom. 572; 22 Mad. 301; 5 C.P.L.R. 13 (18); 22 Bom. 761; 7 Ind. Cas. 871; 18 Cal 510; 23 Cal. 713; 13 Cal. 145.

Notes under Section 10.

Section 10—Applicability to debts due to a Devasthanam. *See* (1953) 2 M.L.J. 454, cited under Section 8, *supra*.

LEG-REF.

1. Substituted by Madras Act XXIV of 1950.

SCOPE OF SECTIONS 10 AND 4.—This section may be compared with Section 4 which also provides for exemption of certain debts and liabilities from the provisions of this Act. Section 4 is however much larger in scope. It says "*Nothing in this Act shall affect.*" So, the classes of debts and liabilities mentioned in that section can be enforced as if this Act has not been passed. Section 10 is however limited in its scope and operation. It says that only "*the provisions of Sections 8 and 9 shall not apply*" to the persons, debts and liabilities enumerated therein.

Section 10 (1) As to application of Cl. (1) of Section 10, *see* (1944) 2 M.L.J. 112: 1944 Mad. 487.

Section 10 (2) (1).—This will exclude from the operation of Sections 8 and 9 all usufructuary mortgages and also other anomalous mortgages, under which the mortgagee is let into possession of the property mortgaged, on condition of his enjoying the profits in lieu of interest, and where no rate of interest is stipulated as due to the mortgagee. As to what is interest under the Act, see the new definition in Section 3 (iii-a), *supra*. This sub-section (section 10, Cl. (2)), sub-section (*i*), is to be read as subject to the provisions of Section 9-A.

With reference to these clauses the Select Committee has observed as follows.—"Sub.cl. (2) of this clause has excluded 'usufructuary mortgages' from the operation of the *damdupat* rule. In view of the existence of certain kinds of mortgages in which the mortgagees are in possesion of the mortgaged property, the Committee had substituted for the words 'usufructuary mortgage' the words 'any mortgage by virtue of which the mortgagee is in possession of the property mortgaged.' It had also excluded from the operation of the *damdupat* rule the liability of a purchaser of immovable property who is in possession of such property to pay the amount of any unpaid purchase money due by him." This section is now to be read with new Section 9-A which specially deals with usufructuary mortgages.

THE PHRASE "the property mortgaged" has been construed to mean "all the property mortgaged" not merely a substantial portion of it. [(1943) 2 M.L.J. 642: 56 L.W. 748: 1943 M.W.N. 812: 1944 M. 164.] "Rate of interest" does not mean any specified rate as such; any sum payable over and above the principal sum borrowed would be "interest" under this Act. [*See* Section 2 (iii-a]. The rate would be simply a matter of arithmetical calculation. [(1942) 2 M.L.J. 398: 55 L.W. 570: 1943 M. 100]. The definition of "interest" as given in this Act is so large and comprehensive, that it is not easy to state what sums agreed to be paid over and above the principal sum advanced would not be construed as "interest" under this Act.

SECTION 10 (2) (*i*) AND SECTION 9-A.—Section 9-A applies to usufructuary mortgages. As to what are usufructuary mortgages under Section 9-A, a special definition of the term is given in that section. The definition given in the Transfer of Property Act cannot be applied in determining as to what constitutes a usufructuary mortgage under the Madras Agriculturists Relief Act. There may a covenant to pay and redeem; there may be other conditions inconsistent with the definition of a usufructuary mortgage under the Transfer of Property Act, yet they will satisfy the definition of the term under the Madras Agriculturists' Relief Act. These would be anomalous mortgages under the T.P. Act.

SECTION 10 (2) (i): SUMMARY OF CASE LAW.—The cases decided under this section, before the Amending Act of 1948, in so far as they conflict with the provisions of the new Section 9-A are not now good law.

Section 10 (2) (i)—"Is in possession of the property mortgaged" Meaning.—The words "*is in possession of the property mortgaged*" in Section 10 (2) (i) of the Act must be construed in their ordinary connotation as meaning "in possession of all the property mortgaged. When, therefore no more than a substantial portion of the mortgaged property has been handed over to the mortgagee's possession, the mortgage will not be protected by Section 10 (2) (*i*). 211 I. C. 468: 56 L.W. 748: 1943 M.W.N. 812: A.I.R. 1944 Mad. 164: (1943) 2 M.L.J. 642.

MORTGAGEE—IF TO BE IN PHYSICAL POSSESSION—USUFRUCTUARY MORTGAGEE LEASING BACK PROPERTY TO MORTGAGOR—IF IN POSSESSION.—It is not necessary for the purpose of Section 10 (2) (*i*) of Madras Act IV of 1938 that the mortgagee should be in physical possession of the property. A usufructuary mortgagee who leases the mortgaged land to his mortgagor remains in possession of the mortgaged land for purposes of Section 10 (2) (*i*). The usufructuary mortgage and lease back cannot be regarded as a simple mortgage bearing interest; and a decree for rent or damages for use and occupation is not a decree for interest liable to be wiped out under Section 8 of the Act. 202 I.C. 531: 1942 M.W.N. 232: 55 L.W. 247: A.I.R. 1942 Mad. 507: (1942) 1 M.L.J. 448. *See also* 52 L.W. 683: 1940 M.W.N. 1144: A.I.R. 1940 Mad. 946: (1940) 2 M.L.J. 760.

MORTGAGE AND CONTEMPORANEOUS LEASE—LEASE NOT COVERING PROPERTY UNDER MORTGAGE.—Where the contemporaneous lease by the mortgagor in favour of the mortgagee of a property not covered by the mortgage does not contain a recital that the lessee shall hold the property as security for the payment of the debt, but does contain a covenant that the lessee shall pay a stipulated rent for the property, which however is not equal to

the initial instalment due on the mortgage, it is impossible to read the lease and mortgage as a single transaction making up an usufructuary mortgage. And even if it did, the stipulation for payment of interest to the mortgagee and the fact that the whole of the property mortgaged is not handed over to the mortgagee would make Section 10 (2) (*i*) of the Act not applicable to the case. The mode of appropriation of the rent is, in the absence of a contract or express appropriation, that firstly all interest remaining due on 1st October, 1937, is to be wiped out and the annual rent will have to be adjusted firstly towards interest at the scaled down rate of 6¼ per cent. and any balance towards the principal. 1947 M.W.N. 657: (1947) 2 M.L.J. 385. *See also* (1940) 2 M.L.J. Short Notes, p. 36.

USUFRUCTUARY MORTGAGE IN RENEWAL OF PRIOR SIMPLE MORTGAGE—CLAUSE PROVIDING FOR KEEPING ALIVE PRIOR MORTGAGE—MORTGAGEE TO BE IN POSSESSION—NO RATE OF INTEREST STIPULATED—A usufructuary mortgage deed in and by which the property is mortgaged under a stipulation that the mortgagee should be in possession of the property *in lieu* of interest, no rate of interest being stipulated as being payable to the mortgagee, directly comes within section 10 (2) of the Act and the debt under such a mortgage cannot be scaled down. The fact that the mortgage was executed in renewal of an earlier simple mortgage deed and that there is a clause in it providing for the keeping alive of the prior mortgage would not entitle the mortgagor in a suit on the usufructuary mortgage to claim the benefit of the Act on the ground that the suit must be deemed to have been laid on the original mortgage as well, when the suit is laid only on the usufructuary mortgage. The clause for the keeping alive of the prior mortgage is intended for the benefit of the mortgagee so that he can use it as a shield against any mortgage which might intervene. 200 I.C. 610: 1941 M.W.N. 802: 54 L.W. 301: A.I.R. 1941 Mad. 912: (1941) 2 M.L.J. 376.

Where a mortgage was executed by way of renewal of an earlier mortgage for a certain sum and for a further sum due under a compromise decree and it was provided that the mortgagee was to take possession of the mortgaged properties and enjoy the rents and profits *in lieu* of interest, and that in the event of certain specified irrigation sources going into disrepair the mortgagor should pay interest on excess over a specified sum necessary for the repairs which was payable along with the principal sum as a condition precedent to redemption: *Held*, that it was immaterial whether the contingent stipulation for payment of interest was in respect of the amount advanced to the debtor or was in respect of an amount which according to the bargain between the parties the mortgagee was authorized to advance on

account of the debtor adding it to the mortgage account. In the latter case also the amount must be regarded as part of the amount due under the mortgage and as such the mortgage was not covered by the exemption under Section 10 (2) (*i*) of the Act. 1946 M.W.N. 143: 59 L.W. 271: A.I.R. 1946 Mad. 305: (1946) 1 M.L.J. 129.

Section 10 (2) (*i*) of the Act is not confined to mortgages which are usufructuary mortgages within the terms of Section 58 (*d*) of the T.P. Act. The clause provides a special exemption for any mortgage under which the mortgagee has possession and no rate of interest is specified. It does not apply to a mortgage in which, although the mortgagee is in possession a rate of interest is stipulated, and it makes no difference whether the rate of interest stipulated in the mortgage is one which might be regarded as penal. A mortgage stipulated that the mortgaged properties shall be enjoyed by the mortgagee for two years in lieu of interest, that on the expiry of two years the mortgagor shall pay the amount due, and if he failed to do so the mortgagee shall retain the right to enjoy the usufruct of the properties and shall also be entitled to interest at three per cent. per annum in addition to the usufruct: *Held*, (1) that the mortgage was one under which a rate of interest was stipulated and was therefore not saved by Section 10 (2) (*i*) of Madras Act (IV of 1938) and was liable to be scaled down; (2) that the enjoyment of the produce by the mortgagee could not be deemed to be a payment to the creditor by the debtor falling under Section 8 (2) of the Act. 199 I.C. 854; 53 L.W. 105: 1941 M.W.N. 271: A.I.R. 1941 Mad. 487: (1941) 1 M.L.J. 197.

"RATE OF INTEREST"—MEANING—"LABHAM".—An annual compensation paid by a borrower to a lender for the use of the lender's money is interest, by whatever name it is called; the words "rate of interest" in Section 10 (2) (*i*) do not necessarily imply that a particular percentage should be stipulated in the document, provided that the actual amount of the interest is fixed by the terms of the document. Under a kanom document of 1924, the petitioner demised the land to the respondent, receiving Rs. 300 and the respondent undertook to pay to the petitioner Rs. 36 annually as rent or *michavaram*. In 1927, the petitioner borrowed a further sum of Rs. 200, under a *puramkadam* document, whereby a further charge to the extent of Rs. 200 was to be created over the jenm interest in favour of the respondent (kanomdar) and in consideration of the further advance, the petitioner agreed to pay Rs. 20 to the respondent annually as *labham*. The respondent was entitled to adjust this sum of Rs. 20 annually towards the rent which he had to pay to the petitioner and to pay only the balance: *Held*, that the

effect of the *puramkadam* deed was that there was a contract whereby a mortgage was created for a sum of Rs. 200 with an annual interest of Rs 20 which meant that the loan carried interest at 10 per cent. and the transaction was not therefore protected by Section 10 (2) (*i*) of the Act. 205 I.C. 424: 55 L.W. 608: 1942 M.W.N. 804: A.I.R. 1943 Mad 31: (1942) 2 M.L.J. 422.

STIPULATION OF RATE OF INTEREST—WHAT AMOUNTS TO.—The terms of a mortgage transaction of September, 1917, were embodied both in a mortgage document and in a counter-part executed by the mortgagee which recited, *inter alia*: "And it is further agreed that I should pay 230 paras of paddy therefor valued at Rs. 143-12-0 and Rs. 10 out of the total pattom of 1560 paras of paddy and Rs. 20, deducting therefrom 1200 paras of paddy as interest for the kanom amount of Rs. 10,000 at the rate of 12 paras of paddy per hundred paras and the sum of Rs. 65-0-5 which has been agreed to be paid as assessment and for which 130 paras of paddy has been allowed to be appropriated, making a total of 1330 paras in all and also a sum of Rs. 10 allowed for the protection and upkeep of the items 23 and 24." There was also a stipulation for the redemption of the property after receiving "the mortgage amount," and there was a further clause whereby the mortgagor agreed to pay any enhanced assessment that might be imposed, and if he defaulted and the mortgagee had to pay it, this was to be adjusted towards the purappad payable to the mortgagor and if that was found insufficient, added to the mortgage amount payable: *Held*, that though the document recited a rate of interest, as part of the calculation of the rate of purappad, it was not a document which stipulated a rate of interest as due to the mortgagee so as to take it out of the exception in Section 10 (2) (*i*) of the Act; nor was the realisation of the produce by the mortgagee under its terms a payment of interest by the mortgagor such as might be taken into account under Section 8 (2) and (3). 210 I.C. 27: 1943 M.W.N. 499: 56 L.W. 349: A.I.R. 1943 Mad. 525: (1943) 1 M.L.J. 419.

SECTION 10 READ WITH SECTIONS 8 AND 9—MORTGAGE-DEBT—ASSIGNMENT BY REGISTERED DEED OF PARTITION—CONTINUANCE OF IDENTITY OF DEBT—SCALING DOWN—USUFRUCTUARY MORTGAGE OVER CERTAIN ITEMS AND HYPOTHECATION OVER OTHERS—DEBT IF SEVERABLE.—The appellant who had a kanom over certain jenm properties borrowed a certain amount from and executed a promissory note in favour of one *A* who was the manager of a joint Hindu family. Subsequently he executed a deed of simple mortgage hypothecating eighteen items of property to *A* to cover the amount due under the promissory note and a further cash advance. Then there was a partition in *A's* family and the same was evidenced by a registered deed of partition which allotted the mortgage

(ii) Any liability for which a charge is provided under section 55, clause (4), sub-clause *(b)* of the Transfer of Property Act, or

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to the share of the respondent. Later on a fresh document of mortgage was executed by the appellant in favour of the respondent covering all the items, but out of them only fifteen items were placed in the possession of the mortgagee while the remaining three continued in the possession of the mortgagor. The jenmi gave a melcharth over the properties covered by the appellant's kanom to a third person who filed a suit for redemption of the kanom impleading the appellant and the respondent. A decree was passed in favour of the plaintiff directing possession to be delivered on paying the value of the improvements. There was also a direction that the respondent should be paid the amount due to him out of the sum to be deposited by the melcharthdar. The appellant who was an agriculturist having contended that the debt due to the respondent should be scaled down under Madras Act (IV of 1938): *Held*, that under the circumstances of the case there was an assignment of the debt under the deed of partition, that the identity of the debt, the creditor and the debtor continued notwithstanding the subsequent cash advance and that the debt was consequently liable to be scaled down. *Held, further*, that the debt was one and indivisible notwithstanding the fact that in relation thereto there was a usufructuary mortgage over certain items and a hypothecation over certain other items. 61 L.W. 730: (1948) 2 M.L.J. 463.

SECTION 10 (2) (*ii*).—Section 55 of the T.P. Act deals with the rights and liabilities of buyer and seller of immovable property; and sub-section (4) (*b*) of that section provides for a statutory charge on the property sold in respect of the unpaid portion of the purchase money. It runs as follows:—

"The seller is entitled—(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer, (*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, *to a charge upon the property in the hands of the buyer*, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part."

SECTION 10 (2) (*ii*)—SALE OF LAND—MORTGAGE BY VENDEE TO VENDOR FOR SALE PRICE—SUBSEQUENT SALE BY VENDEE—DIRECTION IN SALE-DEED FOR PAYMENT OF SALE PRICE TO ORIGINAL VENDOR—

When there is a debt incurred originally for the balance of the purchase price of land, embodied in a mortgage, which undergoes renewals, the debt due under the final renewal is a debt in respect of which the protection of Section 10(2) (*ii*) can be invoked. The exclusion of such a liability from the operation of the Act depends not on the actual subsistence of the charge but on the question whether in the beginning the liability was one in respect of which a charge is provided under Section 55 (*iv*) (*b*), T.P. Act. Where a person sells land to another and takes a mortgage from him of the land sold for the sale price and the purchaser sells the land in turn to another directing him to pay off the mortgage debt due to the original vendor, the originol purchaser and the purchaser from him have notice of the subsistence of the lien, and In the absence of anything to show that the lien has been terminated by any act of the vendor, when the ultimate purchaser himself executes a mortgage to the original vendor in respect of the amount which he is directed to pay to him under his purchase, he is in fact renewing a liability in respect of which at its inception the vendor's lien subsisted. That liabilility falls under Section 10 (2) (*ii*) and cannot therefore be scaled down. 208 I.C. 113 : 1942 M.W.N. 751 : A.I.R. 1943 Mad. 213 : (1942) 2 M.L.J. 806. *See also* 193 I.C. 281 : (1940) 2 M.L.J. 651 : (1939) 2 M.L.J. 493.

MORTGAGE FOR UNPAID PURCHASE MONEY—SUBSEQUENT MORTGAGE FOR PART OF DEBT ON OTHER PROPERTIES—CHARGE—*Held*, Section 10 (2) (*ii*) of the Act was a sufficient answer to the application for scaling down; the giving of other property as security for the mortgage debt did not affect the applicability of Section 10 (2) (*ii*) or alter the character of the debt which was unpaid purchase money for which there was a charge under Section 55 (4), (*b*), T.P. Act. 51 L.W. 346 : 1940 M.W.N. 289 : A.I.R. 1940 Mad. 420 : (1940) 1 M.L.J. 367.

Section 10 (2) (*ii*) must be interpreted as excluding all liabilities falling within the category therein described, whether or not the charge actually subsists at the time of suit. The vendees of some lands executed a mortgage in favour of the vendors for the full amount of the sale price giving as security not only the property sold to them but also some other property. The principal was payable after five years but to carry interest from the date of the bond. *Held*, that Section 10 (2) (*ii*) of the Act applied ; the terms of the mortgage bond did not constitute a contract to the contrary so as to exclude the statutory charge under Section 55 (4) (*b*) of the T.P. Act, and, therefore, by reason of Section 10 (2) (*ii*) of Madras Act (IV of 1938) the, debt was excluded from the scaling down provisions. 52 L.W. 733 : 1940 M.W.N. 1175 : (1940) 2 M.L.J. 827 : A.I.R. 1941 Mad. 119.

PROMISSORY NOTE BY VENDEE TO VENDOR FOR UNPAID PURCHASE MONEY—ENDORSEMENT OVER TO ANOTHER—EFFECT—Section 10 (2) (*ii*) must be read as protecting any liablity or the category of liabilities in respect of which a charge is provided under Section 55 (*iv*) (*b*) of the T.P. Act. The intention of the Legislature was to specify those classes of liabilities in respect of which the scaling down provisions of the Act were not to operate; the exclusion of liabilities of these categories does not depend on the actual existence of the charge but on the question whether in the beginning the liability was one belonging to the category in respect of which the T.P. Act provided a charge. Where the vendee executes a promissory note to the vendor for the unpaid purchase money and the instrument is endorsed over by the vendor to another, it is doubtful whether the charge can be enforced by the endorsee in the absence of a registered conveyance. But the essential category into which the liability falls is not affected by the assignment of this liability to a third party, and it still remains one falling under Section 10 (2) (*ii*) of the Act. The debtor cannot claim to have it scaled down in the hands of the endorsee. The Act is an expropriatory measure, and if there is any doubt as to the meaning of its terms, that doubt should be resolved in favour of the person expropriated and not of the person who claims the right to expropriate. 52 L.W. 772: 1940 M.W.N. 1189: I.L.R. (1941) Mad. 132: (1940) 2 M.L.J. 838: A.I.R. 1941 Mad. 118. *See also* (1939) 1 M L.J. 344 (acceptance of further security).

ENDORSEMENT OF PROMISSORY NOTE IN PART PAYMENT OF PRICE OF LAND PURCHASED—ENDORSER'S RIGHT TO CLAIM BENEFIT OF SCALING DOWN.—A promissory note executed by the 1st defendant in favour of the 2nd defendant was subsequently endorsed over to the plaintiff in part payment of the price of immovable property purchased by the 2nd defendant from the endorsee. In a suit on the promissory note by the endorsee, the 2nd defendant (endorser) applied to scale down the debt. *Held*, that since, on the date of the endorsement, the 2nd defendant promised to pay the amount of the note to the plaintiff and since at the inception of his liability there was a charge provided under Section 55 (4) (*b*) of the T. P. Act, Section 10 (2) (*ii*) of the Madras Act (IV of 1938) excluded the 2nd defendant's liability from the operation of Sections 8 and 9 of the Act, although the 1st defendant, the maker of the promissory note, would be entitled to the benefit of the Act, if otherwise qualified as an agriculturist. 199 I.C. 867: 1941 M.W.N. 801: 54 L.W. 310: A.I.R. 1941 Mad. 890: (1941) 2 M.L.J. 453.

Payment of price and execution of sale-deed in favour of *X*—Agreement by *X* before registration to have the land conveyed by the vendor to *Y* direct—*Y* paying cash and executing a promissory note to *X*—Registered sale-deed executed by vendor in favour of

Y—*Y* executing a mortgage next day in favour of *X* to cover the amount due on the promissory note—Liability under—If excluded by Section 16 (2) (*ii*). A.I.R. 1941 Mad. 128 : 52 L.W.8 25 : (1940) 2 M.L.J. 920: 71 M.L.J. 347 : 52 M.L.J. 346 (Dist.).

SUB-SECTION (2) CL. (iii).—With reference to this clause, the Select Cemmittee has observed as follows:—"The Bill had provided that to obtain exemption from this Act a company registered in British India or in an Indian State should have had on its register on October, 1, 1937, at least 500 members. This provision did not apply to foreign companies, and the Committee has removed the distinction ".

Referring to debt due to joint stock companies and Banking institutions the Prime Minister said:—"In the provision as it stood, every care had been taken to maintain banks in perfect order. Just as they sought to protect agriculturists and creditors against themselves, they might protect banks also against themselves. Surely, usurious rates would not help banks. The institutions could hardly be called banks if they claim exemption from the operation of the Bill and yet charged usurious rates of interest from agriculturists on whose welfare that of the whole province depended. He would submit that banks had been protected as far as possible. In view of the provision relating to loans dating from after 1932, there could, he thought, be no room for complaint on the part of banking institutions. In the case of pre-depression debts, if banks had allowed these to remain uncollected all these years, could they, he asked, be called banks? Should they not be deemed to be merely money lenders? From all points of view, he thought, the provision was quite proper, and there was nothing wrong in protecting the agriculturist from the usury of a private individual money-lender or a money-lending institution that had got registered under the Companies Act."

This sub-section as well as Section 4 (*e*) refers to debts due by agriculturists to certain banking institutions. The banks mentioned in Section 4 (*e*) are given a much larger measure of exemption from the provisions of this Act than those mentioned in this sub-section. Section 4 gives exemption from all provisions of this Act, whereas the exemption given by this section is only from the provisions of sections 8 and 9. Even this limited measure of exemption is available to such banks "only *if the interest payable in respect of the liability is not more than 9 per cent per annum.*"

"IF INTEREST PAYABLE.....IS NOT MORE THAN 9 PER CENT." These Banks, though they originally charged 9 per cent. or even less, if default is made in respect of any instalment on the due date generally charged interest on a much higher rate than 9 per cent. Any bank that charges interest, even on default, at rates higher

(*iii*) Any liability in respect of any sum due to any public company as defined in the Indian Companies Act, 1913, or to any scheduled bank as defined by section 2 (*e*) of the Reserve Bank of India Act, 1934, if the interest payable in respect of the liability is not more than nine per cent. per annum.

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than 9 per cent. would not get the exemption provided for by this section. [*N.B.—See* now the enlarged scope of the definition of "Interest" in Section 3 (iii-*a*) of the Act.]

"INTEREST"—This term includes not only the primary interest fixed but also the higher interest made to arise upon default.

PUBLIC COMPANIES.—These alone are exempted, and not private companies. An amendment for the omission of the word "Public" was proposed and lost in the Assembly. (As to what is a "public company" See Companies Act, Section 2—Sections 2 and 3 of the Companies Act, 1956.)

A private company which issues invitation to the public to subscribe for shares or debentures, ceases to be a private company and becomes a public Company with all the obligations attached to a public company. *See* I.L.R. (1945) Bom. 863 : 1946 Bom. 18. As to conversion of private company into a public company, *See Companies Act, 1913, Section 154. (Section 44 of the Companies* Act, 1956.)

CHARITABLE INSTITUTION.—An amendment was proposed to exclude charitable and religious trusts from the operation of this Act. In opposing the amendment, the Premier said that his opposition was not due to any want of respect to the religious and charitable trusts. Individuals also were doing public and humanitarian work. It was not to be presumed that two or three persons joining together become more charitable, religious or philanthropic than a single individual. If there was reason to scale down debts due from agriculturist to very good persons, if there was reason for charitable and religious trusts investing their money on such miserable persons as agriculturists, instead of depositing them in banks, no special consideration could be shown to charitable trusts. There was a fundamental mistake in the assumption that all the religious and charitable trusts were doing better work than individual persons acting in the same cause. These trusts were immobile and would not change with the progress of times or ideas, and it was desirable that they should add some more weight to such immobile bodies.

SECTION 10 (2) (iii)—APPLICABILITY—TEST TO DECIDE.—In deciding whether the exemption under Section 10 (2) (iii) would apply or not, what the Court has to find out is the genesis of the debt and not the subsequent shape into which it has been transferred or the subsequent owner to whom the debt has passed. 1953 M.W.N. 688 : 1954 Mad. 273.

CRITERION FOR APPLICABILITY OF SECTION 10 (2) (iii).— The rate of interest payable in respect of the liability at the time it is sought to be enforced should be the criterion for the application of the clause. (1954) 2 M.L.J. (Andhra) 215.

SECTION 10 (2) (iii)—CONSTRUCTION—"INTEREST NOT MORE THAN 9 PER CENT."—IF COVERS COMPOUND INTEREST.—Section 10 (2) (*iii*) which excludes from the purview of Sections 8 and 9 of the Act any liability in respect of any sum due to a public or scheduled bank if the "interest payable is not more than 9 per cent." cannot be read as meaning not more than 9 per cent. *simple interest*. Interest when used without any qualification, is clearly intended to cover both simple and compound interest. 55 L.W. 560 : 1942 M.W.N. 552 : 206 I.C. 71 : A.I.R. 1943 Mad. 10 : (1942) 2 M.L.J. 346 : 52 L.W. 432.

INTEREST "PAYABLE IN RESPECT OF THE LIABILITY"—MEANING.—Where a public company has got a decree on a mortgage providing for interest at something under 8 per cent, with a default rate of 12½ per cent. per annum, and the latter rate has actually been adopted in the decree, the debt is not exempted from the operation of Sections 8 and 9 of the Act. Interest "payable in respect of the liability" in Section 10 (2) (*iii*) refers to the interest on the basic debt and not the subsequent interest on the decree amount. It is not open to the creditor to base an argument on the theory that the 12½ per cent. is not a rate of interest payable but a penal rate which could not be recovered. 1941 M.W.N. 784 : 54 L.W. 239 : A.I.R. 1941 Mad. 888 : (1941) 2 M.L.J. 388. *See also* (1940) 2 M.L.J. 478.

"LIABILITY" meaning—not confined to liability to pay the primary rate of interest. Interest payable under default clause in the bond may also be taken into account. 52 L.W. 432 : (1940) 2 M.L.J. 478.

DEBT DUE TO BANK CARRYING INTEREST AT LESS THAN 9 PER CENT. IN RENEWAL OF EARLIER DEBT WITH INTEREST AT HIGHER RATE.—In the case of a debt due to a scheduled bank carrying interest at less than 9 per cent. which itself is a renewal of a pre-existing debt carrying interest at more than 9 per cent. the bank is entitled to the protection of Section 10 (2) (*iii*). The Court, in deciding whether the liability is one bearing interest at not more than 9 per cent. has to look to the actual liability sought

Provision as to costs, etc., in certain cases.

11. Where a debt payable by an agriculturist includes any sum decreed as costs by any Court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of sections 8 and 9.

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to be scaled down and cannot take into consideration any pre-existing liability, which only becomes relevant if and when it has been found that the provisions of Madras Act IV of 1938 have to be applied to the debt. Where on a reference to arbitration an award is made for a fixed amount with interest at less than 9 per cent. for the future in respect of pre-existing debts due to a scheduled bank carrying interest at more than 9 per cent. and such award is embodied in a decree of Court, for the purpose of the application of Act IV of 1938, the award is the starting point of a new liability embodied in the decree which can only be re-opened on the footing that it is a renewal or inclusion in a fresh document of a pre-existing debt. The fact that it recites a higher rate of interest on old debts which are discharged is no ground for holding that the liability which actually ripened into the decree was one carrying more than 9 per cent. interest. The bank in whose favour the award decree is made is therefore entitled to the protection of Section 10 (2) (*iii*) of the Act and the decree is not liable to be scaled down. 212 I.C. 385: 1943 M.W.N. 52: 56 L.W. 37: A.I.R. 1943 Mad. 270: (1943) 1 M.L.J. 172..

Where a debt due to a public company carries interest at not more than 9 per cent. it is clearly excluded from the operation of Sections 8 and 9 and therefore Sections 8 and 9 cannot be called in aid to substitute for that liability an earlier liability which it renewed and which bore a higher rate of interest, and thereby to exclude it from the operation of Section 10 (2) (*iii*) of the Act. The liability excluded from the purview of operation under Sections 8 and 9 by Section 10 (2) (*iii*) is the present liability under which the debtor is, at the time of his application, indebted. 201 I.C. 410: 54 L.W. 353: 1941 M.W.N. 887 (1): A.I.R. 1942 Mad. 105: (1941) 2 M.L.J. 509.

SECTIONS 10 (2) (*iii*) AND 19—MORTGAGE SUIT—VENDEE OF HYPOTHECA IMPLEADED IN SUIT—DECREE—APPLICATION BY VENDEE TO SCALE DOWN DEBT.—Where a vendee of immovable property is a party to a suit on a mortgage of that property and a decree is passed in the suit, it cannot be said that the vendee is not a judgment-debtor; and an application by him for scaling down the debt under Section 19, cannot be rejected on that ground.

Nor can his application be rejected on the ground that the liability which he seeks to scale down is one in respect of which there is a charge under Section 55 (4) (*b*) of the T.P. Act, and that therefore the debt cannot be scaled down by reason of Section 10 (2) (*iii*) of the Act. The liability of the vendee to the decree-holder is not the same as the liability to the mortgagor (vendor) in respect of which the vendor's lien subsists. 199 I.C. 617: 54 L.W. 240: 1941 M.W.N. 804: 1941 Mad. 889 (1).

SECTION 11.—This is an equitable provision which saves out of pocket expenses and costs actually incurred by a creditor and decreed by the Court and amounts expended for the preservation of the mortgaged property from the operation of the scaling down sections.

SCOPE OF SECTION.—Section 11 like Section 19 relates only to costs as decreed and does not cover costs of execution. 1940 M.W.N. 1081: 52 L.W. 607: (1940) 2 M.L.J. 685.

SECTIONS 11 AND 19.—There is nothing in the Act which excludes from the scaling down operation interest on costs awarded by decrees. The sections dealing with costs are Sections 11 and 19. When there is a decree for costs the same forms part of a decree sought to be scaled down under Section 19, and the provisions of the decree relating to interest on costs should be amended by the process laid down in Sections 8 and 9. (1940) 2 M.L.J. 707: 52 L.W. 638: 1941 M. 52. These sections are applicable only to cases where any specific sum is decreed as costs. Where parties enter into a compromise agreeing that a certain sum shall be payable in full satisfaction of the suit claim and costs without allocating any part of that sum specially to the costs of the suit, the provisions of Sections 11 and 19 cannot be invoked by the creditor. The Court has no power in a case of that kind to reopen the compromise, tax the costs that would have been awarded if the suit had succeeded after contest and direct its payment, when the judgment-debtor applies for scaling down the decree debt under Section 19. 1940 M.W.N. 945: 52 L.W. 403: (1940) 2 M.L.J 476. *See also* (1940) 2 M.L.J. 293; 1941 Mad. 62.

COSTS OF EXECUTION.—Where a decree is scaled down under the Act, the liability for costs of execution under that decree is not cancelled. The liability for costs of execution is not specifically dealt with in the Act at all. But such a liability, if the judgment-debtor is an agriculturist, is clearly a "debt" originating on the date on which the execution is ordered. There is no warrant in the Act for the cancellation of the principal of the costs of execution; the mere silence of Section 11 or Section 19 with reference to a liability for costs of execution certainly cannot be taken as a provision of law cancelling such a liability. Only

Rate of interest payable by agriculturists on old loans.

12. All debts which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise:

Provided that it shall not in any case exceed 6¼ per cent. per annum simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

Rate of interest payable by agriculturists on new loans.

13. In any proceeding for recovery of a debt, the Court shall scale down all interest, due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6¼ per cent. per annum, simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

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the interest on such costs will be cancelled under Section 8 or Section 9 of the Act according as the order was made before or after 1—10—1932. 211 I.C. 420: 56 L.W. 604: 1943 M.W.N. 633: A.I.R. 1944 Mad. 70: (1943) 2 M.L.J. 443. *See also* 1941 Mad. 62.

SECTIONS 12 AND 13.—These sections make provision for future interest—the one for future interest on existing debts as scaled down and the other for interest on debts incurred by an agriculturist after the commencement of this Act. A maximum rate of interest at 6¼ per cent. (now reduced to 5½ per cent.) per annum is fixed. The State Government is empowered by notification in the Official Gazette to alter and fix any other rate of interest from time to time.

[*See* Notes under Sections 8 and 9, *supra*.] Interest on debt scaled down—Date from which it should be calculated. *See* (1940) 2 M.L.J. 185: 52 L.W. 245: 1940 M.W.N. 753 cited. Section 8 *supra*. The excess amount paid towards interest as scaled down cannot be recovered under Sections 7 and 12 of the Act. 1942 M. 655: 55 L.W. 527: (1942) 2 M.L.J. 275.

Mortgage executed in 1920 in discharge of earlier Pro-notes—Payments made towards mortgage in 1923 and 1924 and appropriated—Decree on mortgage in 1936—Decree, how should be scaled down—Costs and interest on costs—*See* 1940 Mad. 940: 52 L.W. 674: (1940) 2 M.L.J. 758. *See also* (1940) 2 M.L.J. 870.

SECTIONS 12 AND 9: INTEREST ON SCALED DOWN DEBT—CALCULATION.—On 4th March, 1933, petitioners executed a pro-note for Rs. 300 in favour of the respondent. In October of the same year they paid Rs. 100 towards the principal. On 18th November, 1935, interest was calculated up to that date and paid off in full and there was an endorsement to that effect on the promissory note. In a suit in 1938 for the balance of the principal and interest from the date of coming into force of the Madras Agriculturists' Relief Act, it was contended that interest should be calculated at 5 per cent. under Section 9 of the Act, from the date of the debt, should be added to the principal and from that sum the amount actually paid should be deducted, and that the plaintiff (respondent) would be entitled only to the balance. Held that the interest outstanding having been paid off in full, the respondent was not bound to pay anything back and he was therefore entitled to a decree for the balance of principal outstanding and interest from the date of the decree. Section 12 of the Act entitles a creditor to interest on any sum remaining outstanding after the debt has been scaled down from the date up to which it has been scaled down. Plaintiff would be entitled to interest only from date of decree. 52 L.W. 245: 1940 M. 807: 1940 M.W.N. 753: (1940) 2 M.L.J. 185.

Notes under Section 13.

APPLICABILITY OF SECTION: Section 13 applies to all debts incurred after the commencement of the Act, whether they be in discharge of prior debts or not. Hence Section 13 alone applies to a promissory note executed after the Act. 1955 And. W.R. 33.

"INTEREST DUE"—Section 13 applies to debts incurred after the commencement of the Act. The expression 'interest due' must be understood as "legally due" or payable. When the Legislature used the words 'interest due', we have to take it that what was contemplated was the amount which the creditor can obtain by resort to due legal process, and not what he could obtain by illegal methods or under a mistaken notion.

On 24th April, 1944, the defendant executed a promissory note in favour of the plaintiff for a sum of Rs. 200 agreeing to pay interest at 12 per cent. per annum. On 13th March, 1947, there was a payment of Rs. 70 endorsed on the promissory note, and expressly stated to be towards the interest due. Similarly on

8th June, 1949, another payment of Rs. 30 towards the interest was made, and there were further payments of Rs. 35 on 23rd February, 1950 and Rs. 50 on 1st September, 1952, towards interest as such. Appropriating these payments towards interest, the plaintiff brought the suit for recovery of Rs. 235-5-0 which according to him constituted the principal and balance of interest at the contract rate.

Held, that where a statute provides and regulates payments in a particular manner, and to a particular extent, a person paying amounts in excess of that should be considered not to have done it willingly or voluntarily and with the object of making a present, but he must be deemed to have acted in ignorance of the law, and therefore should be entitled to get back the amount. In the present case, the payments of interest were paid under the mistaken belief that in law, the plaintiff was entitled to the higher rate of interest, and it would not have been the intention of the defendant to make a present of the larger sum of money to the plaintiff. The payments already made should be appropriated in the manner contemplated under Section 13 of the Act, that is to say, the rate of interest should be only 5·1/2% as contemplated by that section and any amount in excess of that sum should be adjusted towards the principal. *Srinivasa Rao* v. *Abdul Rahim Saheb.* 1956 Mad. W.N. 592: 69 Mad. L.W. 572: (1956) 2 Mad. L.J. 189.

SECTION 13: RATE OF INTEREST.—[*See also* notes under Section 8 and under Section 12, *supra.*

Section 13—*Renewal of pro-note after commencement of Act — Scaling down of old debt—(Negotiable Instruments Act* (1881), *Section* 44*).*

Where a pronote dated 9—7—1945 for Rs. 1,500 is renewed on 5—7—1948 for a sum of Rs. 1,400 being the balance due after payment of the interest and a portion of the principal under the previous pronote, the rate of interest being 12 per cent., and the creditor sues on the latter pronote, the debtor, who is an agriculturist can plead failure of consideration under Section 44, Negotiable Instruments Act and is entitled to re-open the earlier transaction dated 9—7—1945 and taking Rs. 1,500 as principal advanced on that date and calculating interest at the rate provided under Section 13 and after giving credit to the amounts paid the plaintiff is entitled to a decree to such amount as is found due for balance of principal and interest, if any, on the date of the decree. DHANAKOTIA PILLAI *v.* P. K. NARAYANA IYER. 1955 Mad. W.N. 721: (1955) 2 M.L.J. 569.

Provided that the [1][State] Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

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1. Substituted by A. L. O., 1950.

If an agriculturist chooses to enter into a transaction and borrows at a rate of interest higher than that provided in the Act and discharges the debt by paying at the contract rate of interest it would not be open to him to question the validity of consideration and to plead failure of consideration and recover the amount so paid. The Act is not declaratory of the rate of interest which should be considered proper and legal in the case of borrowing by an agriculturist but it is only a remedial enactment intended to give relief to the agriculturist whose debts come up for adjudication before courts and who apply for relief under the Act. If does not make it illegal for a creditor to charge or recover interest at a rate higher than that provided in the Act even if the debtor is an agriculturist ' *Ibid.*'

AMENDMENTS BY AMENDING ACT XXIII OF 1948. — The amendments suggested by the Select Committee are consequential on the amendments suggested to provisos (B) and (C) to Section 3 (ii) (*d*). (Speech of Law Member in introducing the Bill in the Assembly).

SECTION 13 : SCOPE.—There is nothing in Section 13 of the Act which imports the Explanation to Section 8 and allows the Court to go behind the contract, in a suit on a promissory note of 1942 executed in settlement of previous debts of 1939, in giving relief under the Act. Section 13 can be applied to the suit contract only but not to the previous debts which it superseded. 57 L.W. 545 : 1944 M.W.N. 547 : A.I.R. 1945 Mad. 18 : (1944) 2 M.L.J. 298.

All debts incurred after the commencement of this Act, whether they be in discharge of a prior debt or not will fall under Section 13. I.L.R. (1942) Mad. 57 : (1941) 2 M.L,J. 307 : 54 L.W. 229 : 1941 M.W.N. 800 : 1941 Mad. 799. As to the method of scaling down debt, see 1940 M.W.N. 1249 : 52 L.W. 830 : (1940) 2 M.L.J. 874 : 1941 Mad. 193.

INTEREST PAID AND APPROPRIATED AS SUCH—IF CAN BE SCALED DOWN.—There ts no provision in Madras Act IV of 1938 for the scaling down of interest already paid. Where interest at the contract rate has been paid and actually appropriated, a Court cannot give relief to the debtor under Section 13 and scale down the debt by the process of calculating the amount of principal and

interest at the statutory rate and deducting therefrom the payments made, ignoring the fact that the payments have been actually appropriated. The payments having been made and appropriated to interest at the contract rate under a mistake of law cannot be got back and re-appropriated towards the principal so as to make the whole of the accrued interest amenable to the process contemplated under Section 13. 57 L.W. 550 (2) : 1944 M.W.N. 648 : A.I.R. 1945 Mad. 12 : (1944) 2 M.L.J. 285.

PROCEDURE — DEBT—SUBJECT-MATTER OF APPEAL—APPLICATION FOR SCALING DOWN—WHEN TO BE MADE.—Where a debt is the subject-matter of an appeal, if an application for scaling it down under the Act, is not made in the appellate Court before the judgment is pronounced, the decree must be drawn up in accordance with the terms of the judgment, and no subordinate Court has power to pass an order which will affect the decree. Where, however, an application for scaling down is made before judgment is delivered, the proper course will be to reserve the final order until the application for scaling down is decided. All questions arising in the appeal other than the question of scaling down can be decided and the decree left open until a report has been received from the trial Court, the application for scaling down being remitted to that Court for inquiry and report. But if the application is not made before the judgment is delivered, it will be too late for the judgment-debtor to raise the question. I.L.R. (1942) Mad. 346 : 198 I.C. 117 : 54 L.W. 627 : 1941 M.W.N. 1052 : A.I.R. 1941 Mad. 929 : (1941) 2 M.L.J. 855 (F.B.).

SECTION 13, PROVISO—APPLICABILITY—GOVERNMENT ORDER OF 7—7—1947 ALTERING 6¼ PER CENT. SPECIFIED IN THE PROVISO TO SECTION 13 AND FIXING 5½ PER CENT. PER ANNUM, WHEN OPERATIVE.—*L* executed on the 9th of November, 1938, in favour of *S* a promissory note for Rs. 240 agreeing to pay interest at the rate of 12 per cent. per annum. There were two payments made to *S* one of Rs. 100 on 4th November 1941, and the other of Rs. 150 on 22nd July, 1943. *S* transferred the promissory note on 22nd July, 1945, to *M* who filed a suit on the promissory note on 11th March, 1946, calculating interest at the contract rate and giving credit to the two payments. After adjusting the payments *M* claimed Rs. 160 as due to him. The lower Court dismissed the suit on the ground that the two payments were open payments and that they should be adjusted towards the principal and nothing was due. On revision, held, the case must be dealt with in accordance with the provisions of Section 13 of Madras Act IV of 1938. *M* will be entitled to 6¼ per cent. per annum simple interest up to the coming into operation of the notification of July, 1947, and 5½ per cent. thereafter. The notification has no retrospective effect so as to apply from the date

Explanation.—For the purposes of this section, the definition of 'agriculturist' in section 3 (ii) shall be read as if—

(*i*) in proviso (*A*) to that section, for the expression *[the financial years] ending 31st March, 1938," the expression *[the financial years] ending on the 31st March immediately preceding the date on which the debt is incurred" were substituted; and

(*ii*) in provisos (*B*) and (*C*) to that section, for the expression "the *[four half years] immediately preceding the 1st October, 1938," the expression "the *[four half years] ending on the 31st March or the 30th September (whichever is later) immediately preceding the date on which the debt is incurred" were substitued.

LEG. REF.

Substituted by Amending Act of 1948.

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of the promissory note. The notification operates as from the date of its appearance in the Gazette (29—7—1947) and not the date on which the Government made the order (7—7—1947). It is sufficiently clear from the wording as well as the object of Section 13 that the Legislature clearly intended to protect an agriculturist notwithstanding his own consent and it could not have intended to make his right to the benefit contemplated by the Act liable either to be defeated or materially curtailed by an act of the creditor to which the debtor is no consenting party. The creditor cannot therefore claim to appropriate the payments towards interest due and the balance for principal on the date of the plaint. (I948) 2 M.L.J. 500.

SECTION 13—NOTES: SECTIONS 13 AND 13-A—Applicability—Act in force at time of suit but no relief claimed in ignorance of amendment introducing section 13-A—Debt if can be scaled down. *See* (1955) 2 M.L.J. 485.

SECTION 13-A.—This section was newly introduced by the Amending Act XXIII of 1948.

SECTION 13-A—Stay of Sale—Right of mortgagor to relief under Act. *See* (1955) 2 M.L.J. 151.

[13-A. Where a debt is incurred by a person who would be an agriculturist as defined in section 3 (*ii*) but for the operation of proviso (*B*) or proviso (*C*) to that section, the rate of interest applicable to the debt shall be the rate applicable to it under the law, custom, contract or decree of Court under which the debt arises or the rate applicable to an agriculturist under section 13, whichever rate is less.] *(Inserted by Act XXIII of* 1948.*)*

Rate of interest payable by certain persons on debts.

14. Notwithstanding anything contained in section 3 (ii) and subject to the provisions of sections 5 and 6, where in a Hindu family, whether divided or undivided, some of the members liable in respect of a family debt are not agriculturists while others are agriculturists, the creditor shall, notwithstanding any law to the contrary, be entitled to proceed—

Separation of share of debt in particular cases

SCOPE OF SECTION 13-A—If repeals provisos (*B*) and (*C*) of section 3 (*ii*). There is nothing in section 13-A, which has the effect of repealing by implication provisos (*B*) and (*C*) of section 3 (*ii*) of the Act, which are as much an integral part of the definition of an agriculturist, as the main clauses which precede the provisos. Section 13-A *ex facie* deals with one subject-matter, that is, the rate of interest payable by certain persons, though they may not be agriculturists as defined in section 3 (*ii*) read with the provisos. The section does not deal with any other subject-matter. A debtor who was not an agriculturist as defined in sction 3 (*ii*) read with the provisos (*B*) and (*C*) is therefore not entitled to file an application under section 19-A. (1951) 2 M.L J. 530.

SECTION 14—APPLICABILITY:—Whether a debt is a family debt or not does not depend upon the personal liability cast on the executant. The test to ascertain whether a debt is a family debt or not depends upon the character of the debt, not on the person who executed the document evidencing it. When there is a personal decree on a mortgage against the executant thereof who is a non-agriculturist member of the family, section 14 of the Act is applicable. The section applies in regard to such a personal decree obtained against him in respect of the balance of the family debt. (1951) Mad. 729: (1951) 1 M.L.J. 153 (F.B.) [Disapproving (1942) 1 M.L.J. 418, *infra*].

(*a*) against the non-agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt; and

(*b*) against the agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt which shall be scaled down in accordance with the provisions of this Act.

SCOPE—PROCEDURE—RELIEF UNDER—IF CAN BE CLAIMED IN EXECUTION PROCEEDINGS:—Section 14 is a special provision which applies when there is a debt payable by members of a family some of whom are agriculturists and some are not. It declares that in such cases the creditor could recover only their proportionate shares from the agriculturist and non-agriculturist members respectively. A substantive application is not necessary in order that a judgment-debtor may obtain the benefit of section 14. Nor is it necessary for him in his application under section 19 to invoke the provisions of section 14. When the creditor proceeds to recover what is alleged to be due to him, the judgment-debtor can rely on this provision and it is sufficient if the debtor raises an objection based on section 14 in his counter-affidavit in answer to the execution petition and his objection must be upheld. (1952) 2 M.L J. 655: (1953) Mad. 607. But see *contra 1954 M.W.N. 559: 1954 Mad. 878*, where it was held that failure to raise the plea based on section 14 at the trial and suffering a decree to be passed would preclude the judgment-debtor from raising the plea in execution, on the principle that an executing court cannot go behind the the decree, however wrong it might be.

As to the right of an insolvent to claim the benefit under section 14, when his adjudication has been annulled and no vesting order is made. *See* 1955 And. W.R. 199.

"DEBT"—"FAMILY DEBT"—MEANING OF.—Section 14 of the Act does not confer upon a non-agriculturist the right to get rid of his liabilities in a case in which those liabilities do not necessarily form part of a major liability to which the Act necessarily applies. The term "debt" in the section must be restricted to a debt due from an agriculturist and the term "family debt" therefore necessarily means a debt due from family which was an agriculturist at the commencement of the Act or at least on 1st October, 1937. 205 I.C. 377: 55 L.W. 140: 1942 M W.N. 186: A.I.R. 1942 Mad. 375 (2): (1942) 1 M.L.J. 596. *See also* (1940) 1 M.L.J. 300: 1940 M. 435.

If a debt is a family debt, it must be a family debt with regard to every member of the family, and the members are personally liable for their proportionate share of the debt, but they cannot be liable personally unless the debt is a contractual one, Section 14 is not inapplicable to the case of a contractual debt. where in a family there are two non-agriculturists and five agriculturists, the former are liable for 2/7 of the unscaled debt while the latter are liable for 5/7 of the scaled down debt. It is not necessary that the family property should be split up into individual shares and each individual share be made liable only for its own share of the family debt. 1940 M.W.N. 754: 52 L.W. 249: (1940) 2 M L.J. 187: 1940 Mad. 797. *See also* (1940) 1 M.L J. 300: 50 L.W. 269.

MARUMAKKATHAYAM FAMILY—DEBT DUE BY—AGRICULTURIST AND NON-AGRICULTURIST MEMBERS—LIABILITY.—Section 14 applies to a Marumakkathayam Hindu family also, and the word "member" therein is used as equivalent to "members entitled to a share," and a sub-thavazhi, the smaller unit which can claim such a share will thus be a member for purposes of section 14. The proper procedure, having regard to the section in the case of a Marumakkathayam family will be to find out, first, which members (including any sub-thavazhi entitled to partition) are agriculturists and which are non-agriculturists; secondly, to ascertain how many shares belong to the agriculturist members and how many to the non-agriculturist members; and after scaling down the debt, to hold the agriculturist section of members collectively liable for the proportionate share of the debt as scaled down and the non-agriculturist section of the members collectively liable for the proportionate share of the debt as not scaled down. The creditor will thus have to divide his execution proceedings into two parts, one relating to the scaled down decree and the other relating to the unscaled down decree and so far as the family properties are concerned, each of these parts of the decree will be executable against a composite fraction of the family property. The operation of section 14 will not in any way affect the personal liability of the executants of the promissory note evidencing the debt and they will be entitled to scale down the decree so far as their personal liability is concerned not by rendering themselves liable for a part only of the debt, but by being liable for the whole of the debt subject to such reduction as they may be entitled to if they are agriculturists. 202 I.C. 538: 1942 M.W.N. 274: A.I.R. 1942 Mad. 456: (1942) 1 M.L.J. 418: *See* (1951) 1 M.L.J. 153 (F.B.)

SECTION 14 (*b*) — SCOPE — DECREE AGAINST AGRICULTURIST AND NON-AGRICULTURIST—LIABILITY OF FORMER.—In the case of a decree against an agriculturist and a non-agriculturist, the Court cannot direct the former to pay the full amount of the decree as

CHAPTER III.

ARREARS OF RENT.

Conditional discharge of arrears of rent due to landholders, etc.

15. All rent payable by an agriculturist to a landholder or an undertenure holder under the Madras Estates Land Act, 1908, or to a jenmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor :

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scaled down. Under section 14 (*b*) the liability of the agriculturist defendant extends only to his proportional share in the decree which must be scaled down in his favour. 52 I.W. 479 (1) : (1940) 2 M.L.J. 1064.

HUSBAND AND WIFE JOINT DEBTORS.—Section 14 not applicable. *See* (1940) 2 M.L.J. (Notes of Recent Cases) 58.

CHAPTER III—SECTIONS 15, 16 AND 17—This chapter provides for the discharge of arrears of rent due by a tenant to his landlord on terms. The right of the landlord by land cess, land revenue and water cess, etc., is saved. Section 17 provides for extension of limitation for suits by landlords for recovery of rent.

SECTION 15 : SCOPE.—The Prime Minister, referring to this Chapter as a whole, said that he sincerely felt that this Chapter would really be for the benefit of the landlords. For some years past, there had been a rift between landlords and tenants; the rift appeared to be widening. He would submit that the provisions of this Chapter were not expropriatory. They might appear so in the eyes of those who were opposed to this Bill. But, in his opinion, these clauses would bring in a new life to the tenants and to the landlords. Let them examine the clauses coldly and logically. Let them not be carried away by emotion. The clauses were for creating a clean, tidy and orderly tenantry. Mere accumulation of arrears was not wealth, and the landlords should realise that these clauses would do good to both the parties, and would help to create a new life.

Referring to the position of Zamindars, the Prime Minister said, " I ask whether it is safe for the country, good for the landholders themselves, and proper for the tenants, to go on in this manner. Of what earthly use will be the arrears for fasli 1340 or

even 1344, if these gentlemen who are called the landowners are not able to collect the dues? If the Government appointed a Tahsildar or a Collector to collect the arrears, and he did not do so, he would be dismissed at once. If the Collector or the Tahsildar, without collecting dues, paid the dues to the Government out of his own pocket, would he be excused? I submit he will not be. He would be really doubly punished for not collecting the tax and for paying from his own pocket, in order to cover his failure of duty."

"I maintain," the Prime Minister continuing stated, "that the landholders are public servants and not owners of property at all. I maintain that they have been commissioned by solemn documents to collect the dues not by harassing and at the same time to pay promptly out of the monies collected a fraction to the Government. The rates had been very liberally fixed. Why then, did these people fail to perform their duties? Why should they complain if we say that they have failed in their functions? I have nothing more to add."

With reference to this section the Select Committee's report stated.—"Much apprehension was felt in certain quarters that the wiping off of arrears of rent would encourage the tenants to allow rent to fall into arrears even in the future. In order to remove this apprehension the Bill had provided that relief in respect of arrears should depend upon prompt payment of current dues.

The Committee has strengthened this position by making the payment of the rent for fasli 1347 before September 30, 1938, a condition precedent to the grant to a tenant of the relief from arrears of old rent. It is only where after paying the rent for fasli 1347 on or before September 30, 1938, the tenant also pays the rent for fasli 1346 on or before September 30, 1939, that he obtains a full discharge in respect of all arrears of rent accrued for previous faslis.

If, having paid the rent for fasli 1347 on or before September 30, 1938, he makes default in payment of the rent for fasli 1346, on or before September 30, 1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him.

But the Committee after carefully considering the position decided that there would be no practical relief given to a tenant if the burden of these faslis were left unrelieved and that there would be no incentive for the payment of current dues, if he was still to be left so heavily indebted."

Provided that where the person liable to pay rent (hereinafter in this section referred to as 'tenant') does not, on or before the 30th September, 1939, pay up all arrears of rent accrued in respect of any holding for faslis 1346 and 1347, the the arrears of rent for fasli 1345 and prior faslis which were outstanding in respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for faslis 1346 and 1347 which is paid up by the ryot or tenant bears to the rent due for those two faslis .

Provided further that no tenant shall be entitled to the benefit of this section unless he shall have paid in respect of the holding, the rent due for fasli 1347 on or before the 30th September, 1938.

Explanation :—In cases governed by the Malabar Tenancy Act, 1929, any reference to a fasli year in this Chapter shall be deemed to be a reference to the agricultural year as defined in the Malabar Tenancy Act, 1929, which contains the greater part of the fasli year.

Illustrations.

(*a*) A ryot or tenant is in arrear at the commencement of this Act in respect of rent for a particular holding for fasli 1345 and prior faslis in the sum of Rs. 500 and is in arrear on that date in respect of rent for the same holding for faslis 1346 and 1347, the rent for each fasli being Rs. 100. Within the 30th September, 1938 he pays the rent for fasli 1347 and within 30th September, 1939, he pays the rent for fasli 1346. The arrears of rent of Rs. 500 which were outstanding at the commencement of this Act will be deemed to be discharged.

The Prime Minister said that the point at present in issue was whether arrears of some more years were to be kept alive. To this, he would only say that it was merely a case of an illusory attachment to property. It was impossible for any average tenant to pay arrears for even two years. The rents fell into arrears, not because the tenant was unwilling to pay, but because he was unable to pay. That was the state of affairs. It had been stated that it was possible for some tenants to sell away their cattle and land or house to pay the arrears of rent. But even the landholders would not want the tenants to do that at the present time,

(*b*) A sum of Rs. 500 representing the arrears of rent in respect of a particular holding for fasli 1345 and prior faslis and the rents for faslis 1346 and 1347 for that holding are in arrear and outstanding at the commencement of this Act, the rent for each fasli being Rs. 100. The ryot or tenant pays the landholder within 30th September, 1938, the rent for fasli 1347 but fails to pay within the 30th September 1939, any portion of the rent for fasli 1346. Only a sum of Rs. 250 or one half of the rent of faslis prior to and inclusive of fasli 1345 will be deemed to be discharged.

(*c*) In the same case, the ryot or tenant does not pay the landholder within the 30th September, 1938, the whole of the rent for fasli 1347. No portion of the arrears for fasli 1345 and prior fasli is discharged, and the ryot loses the benefit of this section.

(*d*) In the same case, the ryot or tenant pays the landholder within 30th September, 1938, the rent for fasli 1347, but pays within 30th September, 1939, only Rs. 50, being half the rent for fasli 1346. He has thus paid Rs. 150 out of Rs. 200 being the rent of both the faslis 1346 and 1347, before 30th September, 1939. A sum of Rs. 375, or three-fourth of the rent for faslis prior to and inclusive of fasli 1345 will be allowed to be discharged.

(2) Nothing contained in sub-section (1) shall be deemed to effect a discharge of arrears of rent which accrued due for fasli 1345, if proceedings for the recovery of such arrears stood stayed by an Act of the Legislature or by an order of a Court or if such proceedings, if instituted would have stood so stayed. But the arrears of rent for fasli 1345 shall not be recoverable until the 30th September, 1938 or if the rent for fasli 1347 is paid before that date, until the 30th September, 1939.

SUB-SECTIONS (2) AND (3).—With reference to sub-sections (2) and (3) the Select Committee observed as follows:—The Committee has provided that any payment of rent made " by a tenant after the commencement of this Act shall be credited first towards the rent due by him for fasli 1347 and then towards the rent due by him for fasli 1346 and not towards any rent due for any prior fasli.

It has also made a provision enabling the tenant to deposit the rent due by him into court and to ask the court to cancel his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of this Bill." (Report of Select Committee.)

SECTION 15 (1) AND (3) — CONSTRUCTION AND SCOPE—IF INDEPENDENT OF EACH OTHER.—Sub-section (3) of section 15 should not be construed as a self-contained enactment to be read by itself disregarding the rest of the section. It is necessarily part of the main section 15 and is controlled by section 15 (1). Petitioner, who was an agriculturist owed no rent for fasli 1345 or for any previous fasli. On 3—12—1938 he owed rent for faslis 1346 and 1347, and made a payment on that day declaring it to be for fasli 1346. On the landholder seeking to bring his holding to sale in respect of fasli 1347, the petitioner claimed that the rent paid by him should be credited to fasli 1347 under section 15 (3) of the Act, in spite of his declaration. Held, that the petitioner had not paid the rent for fasli 1347 on or before 30—9—1938, as required by section 15 (1), proviso, and therefore could not claim the benefit of section 15 (3). 1939 M.W.N. 1208 : 50 L.W. 800 (2) : (1939) 2 M.L.J. 791.

SECTIONS 15 AND 19—DISTINCTION BETWEEN—CLAIM FOR RENT—ORDER ENTERING UP PART SATISFACTION—APPEALABILITY—ORDER AS TO COSTS.—Under section 19, what is contemplated is a complete recalculation of the amount to be decreed with reference to the provisions of sections 8 and 9 of the Act, and the result normally is a decree which has a totally different basis from the original decree. If the amount already paid towards the debt is sufficient to wipe off the debt as scaled down, then an order of satisfaction is recorded and against that there is no right of appeal. If, however, the debt as scaled down is not discharged the section contemplates the drafting of a fresh decree capable of execution and this fresh decree gives rise to a right of appeal. But the process contemplated under section 15 of the Act is different. In such a case there is no question of recalculating the amount due under the decree for rent and all that has to be done is to examine the amount of the deposit and see whether it is sufficient to satisfy the rent as decreed for fasli 1347 and to what extent it is sufficient to satisfy the rent as decreed for fasli 1346 and then to enter up satisfaction of the older arrears under the decree proportionately to the extent to which the arrears for those two faslis have been satisfied. In such a case the whole process is not one of amendment but one of satisfaction and there is no right of appeal. And the mere fact that the Act in such a case safeguards the decree for costs will not make the order appealable. Periodical payments of panaya purappad are not rent for the purpose of section 15 and an assignee of the right to collect arrears of rent is not a jenmi or intermediary for the purpose of that section. 205 I.C. 402 : 55 L.W. 506 : 1942 M.W.N. 469 : A.I.R. 1943 Mad. 32 : (1942) 2 M.L.J. 237. *See also* (1943) 1 M.L.J. 45 : 56 L.W. 137.

APPLICABILITY OF SECTION—EXISTENCE OF TENANCY IN FASLI 1347—CONDITION PRECEDENT.—Where a tenancy has ceased to exist before the commencement of fasli 1347, section 15 of the Act does not apply, and the tenant is not entitled to the benefits under that section. A tenancy in and payment of rent for, fasli 1347 is a condition precedent to obtaining relief in respect of fasli 1345 and the earlier years. I.L.R. (1941) Mad. 433: 195 I.C. 351: 1941 M.W.N. 241: A.I.R. 1941 Mad. 366: (1941) 1 M.L.J. 333 (F.B.)

Arrears of rent for faslis prior to 1345 due from tenant assigned by jenmi to third person—If can be deemed to be discharged by tenant depositing rent for faslis 1346 and 1347—'Jenmi' or 'Intermediary'—If includes assignee of right to collect rents. *See* 1941 M.W.N. 33: 193 I.C. 406: A.I.R. 1941 Mad. 201.

RENT DUE TO MELCHARTHDAR—LIABILITY TO BE SCALED DOWN.—A melcharthdar is neither a jenmi nor an intermediary, and hence rent due to a landlord who is a melcharthdar cannot be scaled down. 1911 M.W.N. 239 (1): 53 L.W. 361: A.I.R. 1941 Mad. 436.

As to what is "rent" *see also* 1940 Mad. 1940: (1940) 2 M.L.J. 758: 1940 M.W.N. 1138.

PROMISSORY NOTE FOR ARREARS OF RENT—IF CAN BE SCALED DOWN AS RENT.—Where a landlord takes a promissory note from his tenant for arrears of rent, the character of the liability changes, and it ceases to be rent for the purpose of section 15. The debtor cannot compel the promisee to treat his claim as one for rent, whereas in fact it is nothing of the kind. Section 15 does not apply to such a case. 1941 M.W.N. 454: 53 L.W. 672: A.I.R. 1941 Mad. 638. (1941) 1 M.L.J. 633: *See also* (1940) 2 M.L.J. 825.

MAJOR INAMDAR AND MINOR INAMDAR.—The relationship between a major inamdar and a minor inamdar cannot be held to be that of landlord and tenant, and the minor inamdar is not a person under a liability to pay any rent to a major inamdar. Where the major inamdar obtains a decree against the minor inamdar in the Civil Court in respect of water charges, land cess, etc., alleged to have been paid by the former to the Government on behalf of the latter. Section 15 and R. 6 (1) of the Act will not apply so as to entitle the minor inamdar to have the decree-debt scaled down. 51 L.W. 322: 1940 M.W.N. 300: A.I.R. 1940 Mad. 422: (1940) 1 M.L.J. 369.

CRUCIAL DATE TO DETERMINE STATUES OF PAYEE OF ARREARS OF RENT.—The date with reference to which the payee of rent must belong to one of the three categories, *viz.*, landholder, jenmi or

intermediary, in order to entitle the tenant to relief under section 15 (1) is the date of the commencement of the Act. There must be rent outstanding on the date of the commencement of the Act, which rent must be, as on that date, payable by an agriculturist to a landholder or an under-tenure holder or to a jenmi or intermediary. Where the person to whom the arrears of rent was payable was an intermediary up to 1932, but was not an intermediary in March, 1938, when Act IV of 1938 came into force, the arrears of rent payable to him cannot be deemed to be rent payable to an intermediary on the crucial date. Section 15 (1) cannot therefore be applied. 910 I.C. 297: 56 L.W. 517: 1943 M.W.N. 498: A.I.R. 1943 Mad. 690: (1943) 2 M L.J. 313.

ASSIGNEE FROM ORIGINAL LESSEE—ARREARS OF RENT DUE FOR PERIOD BEFORE ASSIGNMENT—IF "RENT PAYABLE" BY THE ASSIGNEE.—Although an assignee from the original tenant of lands is not personally liable to pay the arrears of rent for the period before his assignment, the whole of the arrears of rent must nevertheless be held to be "rent payable" by him within the meaning of section 15 of the Act. Money claimed by the landlord as rent and payable by the assignee does not cease to be rent when he pays it merely because he is never personally liable to pay it. An assignee should be in no worse position than the original lessee and he can therefore take advantage of section 15 of the Act. 1940 M.W.N. 935: 52 L.W. 391: (1940) 2 M.L.J. 451: 1941 M. 44.

ASSIGNEE OF RIGHT TO COLLECT. JODI—IF LANDHOLDER.—"Jodi" is rent according to the definition in the Act, but an assignee of the right to collect jodi is not a landholder as defined by the Madras Estates Land Act, and since that which can be scaled down under section 15 of Act IV of 1938 is rent payable to a landholder under the Madras Estates Land Act, section 15, will not cover that which is rent under Madras Act IV of 1938 but is not payable to a landholder as defined by the Estates Land Act. Jodi due to an assignee cannot therefore be scaled down under section 15 of Act IV of 1938. The payment being in the nature of rent, it is not a debt and cannot be scaled down under any provision of Act IV of 1938. 55 L.W. 526: 1942 M.W.N. 474: A.I.R. 1943 Mad. 8: (1942) 2 M.L.J. 283. *See also* 1941 Mad. 500: (1941) 1 M.L.J. 156.

ASSIGNEE OF SOME ITEMS OF HOLDING FROM TENANT—DIVISION OF LANDLORD'S INTEREST—CLAIM TO RELIEF UNDER SECTION 15—RENT OF ENTIRE HOLDING—IF TO BE DEPOSITED.—Where out of an original holding some items of lands come to the hands of an assignee, and the rent of those items have come to be payable not to the original landlord which was a tarwad but to a tavazhi or sub-group of that tarwad, if there has been an attornment by the tenant to the sub-divided landholder, the tenant would be entitled to claim relief

as against the person to whom he actually paid his rent on deposit of the rent. If, however, the rent of the holding was still payable to the original landholder (tarwad) who had to make over part of the rent to the sub-divided group, the scaling down can presumably be ordered only on payment of the full rent of the holding. 202 I.C. 14 : 55 L.W. 283 (2) : A.I.R. 1942 Mad. 534 (2) : (1942) 1 M.L.J. 573

DEPOSIT OF KATTUBADI—IF TO INCLUDE INTEREST THEREON—BURDEN OF PROOF.—There is no statutory provision as to interest on arrears of kattubadi, as in the case of rent under section 61, Madras Estates Land Act. Therefore the ordinary rules of the Interest Act will apply to the case of kattubadi, and a demand would be necessary to make such interest payable. Where such interest is payable, it is to be included in the deposit made under section 15 of Madras Act IV of 1938. A deposit of kattubadi without interest is therefore bad when interest is payable, but good when no such interest is payable. The burden of proof is on the landlord to prove that there was such a demand as would make interest payable. 202 I.C. 88 : 55 L.W. 185 : 1942 M.W.N. 244 : A.I.R. 1942 Mad. 419 (1) : (1942) 1 M.L.J. 385.

It is clear that interest under section 61, Madras Estates Land Act, is payable as part of the rent in arrears ; and therefore deposit of rent under section 15 of Madras Act IV of 1938 should include such interest also. 209 I.C. 116 : 56 L.W. 178 : 1943 M.W.N. 421 : A.I.R. 1943 Mad. 354 : (1943) 1 M.L.J. 253.

SECTION 15 : IF CONFINED TO CASES OF LANDLORD AND TENANT UNDER MADRAS ESTATES LAND ACT—JODI—IF "RENT."—The operation of section 15 is not confined to cases arising between landlord and tenant under the Madras Estates Land Act. Where an agraharam within a zamindari was not excluded from the zamindari by the permanent settlement but continued as before the settlement to be held on an undertenure under the zamindar, the jodi payable by the proprietor of the agraharam to the zamindar is "rent" as defined by Madras Act IV of 1938, and comes within the purview of section 15 of the Act. The Proprietor of the agraharam is a tenant, as he is a person liable to pay the rent (the jodi) and the property in respect of which such rent has accrued is his holding. 200 I.C. 881 : 1941 M.W.N. 904 : 54 L.W. 120 : A.I.R. 1942 Mad. 56 : (1941) 2 M.L.J. 159. *See also* 1942 M. 746 : (1942) 2 M.L.J. 359 : 1942 M.W.N. 472 : 55 L.W. 558.

LAND HELD BY NON-AGRICULTURIST TENANT ON DATE OF ACT—ASSIGNMENT OF LAND AFTER ACT TO AGRICULTURIST.—Section 15 (1) requires that there should be rent outstanding on the date of the commencement of the Act, which rent must be, as on that date, payable by an agriculturist. In a case where at the commencement of the Act there was no rent payable by an agriculturist in respect

of a land, the tenant being a non-agriculturist, the mere fact that the land has been assigned, after the Act came into force, to an agriculturist cannot give the latter the benefit of section 15 of the Act. 53 L.W. 104: 1941 M.W.N. 186 (1): A.I.R. 1941 Mad. 432: (1941) 1 M.L.J. 177. *See also* 1941 Mad. 500: 1941 M.W.N. 96: (1941) 1 M.L.J. 156.

DECREE FOR MESNE PROFITS IN EJECTMENT SUIT—IF ONE FOR "RENT"—LAND BECOMING "ESTATE" SUBSEQUENTLY.—A decree for mesne profits passed in a suit for ejectment by a Civil Court is not a decree for "rent" within the meaning of section 15 of Madras Act IV of 1938; and the fact that at a date subsequent to the passing of such a decree the village in which the land is situate has become an estate under the amended Madras Estates Land Act will not alter the character of the decree already passed. 209 I.C. 116: 56 L.W. 178: 1943 M.W.N. 421: A.I.R. 1943 Mad. 354: (1943) 1 M.L.J. 253.

DECREE FOR RENT, LAND CESS AND COSTS—LAND SUBSEQUENTLY BECOMING "ESTATE"—SCALING DOWN.—On 18—3—1936 the appellant obtained a decree for rent or damages for use and occupation in respect of the period from 15—12—1932 to 15—10—1935. He also got a decree for land cess in respect of the same lands for the period from 30—6—1931 to 30—6—1935. When Act IV of 1938 came into force the judgment-debtor applied under sections 8, 15 and 19 for scaling down the amount due under the decree. He did not, however, make the deposit of rent as required by section 15 of Act IV of 1938. In the meantime the Madras Estates Land (Amendment) Act of 1936 came into force and the land in respect of which the decree for rent had been obtained became an estate. Held, (1) that the decree having been passed for an ordinary contractual rent which alone could be claimed at the time when the Court dealt with the matter, there was no reason for holding that the effect of the Amendment of 1936 to the Madras Estates Land Act would be to change the character of that rent or the relations of the parties as they stood at the time of the previous adjudication, and therefore the decree could be scaled down as a decree for a debt only, as the rent which was decreed was not rent as defined by Act IV of 1938; (2) that section 15 of Act IV of 1938 had no application and section 16 which was merely a rider to section 15 did not also apply; and the decree for land cess had to be scaled down as any other decree for a debt; and the decree for costs should be treated as a debt incurred on the date of the decree. 55 L.W. 558: 1942 M.W.N. 472: A.I.R. 1942 Mad. 746: (1942) 2 M.L.J. 359.

The time limit prescribed in section 20 which in terms applies only to applications under section 19 has no application to a petition

under section 15 in respect of decrees for rent. 1943 Mad. 321: (1943) 1 M.L.J. 45: 1943 M.W.N. 43: 56 L.W. 137.

Decree on pro-note executed for arrears of rent—if decree for rent. *See* 1941 Mad. 16: 52 L.W. 735: 1940 M.W.N. 1155: (1940) 2 M.L.J. 825.

CO-TENANTS—ONE AGRICULTURIST AND ANOTHER NON-AGRICULTURIST—RIGHT OF FORMER TO BENEFIT OF ACT.—There is no reason why an agriculturist tenant should not get the benefit of section 15 by paying the rent for the holding for Faslis 1346 and 1347, merely because there is a co-tenant who is not an agriculturist. 1941 M.W.N. 239 (1): 53 L.W. 361: A.I.R. 1941 Mad. 436.

OWNER OF KUDIVARAM INTEREST PURCHASING ZAMIN RIGHTS IN ESTATE—USUFRUCTUARY MORTGAGE—MORTGAGOR RETAINING RYOTI LANDS AS TENANT OF MORTGAGEE—MORTGAGOR'S RIGHT TO APPLY FOR SCALING DOWN.—The petitioner owned the kudivaram interest in certain lands in an estate under the Madras Estates Land Act, which was paying Rs. 1,200 as peishkush. He purchased the zamin rights and was recognised as landholder by the Collector. In 1934, he executed two usufructuary mortgages each covering one moiety of the zamin right in the estate. He retained the ryoti lands and became the tenant of the mortgagees in respect of those lands. In 1935, one of the mortgagees obtained from the Collector recognition as "landholder." The petitioner having applied under section 15 of the Madras Act IV of 1938: Held, that notwithstanding the recognition of the mortgagee as the landholder, the petitioner as the owner of the estate must also be deemed to be a "landholder" as defined by section 3 (5) of the Estates Land Act, and in view of proviso D to section 3 (ii) of the Agriculturists Relief Act, he was not entitled to the benefits conferred by section 15 of the latter Act. 52 L.W. 832: (1940) 2 M.L.J. 883: 1941 M.W.N. 31: 1941 Mad. 200.

Section 15 cannot be invoked in favour of a tenant whose rent is payable to an assignee of rent from a Malabar jenmi. 1941 Mad. 201: 52 L.W. 849: (1940) 2 M.L.J. 758.

DECREE FOR ARREARS OF RENT OF HOLDING BEFORE ACT—HOLDING SPLIT UP INTO SEVERAL NEW HOLDINGS—BENEFIT OF SECTION 15—IF AVAILABLE TO RYOTS OF NEW HOLDINGS.—Where the original holding (in respect of which a decree for rent was passed long before Madras Act IV of 1938), ceases to exist as a result of alienations made by the original ryot, and is split up into a number of holdings which have been recognised by the landlord who accepts rent from them on the basis of the new holdings, it is quite impossible for any person to pay any rent for the original

holding as rent due for faslis 1346 and 1347 for the purpose of wiping out the arrears of rent for previous faslis under section 15 of the Act. 213 I.C. 30: 56 L.W. 335: 1943 M.W.N. 431: A.I.R. 1943 Mad. 562: (1943) 1 M.L.J. 431.

DECREE FOR EVICTION BEFORE ACT—CLAUSE PERMITTING SET-OFF OF ARREARS OF RENT AGAINST AMOUNT OF COMPENSATION FOR TENANT'S IMPROVEMENTS—APPLICATION BY TENANT FOR RELIEF UNDER SECTION 15.—The mere existence of a decree in favour of a landlord for eviction of his tenant granting him the right to set-off the amount payable by him as compensation for improvements of the tenant against the arrears declared to be due to him is not equivalent to the payment of the arrears of rent. Nor would an ineffective execution application claiming such a set-off alter the position materially. Where in the case of such a decree made before Madras Act IV of 1938 no payment had been actually made by the landlord paying the amount of compensation due to the tenant, and the tenant after the Act comes into force applies for relief under section 15 of the Act by depositing the rent for faslis 1346 and 1347 within the time fixed, he must be held entitled to relief and the landlord cannot plead the decree granting set-off or his ineffective execution application in bar of the tenant's application for relief. 209 I.C. 378: 1943 M.W.N. 117. 56 L.W. 66: 1943 M. 314: (1943) 1 M.L.J. 164.

PANAYAM PURAPPAD PAYABLE BY USUFRUCTUARY MORTGAGEE TO MORTGAGOR—IF RENT—SCALING DOWN.—Where in the case of a usufructuary mortgage, the mortgagee in possession is authorised to appropriate the interest on the mortgage and the amount required for the assessment out of the income of the mortgaged property, and is directed to pay the surplus income to the mortgagor as panayam purappad, such panayam purappad is not rent within the meaning of section 15 of the Act and therefore the mortgagee cannot take advantage of section 15 and claim to have the arrears wiped off by depositing the purappad for two years under section 15. 52 L.W. 639: 1940 M.W.N. 1126: A.I.R. 1940 Mad. 939: (1940) 2 M.L.J. 712.

KANOM DEMISE—ASSIGNEE OF PART OF PROPERTIES DEMISED—RIGHT TO APPLY UNDER SECTION 15—"LIABLE TO PAY RENT"—An assignee of a part of property demised on kanom is liable by privity of estate to pay a proportionate part of the rent or michawaram reserved under the demise, so long as he remains assignee, and by virtue of section 41 of the Malabar Tenancy Act, the jenmi is entitled to recover the entire rent reserved under the demise from such assignee. The assignee is therefore entitled to claim the benefit of section 15 of Madras Act IV of 1938 in respect of arrears of michawaram due to the jenmi. The fact that a part of the

consideration for the assignment was expressly reserved with the assignee for payment to the jenmi towards the arrears is no bar to his claiming the statutory right to have the arrears wiped out under section 15. 53 L.W. 161: 1941 M.W.N. 174: A.I.R. 1941 Mad. 486: (1941) 1 M.L.J. 220.

Section 15 deals also with arrears of rent under the Malabar Tenancy Act. 1941 Mad. 500: 1941 M.W.N. 96: (1941) 1 M.L.J. 156.

ALIENEE OF PORTION OF KANOM INTEREST—RIGHT TO APPLY—DEPOSIT—IF TO INCLUDE GOVERNMENT REVENUE.—An alienee of the whole of a kanom tenant's interest in a portion of his holding is a person who is liable to pay rent or michawaram in respect of that portion, and provided he is an agriculturist he is entitled to deposit the arrears of the holding for faslis 1346 and 1347 and obtain the benefits of section 15. A deposit under the section must include any arrears of Government revenue payable by the kanomdar in respect of those faslis, when the michawaram payable by the kanomdar includes the land revenue which he has undertaken in the kanom deed to pay on behalf of the jenmi. 52 L.W. 737: 1940 M.W.N. 1177: 1941 Mad. 303: (1940) 2 M.L.J. 820.

APPLICATION BY KANOMDAR FOR RENEWAL OF KANOM—LIQUIDATION OF ARREARS OF RENT BY DEPOSIT UNDER SECTION 15—IF CAN BE EFFECTED.—In an application for renewal of a kanom by a kanomdar under section 24 of the Malabar Tenancy Act, it is open to the Court to apply section 15 of the Madras Agriculturists' Relief Act by which the amount of arrears of michavaram due from the tenant becomes liquidated by a deposit in accordance with the terms of section 15 of Act IV of 1938. On payment of the arrears as scaled down, the tenant is entitled to a renewal under section 24 of the Tenancy Act. 52 L.W. 676: 1941 Mad. 196: (1940) 2 M.L.J. 788.

MALABAR TENANCY ACT — INTERMEDIARY — USUFRUCTUARY MORTGAGEE FROM JENMI—TENANT UNDER PERPETUAL LEASE FROM JENMI ATTORNING TO MORTGAGEE—EFFECT.—A usufructuary mortgage of a Malabar jenmi's rights creates in the mortgagee an interest which entitles him to possession, even when the land is in the possession of a tenant under a perpetual lease known as saswatham; and where such a tenant has attorned to the mortgagee, he must be deemed to have transferred such possession to the tenant. He is therefore an intermediary as defined by section 3 (j), Malabar Tenancy Act, and the tenant is entitled to the benefit of section 15 of Madras Act IV of 1938, with reference to the rent payable to such mortgagee. I.L.R. (1943) Mad 674: 205 I.C. 487: 1942 M.W.N. 788: 55 L.W. 832: A.I.R. 1943 Mad. 116: (1942) 2 M.L.J. 739.

MORTGAGE WITH POSSESSION BY JENMI—LEASE BACK BY MORTGAGEE TO JENMI—RIGHT OF JENMI LESSEE TO APPLY—Where a jenmi mortgages his land with possession and takes the property back at the same time from the mortgagee under a lease undertaking to pay rent to the lessor-mortgagee, the rent payable is not interest so far as Madras Act IV of 1938 is concerned. The lease though contemporaneous with and closely related to the mortgage, must be regarded as a lease and the payment thereunder must be regarded as rent. The mortgagee from the jenmi has, by reason of the mortgage, an interest entitling him to possession of the land and is thus an " intermediary " under the Malabar Tenancy Act, though he transfers that possession to the jenmi himself. The rent payable by the jenmi to the mortgagee-lessor (intermediary) therefore falls within section 15 of Madras Act IV of 1938, and the lessee-jenmi is therefore entitled to relief under section 15 if he makes the required deposit within the time laid down by the section. 197 I. C. 421 : 1941 M. W. N. 799: 54 L. W. 309: A. I. R. 1941 Mad. 826: (1941) 2 M. L. J. 351.

Malabar Compensation for Tenants' Improvements Act—Decree for arrears of rent against tenants passed before Act—Subsequent suit for redemption—Set-off of rent decreed against value of improvements—Right of tenant to claim scaling down under Act VI of 1938. *See* (1942) 1 M. L. J. 166.

DATE OF DEPOSIT.—Where a challan for the deposit of the amount required under section 15 of Madras Act IV of 1938 was applied for and obtained on 30—9—1939, but the amount was actually deposited only on 2—10—1939, the deposit has to be treated as having been made on 2—10—1939 and not on 30—9—1939, unless it is proved that the applicant was prevented from making the deposit on 30—9—1939, by some default on the part of the treasury officer, or by the bank or by some delay on the part of the Court in issuing the challan so as to prevent the applicant from making the deposit in time. 202 I. C. 14 : 55 L. W. 283 : (2) : A. I. R. 1942 Mad. 534 (2) : (1942) 1 M. L. J. 573.

APPEAL.—A proceeding under section 15 for the amendment or discharge of a decree for rent is not a proceeding in execution, but a special proceeding under a special statute, and in the absence of any provision in that statute for a right of appeal, no appeal lies. 202 I. C. 426 ; 55 L. W. 151 : 1942 M. W. N. 201 : A. I. R. 1942 Mad. 413 (2) : (1942) 1 M. L. J. 366.

SECTION 15 (2) : "PROCEEDINGS IF INSTITUTED. WOULD HAVE STOOD SO STAYED "—MEANING OF.—The words " proceedings if instituted would have stood so stayed " in section 15 (2) must be read as indicating that the staying by Legislative action of the proceedings is the necessary consequence of their institution. Section

(3) Notwithstanding anything to the contrary in any agreement or in section 64 of the Madras Estates Land Act, 1908, any payment of rent made by a tenant after the commencement of this Act shall be credited towards the rent due by him for fasli 1347 in the first instance and for fasli 1346 in the next instance, and not towards the rent due for any previous fasli.

(4) Every tenant shall be at liberty to pay into Court any amount towards the rent due or claimed to be due by him for fasli 1347 or 1346 or both and thereupon the Court shall, after notice to the landholder, under-tenure holder, jenmi or intermediary, as the case may be, apply the provisions of this Act and determine whether the whole or only a portion of the rent for the faslis aforesaid has been paid by the tenant, and also the extent of the remaining liability, if any, of the tenant for rent under the provisions of this Act.

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15 (2) has no application to cases in which the landlord had ample time to realise the arrears after the Legislative stay had ceased to operate and before Act IV of 1938 came into force. 57 L. W. 253: 1944 M. W. N. 386: A. I. R. 1944 Mad. 375: (1944) 1 M. L. J. 335. *See also* 1946 Mad. (Rul.) 3.

SECTION 15 (3) is not a self-contained enactment and cannot be read by itself. The whole of the section is controlled by provisos to section 15 (1). 1940 M. 235: 50 L. W. 800: 1939 M. W. N. 1208: (1939) 2 M. L. J. 791.

SECTION 15 (4)—SCOPE—DECREE FOR RENT—DEPOSIT AFTER ACT EARMARKED FOR RENT OF HOLDING—WITHDRAWAL BY LANDLORD —APPROPRIATION.—Where there is in deposit, after Madras Act IV of 1938 came into force, an amount of money earmarked for the rent of a particular holding as decreed by a Court, it would have to be drawn out by the landholder only in accordance with the provisions of section 15 (4) of the Act for credit, firstly, to the two faslis mentioned therein; the landholder so withdrawing the money would presumably be relieved of the necessity of recording satisfaction of the decree for earlier faslis to the extent to which the statutory appropriation is made, the question of the satisfaction of such decree being left to be worked out in accordance with the provisions of section 15 (4). 55 L. W. 575: 1942 M. W. N. 563: 206 I. C. 212: A. I. R. 1943 Mad. 24: (1942) 2 M, L. J. 319.

TENANT'S RIGHT TO ABATEMENT OF RENT.—Although ordinarily in an application under section 15 (4) a plea that the tenant was entitled to abatement of rent for non-possession of part of the lands in his holding or for failure of irrigation supply would not be available to the tenant, yet in a case where the agricultural tenure is itself based upon a contract which provided for such abatement of rent, the Court would, in an application under section 15 (4), have jurisdiction to consider pleas based upon the terms in the patta (contract) which contemplates fluctuations on certain grounds. 203 I.C. 249: 55 L.W. 416: 1942 M.W N. 506: A.I.R. 1942 Mad. 649: (1942) 2 M.L.J. 100.

DECREE FOR RENT OF CIVIL COURT—APPLICATION UNDER SECTION 15 (4) TO REVENUE COURT.—Section 19 only provides for the scaling down a decree for the repayment of a debt which term does not, strictly speaking, include a liability for rent. But a procedure analogous to that laid down in section 19 should be followed in the case of decrees for rent. It is therefore apparent that when there is a decree of a Civil Court determining the amount of rent payable for the relevant period there is no room for any application to the Revenue Court under section 15 (4) of the Act. The object of section 15 (4) is clearly to enable a tenant whose liability for rent has not yet come into Court to ascertain what is the extent of that liability as scaled down and pay it into the Revenue Court in order to prevent an unnecessary suit. Where, however, a decree has been passed by a Civil Court for rent, the proper course for the judgment-debtor is to apply for relief under section 19 of the Act to the Court which passed the decree. 201 I.C. 195: 1941 M.W.N. 997: 54 L.W. 464: A.I.R. 1942 Mad. 78: (1941) 2 M.L.J. 655.

POST-SETTLEMENT SARVA INAM—TENANT UNDER INAMDAR—RIGHT TO APPLY.—A post-settlement grant of a sarva inam which is expressly free of jodi and not subject to any demand of the zamindar, is a grant of the melvaram, and the grantee of such an inam is a landholder as defined by section 3 (5) of the Madras Estates Land Act. A tenant under such an inamdar is therefore entitled to make a deposit under section 15 (4) of Madras Act IV of 1938 and claim relief. I.L.R. (1942) Mad. 944: 55 L.W. 400: 1942 M.W.N. 410: 205 I.C. 225: A.I.R. 1942 Mad. 677: (1942) 2 M.L.J. 211.

APPLICATION ON BEHALF OF GROUP OF INDIVIDUALS—COMPETENCY—MALABAR TARWAD.—There is no authority for holding that an application under section 15 (4) can be made only by an individual and not by a receiver on behalf of a group of individuals. Where by a preliminary decree for partition of a Malabar tarwad owning a leasehold interest in agricultural lands, a receiver is appointed to hold the properties of the tarwad during the process of partition, if no partition has been effected by metes and bounds on the date of

the coming into force of the Act, the position is that the leasehold interest becomes vested in individual sharers as tenants-in-common and the receiver represents all of them. All the tenants-in-common are collectively liable to pay rent and should proceed collectively to get any relief, and if the receiver under the orders of the Court makes the necessary deposit and applies for relief under section 15 (4) on behalf of all the sharers, there is no reason why relief under section 15 should be refused when the individual sharers are all agriculturists and qualified to apply, although the tarwad originally was disqualified to apply under proviso D to section 3 of the Act. 204 I.C. 623 : 55 L.W. 236 : 1942 M.W N. 305 : A.I.R. 1942 Mad. 441 : (1942) 1 M.L.J. 495.

In a suit for redemption of a kanom, a decree was passed in 1936, declaring, firstly, the amounts due to the tenants for improvements and for the kanom amount, and declaring secondly, that on the deposit by the plaintiff (landlord) of these amounts the defendants should hand over the property and the documents to the plaintiff. Then followed a series of clauses specifying the amount due from the defendants to the plaintiff, *viz.*, for arrears of rent, for costs, commission fee and also the rate at which future rent was payable, and the decree provided that "set-off is allowed." While the decree was still unsatisfied the tenants applied under section 15 (4) of Madras Act IV of 1938, praying that the deposit towards the arrears of rent for faslis 1347 and 1346 might be taken into consideration and the arrears for the earlier faslis scaled down. The decree-holder opposed this on the ground that by reason of the provision for set-off in the decree no rent was outstanding when Madras Act IV of 1938 came into force. He also contended that this was really a case of two cross-decrees and that the lesser decree must be deemed to be merged in the greater decree. *Held*, (1) that until the holder of the greater decree actually executed and set-off the amount due from him to the holder of the lesser decree, the latter still had a decree which was unsatisfied and which might become effective if the greater decree were satisfied in some other way; (2) that the decree, not having been drawn up in the form contemplated by section 6 (2) of the Malabar Compensation for Tenants Improvements Act, after setting off the amount due for rent against the amount due to the tenants for improvements, etc., had become final in the absence of any appeal, and as the decree actually passed took the form of two separate decrees, one for rent and the other for the kanom amount and value of improvements, the arrears of rent were due when Act IV of 1938 came into force, and were therfore liable to be scaled down under section 15. 55 L.W. 152 : 1942 M.W.N. 246 : A.I.R. 1942 Mad. 399 : (1942) 1 M.L J. 338.

LEASE ON WARAM RENT—DEPOSIT—IF TO BE OF LANDLORD'S SHARE OF PRODUCE.—There is no warrant for the view that section

Explanation.—For the purposes of this sub-section, 'Court' shall mean the Collector referred to in section 209 (1) of the Madras Estates Land Act, 1908, or the Court referred to in section 3 (*b*) of the Malabar Tenancy Act, 1929, as the case may be.

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15 (4) requires a deposit of the landlord's share also of the produce where waram rent is payable. The section contemplates only payments of money into Court in all cases. It is sufficient if the tenant deposits the correct market value of the waram payable to the landlord or zamindar. I.L.R. (1944) Mad. 595: 217 I.C. 8: 1943 M.W.N. 753: 56 L.W. 683: A.I.R. 1944 Mad. 139: (1943) 2 M.L.J. 615.

RATE OF RENT—DUTY OF COURT TO DECIDE CORRECT RATE.—A landholder is not entitled in proceedings under section 15 to insist on his ryot depositing rent at a rate which represents an unlawful enhancement. The Court dealing with a deposit under section 15 (4) must necessarily find out what is the correct rate of rent, and in deciding what is the correct rate of rent, it must be governed by the principles laid down in the particular Act governing the tenancy. I.L.R. (1942) Mad. 944: 205 I.C. 225: 55 L.W. 400: 1942 M.W.N. 410: A.I.R. 1942 Mad. 677: (1942) 2 M.L.J. 211.

SECTION 15 (4), EXPLANATION—SCOPE AND EFFECT OF—REVISION.—The explanation to section 15 (4) of Madras Act IV of 1938 only provides that the Court which has to exercise the powers thereby conferred shall be the Court which has territorial jurisdiction under section 209 (1) of the Madras Estates Land Act or under section 3 (b) of the Malabar Tenancy Act, such Court in the latter case being a Civil Court. But this provision cannot have the effect of attracting all the provisions of the one or the other of the Acts specified to a proceeding under section 15 (4) of the Act IV of 1938 as if it were a proceeding under that Act. An application by the tenants in an "estate" under the Madras Estates Land Act before the Sub-Collector for relief under section 15 (4) of the Madras Agriculturist's Relief Act is a proceeding to which the provisions of the Estates Land Act can have no application. Hence the District Collector has no jurisdiction to revise the order of the Sub-Collector under section 205 of the Madras Estates Land Act. The District Collector's powers of revision under section 205 of the Estates Land Act can only be exercised in proceedings under that Act. But a proceeding under section 15 (4) of the Madras Act IV of 1938 is not a proceeding under the Estates Land Act, but one under the Agriculturists' Relief Act, and the order can be

Landholder to be entitled to recover land-cess and costs.

16. Notwithstanding anything contained in this chapter, a landholder or an under-tenure holder under the Madras Estates Land Act, 1908, or a jenmi or intermediary under the Malabar Tenancy Act, 1929, shall be entitled to recover, in addition to any sum recoverable by him under section 15—

(*a*) the land-cess, if any, paid by him and recoverable under section 88 of the Madras Local Boards Act, 1920;

(*b*) the land revenue and water cess, if any, paid by him to the State Government which the tenant was bound to pay by virtue of any law, custom, contract or decree of court governing the tenancy and

(*c*) the costs awarded to him in any decree for rent obtained by him.

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revised only by the High Court under section 115, C. P. Code. The Sub-Collector hearing the application is a "Civil Court" subordinate to the High Court within the meaning of section 115, C. P. Code. Both the Sub-Collector and the District Collector who erroneously purports to revise the Sub-Collector's order under section 205 of the Estates Land Act must be deemed to act as "Courts". I.L.R. (1944) Mad. 595: 217 I.C. 8: 1943 M.W.N. 753: 56 L.W. 683: A.I.R. 1944 Mad. 139: (1943) 2 M.L.J. 615.

SECTION 16.—With reference to sections 15 and 16, the observations of the Select Committee are as follow:—The Committee has also provided that where a landholder has paid the tenant's share of the land-cess under the Madras Local Boards Act, 1920, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for fasli 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree.

Section 16 saves the landholder's right to recover any sum paid by him which the tenant should have paid; but does not make these sums part of the deposit contemplated under section 15. 1941 Mad. 303: (1940) 2 M.L.J. 820: 52 L.W. 737: 1940 M.W.N. 1177.

Extension of limitation for suits, etc., for rent in certain cases.

17. Notwithstanding anything contained in the Madras Estates Land Act, 1908, or the Malabar Tenancy Act, 1929, or in any law of limitation or procedure in force for the time being, no suit or execution proceedings in respect of arrears of rent accrued for fasli 1345 or any prior fasli which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1938, shall be so barred and the landholder, under-tenure-holder, jenmi or intermediary, as the case may be, shall be entitled to file a suit or institute execution proceedings for recovery thereof, on or before the 31st December, 1938; and in cases where the rent due for fasli 1347 has been paid before the 30th September, 1938, the period of limitation for any suit or execution proceedings for the recovery of any arrears of rent which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1939, shall stand extended until the 31st December, 1939:

Provided that where on the 31st December, 1938, or the 31st December, 1939, as the case may be, an application under sub-section (4) of section 15 is pending in any Court, the period of limitation prescribed by this section shall stand extended until the expiry of a period of two months from the date of the order on such application.

SECTION 17.—With reference to this section the Select Committee has observed as follows:—The Committee has provided that the period of limitation for suits for the recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for payment of the rents for faslis 1347 and 1346 as those dates would determine the tenant's liability for such arrears.

SECTION 17: SCOPE—SUIT FOR ARREARS OF RENT FOR FASLI 1344 DUE FROM NON-AGRICULTURIST.—Section 17 covers any suit in respect of arrears of rent accrued for fasli 1345 or any prior fasli, and it is not restricted to such a suit filed against an agriculturist. The section therefore saves limitation in respect of a suit for arrears of rent for fasli 1344 due from a non-agriculturist. 201 I.C. 164: 1941 M.W.N. 913: 54 L.W. 433: A.I.R. 1942 Mad. 79: (1941) 2 M.L.J. 604.

17-A. In any suit or proceeding before a civil or revenue court involving a claim for arrears of rent payable by an agriculturist, including a claim to set-off such arrears, whatever be the period to which the arrears relate, the court shall scale down all interest, if any, due on such arrears so as not to exceed a sum calculated at 5½ per cent per annum simple interest, notwithstanding anything to the contrary contained in any contract or custom:

Scaling down of interest on arrerrs of rent.

Provided that the [1][State] Government may, by notification in the official Gazette, alter and fix any other rate of interest from time to time.

EXPLANATION—For the purposes of this section, the definition of 'agriculturist' in section 3 (ii) shall be read as if—

(i) in proviso (A) to that section, for the expression "financial years ending 31st March, 1938," the expression "financial years ending on the 31st March immediately preceding the date of institution of the suit or proceeding" were substituted; and

(ii) in provisos (B) and (C) to that section, for the words and figures "immediately preceding the 1st October, 1937," the words and figures "ending on the 31st March, or the 30th September (whichever is later) immediately preceding the date of institution of the suit or proceeding" were substituted. *(Section 17-A inserted by Madras Act V of 1949).*

CHAPTER IV.

PROCEDURE AND MISCELLANEOUS.

18. (1) Where a decree is passed against an agriculturist in a suit filed on or after the 1st October, 1937, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with

Provision as to costs in certain cases.

1 Substituted by A. L. O, 1950.

Section 18.—On this section, *see* (1942) 2 M. L. J. 592: 55 L. W. 706: 1943 Mad. 5: 1942 M. W. N 719; 1943 Mad. 671: 56 L. W. 578: 1943 M. W. N. 542. As to the method of allowing and calculating costs under sub-section (1), *see* 1941 M. 58: (1940) 2 M. L. J. 507; 1940 M. W. N. 1007.

the provisions of this Act, and where in any such case a decree has been passed before the commencement of this Act, the Court shall, on application by the agriculturist, amend the decree accordingly.

(2) Nothing in sub-section (1) shall apply to any suit instituted on or after the 1st October, 1937, and before the commencement of this Act in respect of a claim which would be barred by limitation before the 1st April, 1938.

Amendment of certain decrees.

19. (1) Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be :

SECTION 19. *See also* notes under sections 8, 9, 12, 15, 20 and 21.

SECTION 19.—The application under this section has to be made to the Court *which passed* the decree, and not to the Court in which execution proceedings may be taking place.

Application for scaling down decree debt—Adjudication of applicant prior to 1st October, 1937 and annulment of adjudication after 22nd March, 1938—Effect on ownership of property and on right to claim relief—Failiure to claim benefit in execution of decree—Subsequent application for scaling down—If barred by constructive res judicata.

A judgment-debtor under a decree passed in a suit of 1933 was adjudicated insolvent on 16th April, 1937. But owing to his laches the adjudication was annulled on 5th March, 1941. He subsequently applied to scale down his debt under section 19 of the Madras Agriculturists Relief Act. It was contended that as both on the relevant date referred to in the Act and on the date when the Act came into force, the property was vested in the Official Receiver, the applicant had no saleable interest in the property, and could not claim the relief under the Act and that he was barred by the principle of constructive *res judicata* from preferring the petition.

Held, as the effect of the annulment of an adjudication is to bring about the same state of affairs as if there had never been an

adjudication, the property should be deemed to have been the property of the insolvent applicant both on 1st October, 1937, the relevant date referred to in the Act and on 22nd March, 1938, when the Act came into force and that therefore the provisions of Madras Act IV of 1938 would apply. (1942) 1 M. L. J. 491, distinguished. (1945) 1 M. L. J. 472, followed.

Held further: It was not open to the insolvent by way of a counter to an execution application to claim that he was entitled to the benefit of Act IV of 1938. Further, the principle of constructive *res judicata* would not apply to the facts of the case. VENKATA RAMAKRISHNA RAO v. SAMBAMURTI. 1950 M. W. N. 3: (1949) 2 M. L. J. 833.

Execution petition—Failure of judgment-debtor to raise the question of scaling down—Subsequent application—Whether maintainable.

An application under section 19 of Madras Act IV of 1938 is not one which comes under section 47 of the Civil Procedure Code and therefore the principle of *res judicata* in execution cannot apply. It is not the bounden duty of the judgment-debtor when an execution application was pending to raise the question regarding scaling down and if he failed to do so it is open to him at a later stage to file an application for scaling down. KANAKAMMAL v. MD. KATHIJA BEEVI. 65 L. W. 346: 1952 M. W. N. 349: (1952) 2 M. L. J. 53.

It is not necessary for a judgment-debtor in his application under section 19 of the Madras Agriculturists Relief Act to invoke the provisions of section 14 of the Act. Section 14 is a special provision which applies when there is a debt payable by members of a family some of whom are agriculturists and some are not. That section declares that in such cases the creditor could recover only their proportionate shares from the agriculturist and non-agriculturist members respectively. A substantive application is not necessary for a judgment-debtor to obtain the benefit of section 14 of the Act. When the creditor proceeds to recover what is alleged to be due to him the judgment-debtor can rely on this provision. It is sufficient if the debtor raises the objection based on section 14 in his counter-affidavit in the execution petition and his objection must be upheld. BRAMARAMBA v. JAGANNATHA RAO. 65 L. W. 1009: 1952 M. W. N. 868: (1952) 2 M. L. J. 655.

SCOPE OF SECTION 19.—Section 19 has no application to cases in which relief under the Act is sought in the trial of the suit itself. 1942 M. 720: 55 L.W. 635: (1942) 2 M.L.J. 948: 1942 M.W.N. 809.

Section 19 applies to a decree passed both against an agriculturist and a non-agriculturist. But the relief would be confined only to the agriculturist. 1942 M. 79: (1941) 2 M.L.J. 604.

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as are originally decreed to the creditor.

[(2) "The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement."] (*Added by Amendment Act, XXIII of 1948.*).

Sole judgment-debtor on record an agriculturist—Portion of property covered by decree coming into the hands of non-agriculturist after decree—Does not affect right of agriculturist judgment-debtor to the benefit of the scaling down provision of the Act. 1941 M. 497 : (1941) 1 M.L.J. 223 : 53 L.W. 162.

"Debt" includes decree debt; Act also applies to scaling down of decrees which have ripened into decrees after commencement of the Act. 1940 M. 482 : 51 L.W. 452 : (1940) 1 M.L.J. 600. *See also* (1940) 2 M.L.J. 473.

There is nothing in the Act which excludes from the benefit of scaling down operations interest on costs. 1941 M. 52 : 52 L.W. 638: 1940 M.W.N. 1128.

Rules (as amended) providing for appeals under the Act have no retrospective effect. 1940 M. 417 : (1940) 1 M.L.J. 317 : 51 L.W. 447 : 1940 M.W.N. 301.

APPEAL : An order dismissing an application made in a suit under section 19 of the Act on the ground that the debtor is not an agriculturist is a decree as defined in section 2 (2), C.P.C. and is appealable under section 96, C.P.C., though the Act itself does not confer a right of appeal. The true rule to be borne in mind is that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. 74 I.A. 254 : (1948) Mad. 505 : (1948) 1 M.L.J. 41 (P.C.).

PETITION PRESENTED UNDER RETURNED FOR PRESENTATION TO PROPER COURT—APPEAL LIES AND HIGH COURT WILL NOT INTERFERE IN REVISION.

An appeal lies under section 25 (*a*) of Madras Act (4 of 1938) against an order returning a petition under section 19 of the Madras Agriculturists Relief Act, for re-presentation to the proper Court, and therefore the High Court will not interfere with that order on a revision petition.

If under Order 7, rule 10, Civil Procedure Code, an order for return of a plaint has been made that will certainly be appealable under Order 43, rule 1 (*a*). The right of appeal under that provision cannot stand attracted to orders made in connection with matters other than suits or plaints merely because of section 141, Civil Procedure Code, which can only imply and involve that the mode of trial laid down by the code in regard to suits will be available in the case of all original petitions as well. VENKATA REDDI v. RAMABRAHMAM. (1953) 1 M.L.J. 240 : 66 L.W. 109 : 1953 M.W.N. 56, 1953 Mad. 417.

APPLICABILITY AND SCOPE—DEBTS SCALABLE UNDER.—The provisions of Act IV of 1938 are not intended to benefit agriculturists who voluntarily pay debts which cannot be enforced against them. The Court has to be satisfied, before it reduces the debt, that there was a debt on the date of the commencement of the Act due from an agriculturist and that debt was one which the agriculturist could be compelled to pay by legal process. Section 19, no doubt, in terms gives to any judgment-debtor a right to apply, but it clearly deals only with a debt which an agriculturist can be compelled to pay. A debt the enforcement of which cannot be secured by legal process is not a debt payable for purposes of Act IV of 1938. This rule applies equally whether the relief is sought in a pending suit or by means of an application under section 19. 1945 M.W.N. 383 : 58 L.W. 246 : A.I.R. 1945 Mad. 385 : (1945) 1 M.L.J. 384.

The object of the Act is clearly to provide relief for debtors who are agriculturists at the commencement of the Act. Section 19 would seem to require that the debtor seeking relief should be an agriculturist at the time of the application and the first paragraph of section 19 also requires that the debtor should have been an agriculturist on 1—10—1937. The agriculturist character of the debtor is not relevant for purposes of scaling down debts under the Act, except with reference to these three dates. 1949 Mad. 847 : (1949) 1 M.L.J. 658.

Section 19 has no application to a decree passed after the Act came into force although the suit in which it was passed was before the Act. Where a suit was dismissed before the Act came into force and the appellate Court reverses the decision and passes a decree after the Act comes into force an application to scale down the debt under section 19 does not lie. 1940 M.W.N. 947 : 52 L.W. 413 : (1940) 2 M.L.J. 473 ; *see also* 1940 M. 482 : 51 L.W. 452 ; (1941) 1 M.L.J. 6 ; 1943 M. 160 : (1942) 2 M.L.J. 599 ; 51 L.W. 452 : 1940 M.W.N. 338 : (1940) 1 M.L.J. 600 ; 192 I.C. 400.

SECTIONS 19 AND 15—DISTINCTION BETWEEN—CLAIM FOR RENT.—*See* 55 L.W. 506 : 1943 Mad. 32 : (1942) 2 M.L.J. 237, cited under section 15, *supra*.

PUISNE MORTGAGEE.—A puisne mortgagee who is impleaded in a suit on the prior mortgage is a judgment-debtor, and the decree debt is payable by him. A debt payable by an agriculturist does not fall outside the purview of the Act merely because it is also payable by a non-agriculturist; the mere fact that the puisne mortgagee has sub-mortgaged his interest to a non-agriculturist will not deprive him of the benefits to which he is entitled under the Act as a person liable to satisfy the decree. The procedure to be adopted must be such as will give to the agriculturist judgment-debtor the full benefit of the relief to which he is entitled under the Act while safeguarding the rights of the decree-holder as against those judgment-debtors who are not entitled to the benefits of the Act. 52 L.W. 842: 1940 M.W.N. 1218: I.L.R. (1941) M. 336: 1941 M. 204: (1940) 2 M.L.J. 872. *see also* 1940 M. 61; (1939) 2 M.L.J. 225; 1943 Mad. 134: (1943) 1 M.L.J. 137.

Applicability of sections 120 and 121, Negotiable Instruments Act to proceedings under section 19 of this Act, *see* (1939) 2 M.L.J. 658.

NECESSITY TO GIVE NOTICE TO PUISNE MORTGAGEE.—Even in respect of a sale of mortgaged properties after 1st October, 1937, it is not enough that the judgment-debtor is the owner of the mortgaged properties to entitle him to the benefit of sections 19 and 23 of the Act. It must be shown that at the date of his application the judgment-debtor was possessed of other lands to entitle him to be deemed an 'agriculturist' within the meaning of the Act. Under the proviso to section 23 notice to the puisne mortgagee is necessary and if he is not impleaded and notice has gone only to the decree-holder auction-purchaser, the terms of the proviso are not complied with. 52 L.W. 836: 1940 M.W.N. 1257: (1940) 2 M.L.J. 943: 1941 Mad. 205.

PURCHASER OF EQUITY OF REDEMPTION IN EXECUTION SALE.—The purchaser of the equity of redemption in mortgaged property at a sale in execution of a money decree against the mortgagor is a person liable to pay the mortgage debt and is entitled to apply to have the mortgage decree scaled down under section 19 of Act IV of 1938. The liability of such a purchaser is a "debt" within the meaning of the Act. It is immaterial whether or not the debtor had the agriculturist character when the debt was originally incurred, where it was incurred prior to 1st October, 1937. 52 L.W. 819: 1940 M.W.N. 1247: (1940) 2 M.L.J. 887: 1941 M. 158; *see also* (1938) 2 M.L.J. 1068; (1940) 2 M.L.J. 317.

FINAL DECREE IN MORTGAGE SUIT—PRIVATE SALE OF PART OF HYPOTHECA—APPLICATION BY MORTGAGOR TO SCALE DOWN.—After a final decree in a suit on a mortgage some of the mortgaged items of property were sold privately on 9—10—1937 and the vendee was directed to pay the amount to the mortgagee. He paid

a portion, retaining the balance for future payment. The debtor applied for entering up satisfaction on the ground that more than twice the amount of the principal and the costs had been paid. The creditor applied to have the purchaser impleaded as a party to the final decree and opposed the debtor's application on the ground that it should not enure to the benefit of the purchaser who was not an agriculturist. *Held*, (1) that the purchaser could not be impleaded as he had no separate rights to agitate in the execution of the decree; (2) that he was not a party to the decree and the scaling down could not be restricted to the judgment-debtor agriculturist's interest in the property in his possession inasmuch as that would result in the splitting up of the decree against the only party to the decree; (3) that there was no decree against two persons, one an agriculturist and the other a non-agriculturist, but the decree was only against one person, the mortgagor. 200 I.C. 388: 53 L. W. 162: 1941 M.W.N. 284: A.I.R. 1941 Mad. 497: (1941) 1 M.L.J. 223.

EFFECT OF SCALING DOWN OF DEBT.—When an agriculturist mortgagor obtains the benefit of the Act and pays the amount of the debt as scaled down, the entire mortgage debt is discharged against all persons interested in the security even though such persons may not be agriculturists entitled to claim relief in their own right under the Act. 59 L.W. 710: (1946) 2 M.L.J. 429: 1945 Mad. 225.

APPLICATION UNDER SECTION 19 AFTER EXECUTION SALE—SUBSEQUENT APPLICATION TO SET ASIDE SALE AND DEPOSIT UNDER O. 21, R. 89, CIVIL PROCEDURE CODE.—A judgment-debtor is entitled to apply for relief under section 19 of Madras Act IV of 1938 so long as the decree continues to subsist except in the circumstances contemplated in section 20 of the Act; and he is equally entitled to avert a sale of his property by making a deposit under O. 21, R. 89, Civil Procedure Code, before the sale is confirmed. Where, pending an application for scaling down a decree debt after a sale in execution has taken place, the debtor deposits the decretal amount under O. 21, R. 89, Civil Procedure Code, to get the sale set aside, and ultimately, as a result of the scaling down, the decree debt is found discharged, satisfaction of the decree can be entered up, and the deposit returned to the debtor. 202 I.C. 94: 15 R.M. 444: 55 L.W. 260: 1942 M.W.N. 333: A.I.R. 1942 Mad. 453: (1942) 1 M.L.J. 500. *See also* (1945) 2 M.L.J. 255; (1941) 2 M.L.J. 682.

SCOPE OF SECTION—If controls O. 21, R. 89—Deposit under O. 21, R. 89 to set aside sale—Reduction of amount of decree by scaling down—Right of decree-holder to claim full deposit on ground of deposit being unconditional. *See* (1945) 2 M.L.J. 255, *See also* (1942) 1 M.L.J. 500.

CIVIL PROCEDURE CODE, O. 21, R. 90.—In the case of a sale in execution to a decree-holder who has been permitted to bid and set-off the sale price, the decree is not satisfied until the sale is confirmed. Where the confirmation of a sale held before 1st October, 1937, is held up owing to the pendency of an application to set it aside under O. 21, R. 90, Civil Procedure Code, the decree still subsists and the judgment-debtor is therefore entitled to ask the Court to scale down the decree under section 19 of Madras Act IV of 1938. 201 I.C. 229: A.I.R. 1942 Mad. 119: 54 L W. 503: 1941 M.W.N. 941: (1941) 2 M.L.J. 682: (1942) 2 M.L.J. 500: 1942 M. 727: (1942) 2 M.L.J. 311.

SALE IN EXECUTION UNDER MORTGAGE DECREE.—Pending confirmation of sale puisne mortgagee applying under section 19 and alleging certain adjustments before sale, but not certified—Setting aside sale—Material irregularity—Civil Procedure Code, O. 21, R. 90. 1943 M. 134: 55 L.W. 812: 1942 M.W.N. 736.

SECTIONS 19 & 20—HINDU JOINT FAMILY—SUCCESSIVE APPLICATIONS BY DIFFERENT INDIVIDUAL MEMBERS—COMPETENCY.—Any member of a Hindu joint family may apply for stay and scaling down a debt. But every member of the family in succession is not entitled to so apply and obtain stay. The joint family is obviously bound by an order passed on an application filed by any member or by any default committed by any member. I.L.R. (1939) Mad. 530: 183 I.C. 865: 12 R.M. 388: 49 L.W. 620: 1939 M.W.N. 441: A.I.R. 1939 Mad. 500: (1939) 1 M.L.J. 888; (1940) 1 M.L.J. 300.

Sections 19, 20—Retrospective effect—(Madras Merged States (Laws) Act (35 of 1949), section 6—(Madras General Clauses Act (1 of 1891), section 8)—(General Clauses Act (1897), section 6).

Decree in 1945—Plea that defendants were entitled to relief under provisions of Pudukottai Agriculturists Relief Regulation (15 of 1938) rejected and defendants held not to be Agriculturists—Application under section 20 of Madras Agriculturists Relief Act for stay of execution proceedings to enable defendant to file application under section 19 of the Act—Held that the Madras Agriculturists Relief Act IV of 1938 which came into force in the territory of Pudukottai on 1st January, 1950, was applicable to this case, and the application made by appellant under section 20 of that Act must have been granted. A. I. R. 1937 Mad. 232 (F. B.) and A. I. R. 1449 F. C. 105, Foll. ALAGAPPA CHETTIAR v. NACHIAPPA CHETTIAR. (1953) 2 M. L. J. 298: 1953 Mad. W. N. 479: I. L. R. (1953) Mad. 996: 66 Mad. L. W. 1066, A. I. R: 1953 Mad. 810 (D. B.).

HINDU FATHER—DECREE AGAINST, IN RESPECT OF LIABILITY ENFORCEABLE AGAINST FAMILY PROPERTY—RIGHT OF SON TO APPLY.

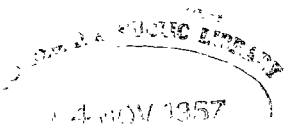
A decree passed against a Hindu father in respect of a family liability, that is to say, a liability enforceable against the family property, must be deemed in law to be a decree passed against his son also. The son must be regarded as virtually party to it, though not by name, as he must be regarded as a person by whom the debt is payable as well as by his father, and the son is therefore a debtor who is entitled to maintain an application under section 20. 50 L. W. 636: 1939 M. W. N. 1077: (1939) 2 M. L. J. 745: 1940 M. 95.

A "debt" in the Madras Agriculturists Relief Act cannot be restricted to cases where a person is personally liable; it is wide enough to cover the case of every person who is in any manner liable either because he is personally liable or because he is liable on account of possession of property, and takes in his heirs, legal representatives or assigns. The definition of "debt" under the Act would include a liability to make restitution. Where there is a liability on the part of a Hindu father to make restitution and pay certain amounts, which is made a charge on his joint family property, his son who takes that property as the result of a partition between him and his father would be a "debtor" and be entitled to apply under section 20 of the Act. It cannot be said that because the son is not personally liable to pay the amount charged on the property falling to his share, he is not a debtor or that there is no debt which would entitle him to apply. 50 L. W. 636: (1939) 2 M. L. J. 745.

SECTIONS 19 AND 20—(AS AMENDED BY ACT 23 OF 1948)—SUCCESSIVE APPLICATIONS—MAINTAINABILITY.

A judgment-debtor would not have a right to file successive applications under section 20 or section 19 of the Madras Agriculturists Relief Act if the reliefs which he claims as being entitled to are the same in the several applications. But if a subsequent application is based upon a provision of law not in existence at the time of a prior application of his he will not be debarred from filing the later application simply because he had filed a prior application when the state of law did not entitle him to the relief to which he became entitled by a subsequent change in the law. Where the judgment-debtor alleges that he has become entitled to relief under the provisions of the Amending Act XXIII of 1948—relief which was not available to him before the amendment, a prior application under section 20 filed in 1946 will not be a bar to a fresh application under that section after the Amending Act came into force. NARAYANAN CHETTIAR v. RATHINASAMI PADAYACHI. 1952 M. W. N. 981: 66 L. W. 44: (1952) 2 M. L. J. 859.

SECTION 19—*Mortgage decree scaled down before Madras Act (XXIII of 1948) (Amending Act) came into force—Second application for scaling down after Amending Act—If maintainable.*



After an application under section 19 of the Madras Act (1938), has been taken, heard and decided finally, it is not open to the judgment-debtor to file a similar application again, for taking advantage of certain amendments in the method of scaling down introduced later by the Amending Act (XXIII of 1948). Neither section 16 of the Amending Act nor Explanation 1 to section 8 of Act IV of 1938 (as amended) gives retrospective operation to matters which have been decided prior to the date of the amendment. JAGANNATHAM CHETTY v. PARTHASARATHY IYENGAR. (1952) 2 M. L. J. 430.

MORTGAGE DECREE AGAINST JOINT FAMILY—SUBSEQUENTLY BORN MEMBER OF THE FAMILY CAN APPLY UNDER SECTION 20—A member of a Hindu joint family petitioned the Court under section 20, Madras Agriculturists Relief Act, and the lower Court dismissed the application on the ground that the petitioner not having been born when the mortgage decree in question was passed, he could not maintain an application under section 20 of the Act. In revision, *Held*, that section 20 is ancillary in section 19 of the Act and that being so the expression "on application" should be construed as meaning "on an application by a person entitled to the benefits of section 19." Therefore the petitioner's application was maintainable. (1948) 2 M. L. J. 164.

Decree debt due by joint family—Any member can apply for scaling down—Mortgage debt due by joint family—Scaling down need not be confined with reference to agricultural lands only included in the mortgage. 1940 M. 435: 51 L.W. 269: (1940) 1 M.L.J. 300: 1940 M. W. N. 283.

PARTNERSHIP—DEBT DUE BY.—A debt incurred by a partnership is really a debt incurred by the partners for which each of them is liable. And, if a partner who is, by a decree of Court, made personally liable for the debt of the firm, is an agriculturist, he is entitled to apply under sections 19 and 20 for scaling down the debt. 199 I. C 436: 53 L. W. 497: 1941 M. W. N. 570: A. I. R. 1941 Mad. 611; (1941) 1 M. L. J. 609.

CROSS DECREES—PROCEEDINGS UNDER SECTIONS 19 AND 20.—If bar to power of executing Court under O. 21, R. 18 and adjusting cross-decree. *See* (1944) 1 M. L. J. 136.

JURISDICTION—DECREE BY COURT OUTSIDE MADRAS PROVINCE—IF CAN BE SCALED DOWN.—Interest payable under a decree passed by a Court in the Bombay Presidency, but transferred for execution to a Court in the Province of Madras, is not liable to be scaled down under Madras Act IV of 1938, because section 19 of the Act does not apply to a Court outside the province of Madras. 200 I. C. 503: 54 L. W. 178: 1941 M. W. N. 961: A. I. R. 1941 Mad. 810: (1941) 2 M. L. J. 295. *See also* 1943 M. 330; (1943) 1 M. L. J. 32.

APPLICABILITY—COURTS IN ORISSA.—Section 19 has no application to Courts in Orissa; no provision of the Act is applicable to any Court situated outside the Province of Madras. 23 Pat. 446: 25 P. L. T. 108: 219 I. C. 107: 10 Cut. L. T. 41: A. I. R. 1944 Pat. 309. *See also* notes under section 1, *supra.*

Scaling down—Forum.—Even where an appellate Court has either confirmed or modified a decree of the trial Court, still the Court to which an application under section 19 has to be made is the Court of first instance which passed the decree. A. I. R. 1939 Mad. 483: (1939) 1 M. L. J. 329. Rel. on. LINGAPPA CHETTIAR v. CHINNASWAMI NAIDU, 1954 M. W. N. 897: (1955) 1 M. L. J. 1 (D. B.).

DEGREE OF PRIVY COUNCIL—IF CAN BE SCALED DOWN.—In dealing with Privy Council decrees, royal prerogative cannot be said to be affected by the Proviso to section 19. 1941 M. 817: (1941) 2 M. L. J. 125:54 L. W. 107.

DECREE IN PRIVY COUNCIL APPEAL—IF CAN BE SCALED DOWN.—It cannot be held that the Privy Council is not a "Court" and that its decision is not a decree properly so called falling within the purview of Madras Act IV of 1938. Section 19 applies to the decree made by the Privy Council in appeal from decisions of Courts in Madras. The Privy Council is not a foreign Court or tribunal so as to make the section inapplicable to a decree passed on an appeal to the Privy Council taken from the province of Madras. The application to scale down such a decree has to be made to the Court of first instance, *i.e.*, a Court of this Province (Madras). I.L.R. (1941) Mad. 60: 200 I.C. 520: 15 R.M. 69: 54 L.W. 107: 1941 M.W.N. 741: 4 F.L.J. (H.C.) 280: A.I.R. 1941 Mad. 817: (1941) 2 M.L.J. 125.

DECREE FOR ARREARS OF RENT AND COSTS.—Part payment—Sale for the balance—Act taking effect subsequent to sale—Application to scale down—Maintainability—Rent constitutes 'debt'—Scaling down regarding costs of suit. *See* A.I.R. 1947 Mad. 208. *See also (1940) 2 M.L.J. 825: 1941 Mad. 116.*

Section 19 (1)—Interpretation—Whether applicant under section 19-A should also prove that he was an agriculturist on date of application. *See* 1955 Andhra W.R. 70.

Pro-note for arrears of rent—Decree—Procedure for scaling down—If decree for rent or for debt. (1940) 2 M.L.J. 825; *see also* 1947 Mad. 208; (1946) 2 M.L.J. 266.

Decree for rent by Civil Court—Procedure for scaling down—Application to Revenue Court under section 15 (4)—Propriety. *See* (1941) 2 M.L.J. 655.

UNCERTIFIED PAYMENT—IF CAN BE TAKEN INTO ACCOUNT.—If for the purpose of scaling down a debt embodied in a decree the Court finds it necessary to ascertain what payments have been made towards the decree in question, the bar in O. 21, R. 2, Civil Procedure Code, would not prohibit the proof of payments which have not been certified. I.L.R. (1943) Mad. 138: 203 I.C. 481: 1942 M.W.N. 494: 55 L.W. 491: A.I.R. 1942 Mad. 597; (1942) 2 M.L.J. 185.

PROCEEDINGS UNDER SECTION 19—IF PROCEEDINGS IN SUIT OR SEPARATE PROCEEDINGS.—Though the initial stages of a proceeding under section 19 of the Act may properly be regarded as proceedings outside the suit and not in any way ancillary to the decree, when once it has been decided to re-open the suit and to give effect to the defence under Act IV of 1938 so as to pass an amended decree, these later stages of the proceedings may properly be regarded as proceedings in the suit resulting in a decree in the suit, and the party who is dissatisfied with such an amended decree can properly file a new trial application under section 38 of the Presidency Small Cause Courts Act notwithstanding that the original suit was uncontested. 202 I.C. 771: 55 L.W. 73: 1942 M.W.N. 110: A.I.R. 1942 Mad. 610: (1942) 1 M.L.J. 213.

APPLICATION UNDER SECTION 19—IF ONE IN EXECUTION.—Petitions under section 19 of the Act are independent proceedings and not proceedings in execution. 23 Pat. 446: 219 I.C. 107: 11 B.R. 351: 25 P.L.T. 108: 10 Cut. L.T. 41: A.I.R. 1944 Pat. 309. *See also* 50 L.W. 537: (1939) 2 M.L.J. 609: 1939 M.W.N. 1160.

A proceeding under section 19 is not a proceeding in execution, but is a new statutory remedy, whereby the decree originally passed is modified on certain principles. 1942 M. 610: (1942) 1 M.L.J. 213.

Section 19 (1) and (2)—Applicability—Decree before Act IV of 1938—Execution not taken out—Scaling down—Madras Agriculturists Relief Amendment Act (XXIII of 1948), section 16.

Under sub-section (1) of the section 19, it is open to the agriculturist to apply for the scaling down of a decree which had been passed before the commencement of the Act and there is no difficulty or ambiguity in holding that this beneficent provision can be availed of by an agriculturist who has defaulted in taking advantage of it at the time of the passing of the decree even after the commencement of Act IV of 1938, *viz.*, 22nd March, 1938.

The words "commencement of this Act" in sub-section (2) refer to the commencement of Act IV of 1938, *viz.*, 22nd March, 1938 and not to the commencement of Act XXIII of 1948,

which engrafted sub-section. (2) to section 19, *viz.*, 25th January, 1949. Section 16 of Madras Act XXIII of 1948 has not been incorporated into Madras Act IV of 1938, but is now on the statute book as a separate provision which enables the interpretation of those provisions of Act XXIII of 1948 which have been engrafted in various places and dovetailed in other places in the Parent Act, Madras Act IV of 1938. Therefore, in clause (*iii*) of section 16 of Act XXIII of 1948 the words "commencement of this Act" would mean the commencement of Act XXIII of 1948, *viz.*, 25th January, 1949.

Where the decree in the case had been passed prior to the 25th January, 1949, but the same has not been executed or satisfied in full before that date, the judgment-debtor is entitled to apply under sub-section (2) of section 19. A. I. R. 1952 Mad. 591 : (1952) 1 M.L.J. 264 (F. B.), relied on. A. I. R. 1953 Mad. 914 : (1953) 2 M. L. J. 174, not followed. LINGAPPA CHETTIAR *v.* CHINNASWAMI NAIDU. (1955) 1 M.L.J. 1 : 1954 M.W.N. 897.

PRACTICE AND PROCEDURE—APPLICATION UNDER SECTION 19 TO APPELLATE COURT—IF ORIGINAL MATTER—RETURN OF PETITION FOR PRESENTATION TO PROPER COURT.—An application under section 19 for scaling down a decree passed by an appellate Court was dismissed on the ground that the application ought to have been presented to the Court of first instance. In revision, *held*, that the nature of an application under section 19 of the Act was akin to an original petition and therefore O. 7, R. 10, which applies to a plaint in a suit, applies equally to such an application by force of section 141, Civil Procedure Code, and the application ought to have been returned for presentation to the proper Court. (5 M. L. J. 3 : 22 I. A. 44 and 50 M. L. J. 75 Ref.) 52 L. W. 846 ; 1940 M. W. N. 1258 : (1940) 2 M. L. J. 940 : 1941 Mad. 362.

Decree of trial Court superseded by appellate decree—Application for scaling down decree—Forum—Benefit of section 14, Limitation Act. (1944) 2 M. L. J. 338 ; 57 L. W. 582 : 1945 M. 96.

Act coming into force during pendency of appeal—Application under section 19, when should be made. 1943 M. 160 : 1942 M. W. N. 681 : 55 L. W. 840 : (1942) 2 M. L. J. 599.

Judgment on appeal by High Court—Practice of remitting subsequently filed application for scaling down to lower Court for enquiry and report—Court drawing report in accordance with that report—Procedure not valid. 1941 Mad. 929 : 54 L. W. 627 : I. L. R. 1942 Mad. 346 : (1941) 2 M. L. J. 855.

"JUDGMENT-DEBTORS," WHO ARE—RIGHT TO APPLY.—Purchaser of equity of redemption from Official Receiver in insolvency of judgment-debtor—Whether judgment-debtor competent to apply. 191 I. C. 744. *See also* (1944) 1 M. L. J. 38.

Vendee of hypotheca impleaded as party—If judgment-debtor under decree in suit—Right to apply for scaling down. *See* 54 L. W. 240.

"Judgment-debtor"—Official Receiver in insolvency of debtor—Right to apply and to appeal. *See* (1944) 1 M. L. J. 38. *See also* (1943) 1 M. L. J. 411. Insolvent after declaration of dividend.

Section 19 (2)—*Ordinance X of* 1945—*Scaling down of promissory note—After final decree Ordinance has no application—Nor will amendment act retrospectively and apply to a final decree.*

The Provincial Debt Laws Temporary Validation Ordinance, Ordinance No. X of 1945 will not enable the judgment-debtor to obtain relief under the provisions of the Madras Agriculturists Relief Act (IV of 1938).

Where after a decree was passed after the coming into force of Madras Act IV of 1938 on a promissory note without scaling down and at the time of execution the judgment-debtor applied in the execution proceedings to have the debt scaled down on the ground of Ordinance X of 1945 and also under section 19 (2) of the Amendment Act of 1948:

Held, that (1) the Ordinance will have no application as clause (*a*) of the Ordinance cannot have the effect of opening the decree passed. Nor could clause (*b*) be applicable as it will not apply to such a case as this.

(2) That section 19 (2) which had been added by the Amendment Act (XXIII of 1948) cannot apply as by reason of section 16 of the Act its retrospective applicability is confined only to a decree not become final. Hence it will not apply to this case where the decree has become final. PUNITHAVALLI AMMAL *v.* CHIDAMBARA MUDALIAR. 65 L. W. 33: (1952) 2 M. L. J. 71.

Where a decree is passed in favour of the Karta of a joint Hindu family, after partition, as to whether it can be executed by other members of the family, *see* (1950) 2 M. L. J. 155.

Section 19 (2)—"After the commencement of the Act"—Interpretation of.

The expression 'after the commencement of this Act' in sub-section (2) of section 19 as added by the Amending Act XXIII of 1948 only means after the commencement of the main Act IV of 1948 and not the Amending Act of 1948. And as the reference to the 'Act' in sub-section (2) is only to the main Act, the debts contracted after the commencement of the main Act do not attract the provisions of sub-section (2) of section 19. BATCHU CHINNA

VENKATARAYUDU *v.* PERURI SEETHARATHAMMA. (1954) 2 M. L. J. (Andhra) 15: 1954 M. W. N. 623: 1954 Andhra L. J. (W.) H. C. 34.

Usufructuary mortgage—Preliminary decree for redemption in 1944—Application for scaling down under section 9-A, inserted by Madras Act, XXIII of 1948—Maintainability. *See* DEBT LAWS —MADRAS AGRICULTURISTS RELIEF Act (IV OF 1938), section 3 (iii). (1955) 1 M. L. J. 215.

Section 19 (2)—Retrospective operation—(Civil Procedure Code. (1908), section 11)—(Debt laws—Madras Agriculturists Relief (Amendment) Act (23 of 1948), section 16).

Retrospective operation of section 19 (2) is controlled by section 16 of Act 23 of 1948 which came into operation on 25-1-1949. No final decree in appeal, pending on that date, passed till 9-3-1951. Hence section 16 (2) of the Act of 1948 applies to the case and debtor could and should have raised the plea that he is entitled to relief under Madras Agriculturists Relief Act in the appeal itself. A debtor who had opportunity to file an additional written statement and did so, claiming certain other relief, not asking for relief under section 19 (2) of the Act—*Held*, his subsequent application was barred by *res judicata*. I. L. R. (1942) Mad. 346 (F. B.); (1952) 1 M.L.J. 264 Rel. on. NARAYANA CHETTIAR v. ANNAMALAI CHETTIAR. (1953) 2 M. L. J. 174: 1953 M. W. N. 513: A. I. R. 1953 Mad. 314.

PUISNE MORTGAGEE.—Where in execution of a final decree passed in 1919 in a suit on a mortgage of 1913, a sale is held and the properties are sold in 1939 without applying the provisions of 1938, the mere holding of the sale without first applying the provisions of Madras Act IV of 1938 in favour of a person interested in the hypotheca would not amount to a material irrregularity such as would justify the setting aside of the sale at the instance of a puisne mortgagee who became a mortgagee in April, 1937, when there was no application filed or pending under Act IV of 1938 at the time of the sale, and when it is not clear that the decree-holder brought the properties to sale with the knowledge that the puisne mortgagee was entitled to the benefits of the Act. But such a puisne mortgagee having, by reason of his mortgage, acquired before 1—10—1937, an interest in property bound by the mortgage decree, and having therefore become liable to discharge the debt decreed, must be deemed to be a judgment-debtor entitled to apply under section 19 to scale down the decree if he is an agriculturist. 207 I. C. 438: 1942 M.W.N. 736: 55 L. W. 812: A. I. R. 1943 Mad. 134: (1943) 1 M. L. J. 137. *See also* (1940) 2 M. L. J. 872; 1940 Mad. 61; (1943) 1 M. L. J. 137; (1939) 2 M.L.J. 225; 1941 M. 113: 52 L. W. 481.

SURETY FOR DEFENDANT—LIABILITY OF—APPLICATION TO SCALE DOWN DECREE.—A person executing a surety bond undertaking to satisfy a decree which might be passed against a defendant can be deemed to be a judgment-debtor entitled to scale down the decree which might ultimately be passed by the procedure laid down in section 19 of the Act. Such a surety is, for the purposes of execution, in the position of a judgment-debtor and he should be given the benefit of the procedure laid down in section 19 to the limited extent of the reduction or scaling down of interest under the decree with reference to the appropriate section of the Act, having regard to the date on which the liability of the surety himself was incurred. 1942 M. W. N. 61 : 54 L. W. 699 : A. I. R. 1942 Mad. 149 : (1941) 2 M. L. J. 1010.

CO-JUDGMENT-DEBTORS.—*See* 1941 Mad. 556 : (1941) 1 M. L. J. 218.

MORTGAGE DECREE—ALL MORTGAGORS AGRICULTUISTS—APPLICATION FOR SCALING BY ALL EXCEPT ONE.—In a suit by the mortgagee, the mortgage was held binding on all the defendants and while scaling down was not ordered with reference to the 1st defendant (though he was an agriculturist) as he made no application for scaling down of the decree when the the Act came into force, scaling down was ordered so far as the other defendants were concerned, as they had made the necessary applications. In the decree passed there was no specification of the different interests in the hypotheca of the several defendants. Thereafter applications were made by the first defendant for amendment of the decree under section 19 of the Madras Agriculturists Relief Act. It was dismissed as also his application for permitting him to file an application to have the decree scaled down as against him also. A revised final decree was passed as no payment under the preliminary decree was made, 'that the mortgaged property in the aforesaid preliminary decree mentioned or sufficient part thereof be sold.' The other defendants made certain payments towards the decree, when it was put into execution. Then the first defendant deposited an amount equal to the difference between the amount of the scaled down decree against the other defendants and the payments made by them and prayed that the deposit should be accepted and full satisfaction entered up and the entire hypotheca released from the mortgage.

On a question whether the first defendant was entitled to ask for those reliefs, notwithstanding that so far as he was concerned the decree was not scaled down under the Act :

Held, (*i*) As the defendants other than the first defendant could, by payment of the scaled down amount, get the property freed from the burden of the mortgage on the principle of unity and

indivisibility of the mortgage and by the terms of the decree, and as the decree-holder could sell the mortgage security only for the reduced amount, there was no reason for holding that further execution of the mortgage decree could not be resisted by the first defendant by payment of what still remained due out of the amount to which the decree was scaled down.

(*ii*) As the decree was scaled down at the instance of all the mortgagors but one and in view of the restrictions imposed on the mortgagee's rights permitting him to proceed against the mortgage security only for the scaled down amount there was no logic in refusing to allow the remaining judgment-debtor alone to deposit the balance due and thereby resist the execution of the mortgage decree for anything more than the scaled down amount.

(*iii*) The first defendant was also not precluded from claiming the relief by reason of anything which happened in the course of execution proceedings. 1948 M. W. N. 393: (1948) 2 M. L. J. 28.

CO-JUDGMENT-DEBTORS—JOINDER OF PARTIES.—There is nothing in section 19 or section 20 which compels all co-judgment-debtors who have claims as agriculturists to join in an application for stay or for scaling down filed by any other judgment-debtor. 53 L. W. 158: 1941 M. W. N. 204 (1): A. I. R. 1941 Mad. 556: (1941) 1 M. L. J. 218.

The following persons are also entitled to apply under the section:

(1) Purchaser of equity of redemption in execution sale. (1940) 2 M.L.J. 887: 1941 M. 158; 1941 M. W. N. 804: 1941 Mad. 889.

(2) Judgment-debtor after sale of property when application to set aside sale under Civil Procedure Code, O. 21, R. 90 is pending. (1941) 2 M. L. J. 682.

(3) Member of joint Hindu family in respect of a decree debt against the joint family. (1939) 2 M. L. J. 745: 1940 M. 95; (1939) 1 M. L. J. 888; 1939 M. 500; (1939) 2 M. L. J. 745; (1948) 2 M. L. J. 164.

(4) Partner in respect of Partnership debt. (1941) 1 M. L. J. 609.

(5) Official Receiver. 1944 Mad. 256.

As to who can apply under the section. *See also* 1943 M. 469: 56 L. W. 132: (1943) 1 M. L. J. 211: 1943 M. W. N. 705.

PURCHASER OF PROPERTY MORTGAGED—Where both the mortgagor and the purchaser of the hypotheca are agriculturists, the purchaser can claim to have the debt scaled down on the basis, that the debt was a renewal of the previous debt. 1941 M. 62: (1940) 2 M. L. J. 685: 52 L. W. 607: 1940 M. W. N. 1081.

Vendee of hypotheca impleaded in mortgage suit is a judgment-debtor and can apply under section 19. 1941 Mad. 889: 54 L. W. 240: 1941 M. W. N. 804.

Property bound by mortgage decree at time of passing of the Act—Purchaser in May, 1940, of property bound by decree cannot apply for scaling down decree. 1944 M. 128: 56 L.W. 692: (1943) 2 M. L. J. 531.

Purchaser of equity of redemption executing pro-note in favour of mortgagee to satisfy mortgage—Note, whether renewal of pre-existing liability—Scaling down of debt—Procedure. 1941 M. 59: 52 L. W. 582: (1940) 2 M. L. J. 651: 1940 M.W.N. 1042.

EFFECT OF AGREEMENT TO SELL ON STATUS OF AGRICULTURIST.—*See* 1943 Mad. 711: (1943) 2 M. L. J. 285.

COMPROMISE DECREE—SCALING DOWN—BURDEN OF PROOF—Where, in a suit on a mortgage, a compromise decree is passed under which the parties agree to pay and receive a lump sum in discharge of the claim and of the amount of the costs, and there is nothing to show that the claim for costs was waived, it is incumbent on the debtor who applies to scale down the debt to prove the extent to which interest is available for cancellation and the extent to which the compromise decree can be deemed to be a renewal of the antecedent liability. 1945 M. W. N. 489: A.I.R. 1946 Mad. 161: (1945) 2 M. L. J. 135: 1940 M. 925: (1940) 2 M. L. J. 470. As to costs and interest on costs. *See also* 1944 M. 70: 56 L.W. 604.

APPROPRIATION OF PAYMENTS.—*See* 1941 M. 403: 53 L. W. 24: (1941) 1 M. L. J. 9: 1941 M.W.N. 326.

PAYMENT MADE PENDING SUIT—APPROPRIATION IN DECREE BEFORE 1ST OCTOBER, 1937, TOWARDS INTEREST WITHOUT OBJECTION—RE-APPROPRIATION.—There is no provision in Madras Act IV of 1938 for re-appropriation of payments made before 1st October, 1937, excepting the proviso to section 19, which deals with payments made under a decree. Where, pending a suit on a mortgage, the defendant makes a payment which is appropriated in the decree (dated 3—10—1936) to the interest due on the mortgage without objection, it is not open to the defendant to urge in second appeal that the payment should be appropriated towards the principal. The appropriation made by the Court is just as binding on the parties who do not object to it as if it were made by one of the

parties before the decree was drafted. There is nothing in the Act which permits the re-opening of such an appropriation which is not in respect of a payment made under the decree. 204 I. C. 373 : 1942 M. W. N. 790 : 55 L.W. 607 : A. I. R. 1942 Mad. 729 : (1942) 2 M. L. J. 424.

POWER TO SCALE DOWN DECREE PASSED BY APPELLATE COURT—JURISDICTION OF TRIAL COURT.—A trial Court has power under section 19 to scale down a decree passed by an appellate Court. 52 L. W. 481 : 1940 M.W.N. 1010 : (1940) 2 M. L. J. 513 : I. L. R. (1941) Mad. 53 : 1941 M. 113. But *see also* (1944) 2 M. L. J. 388; (1940) 2 M.L.J. 473 : 52 L.W. 413 : 1940 M. 959 ; (1942) 2 M. L. J. 599 : 1943 M. 160.

Sections 19 and 20 should be read together ; the explanation of the expression "Court which passed the decree" in section 20 of that Act equally applies to section 19. The Court of first instance whose decree has been confirmed on appeal has clearly jurisdiction to entertain and deal with an application under section 19 of the Act to scale down the decree debt and to amend the decree accordingly, and the application can properly be made to that Court. I.L.R. (1939) Mad. 520 : 183 I.C. 596 : 12 R. M. 329 : 49 L. W. 303 : 1939 M. W. N. 164 : A.I.R. 1939 Mad. 483 : (1939) 1 M.L.J. 329. *See also* 1941 Mad. 76.

It is well settled that where the trial Court's decree has been superseded by an appellate decree passed after Madras Act IV of 1938 came into force, no application under section 19 of that Act will lie to the trial Court to scale down the trial Court's decree even though the debtor seeking relief had no notice of the appeal. In such a case the mere fact that the judgment-debtors erroneously prosecuted proceedings in the wrong Court (in the trial Court) for scaling down the decree debt would not be a ground for the application of section 14, Limitation Act, so as to entitle them to move the appellate Court afterwards for scaling down the decree debt by applying for rehearing of the appeal out of time. The words "the same relief", in section 14, Limitation Act, have reference to the precise relief sought and cannot be construed in a liberal sense so as to look to the ultimate object with which that relief is sought. 57 L. W. 582 : 1945 M. W. N. 20 : A. I. R. 1945 Mad. 86 : (1944) 2 M. L. J. 338. *See also* (1943) 1 M. L. J. 32; (1943) 2 M. L. J. 135,

Under section 19 of Madras Act, IV of 1938, it is the Court which passed the decree which has jurisdiction to amend it. This rule applies even if the Small Cause Court which passed the decree has a lower pecuniary jurisdiction at the time of the scaling down petition than it had at the time of the decree. The jurisdiction is

conferred solely by section 19 of the Act which does not impose any pecuniary limitation. C. R. P. 707 of 1939 : (1940) 2 M. L. J. (Short Notes), p. 23.

Where a liability is being declared in the appellate Court's decree for the first time, and a plea is open to the defendant under the Madras Agriculturists Relief Act, there should be a written application raising the plea before the appellate Court, and on such application the appellate Court should either give its own decision or reserve in its decree the right to have the matter decided by the Court below. In the absence of such application and reservation by the appellate Court in its decree though the judgment provides for it, the proper procedure is for the debtor to apply to the appellate Court for amendment of the decree in accordance with the judgment and then to apply for scaling down. 1940 M. W. N. 947 : 52 L.W. 413 : A. I. R. 1940 Mad. 959 : (1940) 2 M.L.J. 473. *See also* (1941) 2. M. L. J. 338; 1941 M. 929 : (1941) 2 M. L. J. 858.

SECOND APPEAL PENDING AT TIME OF COMING INTO FORCE OF ACT—DISMISSAL SUBSEQUENTLY—APPLICATION TO SCALE DOWN DECREE TO TRIAL COURT.—Where a decree has been the subject-matter of an appeal, the decree of the appellate court supersedes the decree of the Court below, even though the appellate decree is one of affirmance of the decree of the Court below, and does not reverse or modify it. It makes no difference to this principle whether the particular defendant affected was or was not a respondent in the appeal. Where a second appeal pending at the time when Madras Act IV of 1938 came into force is subsequently dismissed and the trial Court's decree is thereby confirmed, and an application is made under section 19 of the Act for scaling down the decree by a person who was a party to the suit but not a party to the appeal and second appeal, it cannot be entertained. The only decree to be executed being the appellate decree the trial Court has no longer any jurisdiction to alter the superseded decree under section 19. Nor can the High Court alter its own decree under section 19, as that section applies only to to decree passed before the commencement of the Act. If a party is entitled to any benefit under the Act which came into force during the pendency of the appeal, it is his duty to get himself impleaded in the pending appeal and ask for that relief before the appellate decree is passed. 207 I. C. 621 : 1942 M.W.N. 681 : 55 L.W. 840 : A. I. R. 1943 Mad. 160 : (1942) 2 M. L. J. 599. *See also* 1941 Mad. 158.

APPEAL.—[*See* now section 25-A newly added by Amending Act of 1943]. Orders under section 19 cannot be deemed to be orders under section 47, Civil Procedure Code, even when execution petitions are pending. An application under section 19 has to be made to the Court which passed the decree and not to the executing

Court. It is not a matter relating to the execution of the decree in any sense. If the decree is scaled down, an appeal will lie from the new decree, 1940 M.W. 290 (1): (1940) 1 M.L.J. 422: 1940 M. 418. *See also* 1941 M. 235: 54 L. W. 178; 1939 M. 483; 50 L. W. 537: (1939) 2 M. L. J. 609; 1943 Mad. 617. *See also* the Rules framed under the Act.

An order dismissing an application made in a suit under section 19 of the Madras Agriculturists Relief Act, on the ground that the judgment-debtor is not an agriculturist, is a decree within the meaning of section 2 (2), Civil Procedure Code, and an appeal lies under section 96, Civil Procedure Code, although the Act does not confer a right of appeal. The true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. 1948 M. W. N. 15: A.I.R. 1948 P. C. 32: (1948) 1 M.L.J. 41 (P.C.) [*See* now section 25-A, *infra*.]

Section 19 has no application to decrees passed after the Act came into force, one reason being that any person who has a contention to urge which will affect such a decree must urge it in the pending proceedings, and if he does not so urge he must be taken to have waived it. There is no reason to apply a different principle to proceedings in appeal of which the affected party has notice. Accordingly where an application to scale down a decree (against which an appeal is pending) is dismissed, and an appeal against such orders of dismissal is not clubbed with the main appeal which is allowed by the debtor to proceed *ex parte*, then after the disposal of the main appeal substituting the appellate decree for the decree sought to be scaled down, the original decree cannot be scaled down and the appeal against the dismissal of the application for scaling down under section 19 becomes infructuous and must be dismissed. 53 L. W. 22: 1941 M. W. N. 51: A. I. R. 1941 Mad. 373: (1941) 1 M.L.J. 6. *See also* (1940) 2 M.L.J. 473; (1940) 1 M. L. J. 600; (1941) 2 M. L. J. 1064: 1942 Mad. 291.

(AS AMENDED IN 1943), Section 19—RIGHT OF APPEAL—RETROSPECTIVE EFFECT OF AMENDING ACT—The amendment to Madras Act IV of 1938, passed by Act XV of 1943 gives a right of appeal against an order under section 19, amending or refusing to amend a decree, or entering or refusing to enter satisfaction in respect of a decree; this amendment has to be deemed to have come into force on 27—10—1936. Any order made after that date is therefore appealable under the Amending Act. 58 L. W. 459: 1945 M.W.N. 675: A. I. R. 1945 Mad. 520: (1945) 2 M. L. J. 255.

Order under section 19—Appeal prior to the new rules—Competency. 194 I. C. 607.

PROCEDURE — APPEAL — ORDER DIRECTING AMENDMENT OF DECREE—IF CAN BE TREATED AS AMENDED DECREE WITHOUT COPY OF ORIGINAL DECREE—APPEAL AGAINST ORDER DIRECTING AMENDMENT—PRODUCTION OF ORDER DIRECTING AMENDMENT ONLY—DISMISSAL ON MERITS — SECOND APPEAL — MAINTAINABILITY—APPEAL—IF CAN BE TREATED AS ONE AGAINST AMENDED DECREE ON PAYMENT OF COURT-FEES.—I.L.R. (1943) Mad. 297: 55 L.W. 668: 1942 M.W.N. 824: A.I.R. 1943 Mad. 185: (1942) 2 M.L.J. 568.

Amendment of decree—Effect of—Amended decree—If old decree or fresh decree—Period of 12 years under Civil Procedure Code, section 48—Computation of. *See* (1943) 2 M.L.J. 358.

REVISION—DECREE AMENDED ON APPEAL — REMEDY — REVISION.—When there is an amended decree as the result of an application under section 19 of the Act, an appeal must be preferred against that amended decree; a revision cannot be entertained. 202 I.C. 380: 55 L.W. 287: A.I.R. 1942 Mad. 519: (1942) 2 M.L.J. 38. *See also* 192 I.C. 896.

Order under section 19—Revision—Provision of right of appeal against such orders by the new rules—If retrospective—Effect on competency of pending revision petitions. 192 I.C. 896.

LIMITATION—PLEA OF LIMITATION—DUTY OF COURT TO DECIDE BEFORE SCALING DOWN.—Madras Act IV of 1938 contemplates relief being granted to agriculturist debtors only in respect of debts which are enforceable in law, and the Court has accordingly to see, before applying the provisions of the Act, whether the decree in question is barred by limitation or not. The view that in a proceeding under section 19 of the Act the Court cannot go into the question whether the decree sought to be scaled down is barred or not cannot be gone into cannot be supported. It is not open to the Court to scale down the decree at the instance of the decree-holder reserving the plea of limitation raised by the judgment-debtor for disposal in other proceedings. 210 I.C. 448: 16 R.M. 438: 1943 M.W.N 524: 56 L.W. 413 (2): A.I.R. 1943 Mad. 657 (2): (1943) 2 M.L.J. 135. *See also* (1944) 2 M.L.J. 338; (1943) 2 M.L.J. 358.

Time expiring on a holiday—Application filed on next day would be in time. *See* I L.R. (1939) M. 886: 49 L.W. 762: 1939 M. 613: (1939) 2 M.L.J. 308.

The order of the District Munsif in disposing of the stay application under section 20 by noting that execution is stayed for two months will not extend the period from 60 days to two months,

within which an application under section 19 may be filed. Such error though a ground for review is not a ground for revision. C.R.P. 1104 of 1939: (1940) 2 M.L.J. (Short Notes) 29.

RES JUDICATA.—Where a presiding Judge decided that there was no vendor's lien in respect of the liability sought to be scaled down and adjourned the application for further enquiry, the succeeding Judge must proceed with the matter where his predecessor left it and cannot re-open the issue and give a contrary finding. (1940) 2 M.L.J. 499. A Court hearing an appeal from a decision on a suit wherein the plaintiff seeks to escape liability from a decree of another Court has no jurisdiction under section 19 or any other section of this Act to scale down the decree which is being attacked at the instance of the plaintiff. 1940 M.W.N. 936: 52 L.W. 385: (1940) 2 M.L.J. 416. *See also* 1941 M. 373: (1941) 1 M.L.J. 6: 53 L.W. 22.

Where in a mortgage suit the preliminary decree was passed before Madras Act IV of 1938 came into force and the final decree is passed after the Act came into force, the omission on the part of the debtor to raise a plea under the Act in the final decree proceedings would not bar the debtor from taking advantage of the special procedure laid down in the Act for scaling down the decree debt. 201 I.C. 721: 55 L.W. 157: 1942 M.W.N. 141: A.I.R. 1942 Mad. 418: (1942) 1 M.L.J. 314. *See also* 1941 Mad. 373: (1941) 1 M.L.J. 6.

In dealing with applications under section 19 the Court is not acting in execution. They are proceedings of an "independent nature". The omission on the part of a judgment-debtor to claim relief under Act IV of 1938, by way of objection in prior execution proceedings does not operate as a bar to his claiming such relief subsequently by means of an application under section 19 of the Act. I.L.R. (1945) Mad. 742: 58 L.W. 193: 1945 M.W.N. 268: A.I.R. 1945 Mad. 342: (1945) 1 M.L.J. 391.

Section 19 of Madras Act IV of 1938 would not apply to a decree passed after the commencement of the Act, whether it be a decree passed by the trial Court in a suit or by an appellate Court in proceedings in appeal of which the affected party has had notice. Whether the decree of the appellate Court is passed in the first instance or in modification or in reversal or confirmation of the decree of the original Court, nevertheless it would be a decree passed after the commencement of the Act, and cannot be amended under section 19 of the Act, although the decree in the suit was passed by the trial Court before the Act came into force. The pendency of an appeal suspends the finality of the decree of the original Court, and before a final decree is passed on appeal all the relief which a party is entitled to and which would have been given by

the original Court had Act IV of 1938 been in existence on the date on which it passed the decree should be urged before the appellate decree is passed. An application under section 19 of the Act to the original Court is incompetent when the decree of such Court has been confirmed on appeal after coming into force of the Act. 201 I.C. 378: 15 R.M. 324: 1942 M.W.N. 385: 55 L.W. 180: A.I.R. 1942 Mad. 291: (1941) 2 M.L.J. 1064. *See also* 1941 Mad. 373: (1941) 1 M.L.J. 6; 194 I.C. 757. Dismissal for default of *application under section 20 does not bar application under* section 19. 1941 M. 433: 1941 M.W.N. 270: (1941) 1 M.L.J. 296.

Suit on *pro-note* executed in 1933—Application under section 19 to scale down debt in accordance with section 8—Evidence that the suit note was a renewal of a note prior to 1939—Permissibility—Estoppel. 50 L.W. 587: *(1939)* 2 M.L.J. 658.

SECTION 19, PROVISO—APPLICABILITY—DECREE FOR ARREARS OF RENT AND COSTS—PART-PAYMENT—SALE FOR THE BALANCE—ACT TAKING EFFECT SUBSEQUENT TO SALE—APPLICATION TO SCALE DOWN.—The respondent obtained a decree for arrears of rent and interest due under a kaichit executed before the Madras Agriculturists Relief Act was passed. The appellants paid a certain amount towards the decree and for the balance the properties were sold in November, 1937. After the Act was passed the sale was set aside on an application under section 23. Thereupon the appellants applied for *relief under section 15* of the Act and deposited the rent due for faslis 1346 and 1347. The amounts deposited were found to be correct and full satisfaction of the rents was granted. The appellants then filed an application under section *19 of the* Act praying that the entire arrears of rent due under the decree should be scaled down and that the amount paid by them towards the decree before the commencement of the Act should be adjusted towards the costs payable under the decree under the proviso to *that section.* It was held that the decree for arrears of rent was not "a decree for repayment of debt" within the meaning of section 19 of the Act.

It was further decided that the costs of the suit were not in any sense borrowed by the unsuccessful party, that the proviso to section *19 of the* Act was *inapplicable* to the case and that the appellants could not therefore claim to have their payment adjusted first in payment of the costs awarded under the decree. 59 L.W. 549: *1946* M.W.N. *629: (1946)* 2 *M.L.J. 266. See also (1940)* 2 M.L.J. 208.

Compromise *decree for principal, interest* and costs—No separate allocation of costs—Costs if can be separately taxed—Costs of execution—If can be directed to be paid first. *See* (1941) 2 M.L.J. 658.

Decree for costs in favour of respondent in appeal before Privy Council—Adjustment of decree by appropriation of payments already made under section 19—Claim by respondent for payment towards costs out of deposit by appellant under O. 45, R. 7, Civil Procedure Code. *See* (1941) 2 M.L J. 125.

SECTION 19, PROVISO—DECREE ON MORTGAGE—PAYMENT UNDER—RE-APPROPRIATION TOWARDS COSTS—PRINCIPLES.—On the basis of a mortgage executed in August, 1925, for Rs. 7,500, a decree was passed for the principal amount and Rs. 3,311-14-0 interest, Rs. 336-8-4 subsequent interest, and Rs. 1,515-8-0 as taxed costs. In 1935, the judgment-debtor mortgaged one of the items of the mortgaged properties with the leave of the Court and deposited a sum of Rs. 8,500, which he raised by mortgage, in Court towards the decree. In 1936, a further sum of Rs. 500 was paid towards the decree and part satisfaction was entered to the extent of Rs. 9,000. From the order of assessment to income-tax made on the decree-holder in 1936, it was found that the decree-holder had appropriated in his books Rs. 5,000 out of Rs. 8,500 towards the principal and Rs. 3,500 towards interest. The sum of Rs. 500 was not definitely appropriated either to the principal or to the interest, but it was definitely appropriated to the decree. *Held*, (1) that the sum of Rs. 500 could not be treated as unappropriated; (2) that in the absence of evidence of the judgment-debtor to the contrary, the sum of Rs. 8,500 could not be treated as not definitely appropriated by the act of the creditor, and the creditor's appropriation must therefore stand except for purposes of re-appropriation under the proviso to section 19 of Madras Act IV of 1938; (3) that it was equitable that the amount appropriated towards the principal and the amount appropriated towards interest should contribute rateably in making up the amount required for re-appropriation towards costs. 199 I.C. 449: 53 L.W. 721: 1941 M.W.N. 625: A.I.R. 1941 Mad. 697: (1941) 1 M.L.J. 833.

SECTIONS 19, 8, EXPLANATION 1—Application under section 19 decided finally—No similar application lies—Advantage of Amending Act cannot be taken retrospectively. JAGANNATHAM CHETTY v. PARTHASARATHY IYENGAR. (1952) 2 M.L.J. 430: A.I.R. 1953 Mad. 777.

SECTIONS 19, 20 AND 21—APPLICABILITY AND SCOPE—SALE BY OFFICIAL RECEIVER OF PROPERTY SUBJECT TO MORTGAGE—SCALING DOWN—STAY OF SALE—PROCEDURE.—Section 20 has no application to sales by Official Receivers and cannot be invoked in favour of a person who is not a judgment-debtor seeking to stay the execution of a decree. It is also clear that though section 21 of the Act does not lay down any procedure for scaling down debts due by an insolvent, the procedure should, as far as may be, be analogous to that prescribed for the reduction of other debts. The Court

"19-A. (1) Where any debt incurred before the 22nd March, 1938, other than a decree debt, is due by any person who claims that he was an agriculturist both on that date and on the 1st October, 1937, the debtor or the creditor may apply to the Court having jurisdiction for a declaration of the amount of the debt due by the debtor on the date of the application:

Application for determination of the amount of the debt due.

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which passed the decree would have to be moved under section 19 to reduce the decree and the Court which executes the decree must be moved under section 20 to stay execution of the decree in so far as the debts of the insolvent are covered by decrees of Courts. It would be within the power of the Insolvency Court to entertain an application under section 21 for scaling down of those debts of the insolvent which are not covered by decrees or suits in other Courts. But any proceedings under section 21 should not be taken behind the back of the Official Receiver by the insolvent himself. If the Official Receiver is about to sell properties subject to mortgages which are liable to be scaled down, an application may be made to the Insolvency Court to give directions to the Official Receiver to suspend the sale until the scaling down process is completed. It Is not open to the insolvent to apply to the Official Receiver to stay the sale, or to apply to the Insolvency Court to have it declared that he is an agriculturist and that his debts should be scaled down without making the Official Receiver a party to the application. 200 I.C. 784: 54 L.W. 513: 1941 M.W.N. 947: A.I.R. 1942 Mad. 254: (1941) 2 M.L.J. 698.

SECTIONS 19 AND 25-A—Order scaling down decree passed by Small Cause Court—Order is not appealable. VANUKURI DANDA REDDI v. VAJRALA RAMIREDDI. (1953) 1 M.L.J. 851: 1953 Mad. W.N. 444: A.I.R. 1953 Mad. 908.

Section 19.—Proviso, scope of—Court, if can re-open compromise of suit and act under the Proviso—Pro-note dated 4—1—1931 and guarantee letter dated 7—8—1933 — Decree against both—Remedy—Procedure for scaling down. 1942 M. 133: 54 L.W. 461: (1941) 2 M.L.J. 658.

SECTION 19-A AND SECTION 9-A—*Mortgage-debt is not excluded from operation of section 19-A.*

On a plain reading of the provisions of section 19-A, a mortgage-debt is not as such excluded from the operation of section 19- A. Hence a petition under section 10-A is maintainable

Provided that no such application shall be presented or be maintainable if a suit for the recovery of the debt is pending.

Explanation.—The Court having jurisdiction under this section shall be the Court which whould have jurisdiction to entertain a suit for the recovery of the debt as unscaled.

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for declaring the mortgage discharged. Any further remedy which the mortgagor might claim to have, as and by way of recovery of possession or otherwise, could be had not in a proceeding under section 19-A, but the other modes open to him under law, ordinarily by way of a suit. PERIA KARUPPAN CHETTIAR v. VAITHYANATHAN CHETTIAR. 1955 Mad. W.N. 379: 68 Mad. L.W. 477: (1955) 2 Mad. L.J. 30 (D.B.).

(AS AMENDED BY ACT XV OF 1943), SECTIONS 19-A AND 25-A—*Order declaring amount due as scaled down—Suit by mortgagee to enforce mortgage after the Amending Act—Suit whether maintainable in view of provisions of section 19-A of Amending Act—Subsequent alienee's non-joinder whether fatal to suit.*

The appellant applied, in 1940, under the rules framed by the Madras Agriculturists Relief Act for a declaration of the amount due by him under a mortgage claiming to be an agriculturist entitled to the benefits of the Act. The debt was scaled down and the amount payable by appellant was determined. Subsequently the Act (XV of 1943) was passed amending the Madras Agriculturists Relief Act by inserting new sections 19-A and 25-A. On the question whether a suit to enforce a mortgage after the Amending Act came into force was maintainable, in view of sub-section (9) of section 19-A:

Held, that there was nothing in the new provisions preventing the respondent from suing to enforce his mortgage. The right of suing to enforce a mortgage which the respondent undoubtedly had when the Amending Act was passed could not have been extinguished without express words. The non-joinder of a subsequent alienee will not be fatal to the suit, the result being that the decree will not bind him. ABU BAKKAR MARAKAYAR v. RAMASWAMI AYYAR. 59 L.W. 147: 1946 M.W.N. 152: A.I.R. 1946 Mad. 335: (1946) 1 M.L.J. 136.

SECTION 19-A—SCOPE AND EFFECT—APPLICATION FOR SCALING DOWN MORTGAGE DEBT—PARTIES.—By reason of the new section

(2) The provisions of sub-section (1) shall apply also to any person claiming to be such an agriculturist who contends that any such debt due by him has been discharged.

(3) All persons who would have been necessary parties to a suit for the recovery of the debt shall be impleaded as parties to the application under sub-section (1) or under that sub-section read with sub-section (2).

19-A of the Madras Agriculturists Relief Act, enacted by the Amending Act XV of 1943, proceedings for scaling down, until then held under the rules, must now be deemed to be under the Act itself, and it is necessary that all parties, who would be necessary parties in a suit should be impleaded in those proceedings, as there is now a right to get a decree on the basis of the declaration on payment of the necessary court-fee. In an application for scaling down a mortgage debt or an appeal from an order on such an application, after the Amending Act, it is therefore necessary to implead all those persons who would be necessary parties to a suit on the mortgage, though the rules did not require it. 57 L.W. 563: 1944 M.W.N. 740: A.I.R. 1945 Mad. 116: (1944) 2 M.L.J. 329. Also allegations as to failure of consideration would have to be fully enquired into. 1945 Mad. 116: (1944) 2 M.L.J. 329.

Appeal—Order rejecting application on the ground that Act does not apply—*See* (1954) 2 M.L.J. 192, cited under section 25-A, *infra*.

SECTION 19-A (1)—Interpretation—Whether applicant under section 19-A should also prove that he was an agriculturist on date of application. *See* DEBT LAWS—MADRAS AGRICULTURISTS RELIEF ACT (IV OE 1938), section 3 (*ii*). 1955 Andhra W.R 70.

PLEA REQUISITE FOR APPLICATION UNDER SECTION 19-A (1).—The necessary pre-requisite for an application under section 19-A (1) is that the debtor must say that either that there should be a declaration that the whole debt is wiped off or that a sum of money is due from him to the creditor. Where the creditor admits that no amount is due to him there is no scope for the applicability of section 19-A (1). Where in an application the debtor claims that an amount already paid by him not only discharged the debt in full but that some amount would be due from the creditor to him, while on the other hand the creditor's case is that the amount was paid to him in full satisfaction of his dues, the application will not lie at all. (1951) 2 M.L.J. 629.

(4) (*a*) When any such application is made, the Court shall decide whether the debtor was such an agriculturist or not, and if it finds that he was such an agriculturist, pass an order declaring the amount due by him or declaring that the debt has been discharged, as the case may be.

(*b*) The Court shall dismiss the application if it finds that the debtor was not such an agriculturist.

(5) At any time after passing an order under clause (*a*) of sub-section (4), the Court shall on payment by the creditor of the court-fee payable on a suit for the amount declared due to him, grant a decree to the creditor for such amount:

Provided that the creditor may on his application be granted a decree for an amount less than that declared due to him on paying the appropriate court-fee.

(6) The Court may order that the court-fee if any, paid by the creditor under sub-section (5) shall be paid by the debtor in addition to the amount decreed.

(7) If the debtor pays into the Court the amount declared to be due under clause (*a*) of sub-section (4) or the amount of the decree granted under sub-section (5) together with the costs, if any, ordered to be paid under sub-section (6), the Court shall grant to the debtor a certificate that the debt has been discharged.

SECTION 19-A (4) AND (5)—*Order under—Appeal from, not competent under Civil P.C., section 104 or O. 43.*

It is clear from the terms of sub-section (5) of section 19-A that the Order passed under sub-clause (4) is only an order and becomes a decree when court-fee is paid. Thus, the Order passed under section 19-A being only an order falling within the definition of an order under section 2, clause (14), Civil Procedure Code, is not appealable either under section 104 or Order 43, Civil Procedure Code. It is for this reason the Legislature enacted, section 25-A providing for an appeal against Orders passed under section 19-A. POLINEDI HANUMAYYA *v.* ADDANKI SRINIVASA RAO. 1955 Andhra W.R. 178.

SECTION 19-A (4) (*a*) AND (*b*) AND (8)—*Order under—Appealability*—Ex parte *proceedings—Refusal to set aside—Appeal—Maintainability—C.P. Code, O. 9, R. 13 and O. 43, R. 1 (d).*

(8) The procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits shall, as far as may be, apply to applications under this section.

(9) No Court shall entertain a suit by the creditor for the recovery of a debt :—

(*i*) if an application has been made under sub-section (1) in respect of such debt to a Court having jurisdiction and is pending in such Court ; or

(*ii*) If a Court having jurisdiction has passed an order under clause (*a*) of sub-section (4) in respect of such debt.

(10) In computing the period of limitation prescribed for a suit by the creditor for the recovery of a debt, the time if any, during which the Court was prevented from entertaining the suit by virtue of the provision contained in clause (i) of sub-section (9) shall be excluded." [*Inserted by Madras Act XV of 1943.*]

Where the Judge found that the debtors were not agriculturists entitled to the benefits of Madras Act (IV of 1938) but without dismissing the petition on that ground he went on to say that the creditor was entitled to whatever amount was payable under the mortgage.

Held, that the order should be deemed to be one under section 19-A (4) *(b)* of the Act and that it was not appealable. Although section 19-A (8) of Madras Act (IV of 1938) may make the provisions of O. 9, R. 13 of the Civil Procedure Code, applicable to proceedings under the Act, cannot attract the right of appeal conferred under O. 43, R. 1 (*d*) of the Civil Procedure Code. Hence an order refusing to set aside the *ex parte* proceedings is not appealable. SURYANARAYANAMURTHI NAIDU *v.* SATYANARAYANAMURTHI. 225 I.C. 332: 1946 M.W.N. 66: 59 L.W. 36: A.I.R. 1946 Mad. 264: (1946) 1 M.L.J. 54.

SECTION 19-A (8)—Scope— If can attract right of appeal conferred by O. 43, R. 1 (*d*), C.P. Code. *See* MADRAS AGRICULTURISTS RELIEF ACT, SECTION 19-A (4) (*a*) AND (*b*) AND (8). (1946) 1 M.L.J. 54.

SECTION 19-A (8)—*Order under—Appeal—Civil P.C., section 96 is not attracted.*

Clause (8) of section 19-A does not, by itself, attract the terms of section 96, Civil P.C. and confer a right of appeal. The order passed under section 19-A (4) only falls within the definition of section 2 (14) of Civil P.C. A.I.R 1948 P.C. 12: (1948) 1 M.L.J. 14 (P.C.) explained. POLINEDI HANUMAYYA *v.* ADDANKI SRINIVASA RAO. 1955 Andhra W. R. 178.

SECTION 19-A (AS AMENDED BY ACT XV OF 1943)—APPLICABILITY—APPLICATION FOR DECLARATION IN RESPECT OF CONTINGENT LIABILITY.—*H*, a Mahomedan, died leaving 2 sons, the petitioners and a daughter *F*. *F* too died, but had, before her death, claimed her share in the estate of her father. After her death, her husband and children started proceedings to claim her share in the estate of *H* and there was a settlement by mediators who intervened and on 10—9—1929, a settlement deed was executed under which the petitioners undertook to pay Rs. 13,000 to the heirs of *F* in consideration of their relinquishing the share claimed by them in the estate of *H*. It was decided that the shares of the major heirs of *F* in the sum of Rs. 13,000 were to be paid within four months and the shares of the minor heirs were to be utilised for the purchase of land to the value of their shares, to be put into the names of the minors but to be held by their father, the husband of *F*, until they became majors. If at any time any one of the minors repudiated the settlement or claimed the full share in the estate, the property purchased out of that minor's share of the money together with the income thereof was to be handed over to the petitioners. It was further provided that if the arrangement for the purchase of land was not completed within the four months, the petitioners were to deposit the minors' share of the cash amount with the Imperial Bank of India in their own names and their liability for interest would thereon cease, but if they failed to make the deposit at the end of the four months' period they were to be liable for compound interest at the stipulated rate. The petitioners paid the shares of all except two minor heirs (respondents). They deposited the amount of their shares in the Bank, but subsequently withdrew the same. The petitioner in 1942 applied to have the amount due to the respondents (then aged 19 and 15) scaled down. *Held*, that there was on 22—3—1938 (when the Act came into force) no debt of an ascertained amount due from the petitioners to the respondents who were on that date both minors; there was a contingent liability enforceable by their father to finance the purchase of property; but as he had not made any arrangements to purchase property there was no enforceable liability to pay any particular amount to him. Hence as there was no debt due to the respondents from the petitioners at the date of commencement of the Act, section 19-A of the Act did not apply and the petition was therefore incompetent. 215 I.C. 28: 1944 M.W.N. 165: 57 L.W. 400: A.I.R. 1944 Mad. 133: (1943) 2 M.L.J. 630.

SECTION 19-A—*Scope and object—Mortgage-debt—Application for scaling down—Power of Court to determine all questions arising between parties as in a mortgage suit.*

In view of the definition of a debt in section 3, clause (iii) of the Act as any liability secured or unsecured due from an agriculturist, section 19-A must be held to apply to mortgage debts also.

Section 19-A was newly enacted in order to provide a more comprehensive and effective remedy to the parties and proceedings for scaling down formerly held under the rules framed under the Act, must now be held under section 19-A of the Act itself. The object of the new provision was to avoid multiplicity of legal proceedings in the interests both of the debtor and creditor.

The jurisdiction of the Court acting under section 19-A is not confined merely to scaling down the debt by the application of sections 8 and 9 as the case may be and declaring the amount due. In the case of a mortgage debt the Court deciding an application under section 19-A (1) should be held to have the power to decide all questions arising between the mortgagee and the mortgagor as well as other owners of the equity of redemption as in a regular mortgage suit. If the mortgagee does not relinquish his security the Court would have to pass a mortgage decree under sub-section (5) of section 19-A. If the mortgagee has himself purchased a portion of the equity of redemption, he may have to suffer a proportionate reduction of the debt due to him and cannot throw the entire burden of the debt on the remainder of the mortgaged properties. Before declaring the amount due to the mortgagee under sub-section (4) (*a*) of section 19-A, the Court has to determine these matters which fall to be determined under the general law. If these questions are not decided by the Court passing an order under sub-section (4) (*a*) before such an order is passed, they cannot be decided in a separate suit on the mortgage by reason of the prohibition enacted by sub-section (9) of the Act. KOTIPALLI THAMMAYYA *v.* MATTAPALLI RAJU. (1955) Andhra W.R. 905 (D.B.).

SCOPE OF SECTION—RELIEF UNDER OTHER LAWS—IF CAN BE GRANTED.—The basis of an application under section 19-A, for relief to a debtor or to a creditor, as the case may be, is that the debtor should be an agriculturist on the crucial dates mentioned in the section, and the relief claimed and granted must be confined to the provisions of the Act. The applicant who claims relief under the section cannot club either the reliefs which he may be entitled to under the general law or under any other Act. The

Stay of execution proceedings.

20. Every court executing a decree passed against a person entitled to the benefits of this Act, shall, on application, stay the proceedings until the court which passed the decree has passed orders on an application made or to be made under section 19 :

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court cannot invoke its powers under the Usurious Loans Act to give relief to debtors applying under the Agriculturists Relief Act.

Unappropriated payments have to be set off against the original principal and the advances made from time to time. But when a party makes a payment towards the principal and the payment is endorsed on the document evidencing the debt (*e. g.*, promissory note), the payment must be taken to be as towards the principal and not towards the hypothecated principal calculated as above. (1951) M.W.N. 787 (2): (1951) 2 M.L.J. 560.

CONSTRUCTION AND SCOPE: MORTGAGE DEBT, IF EXCLUDED.— On a plain reading of the provisions of section 19-A a mortgage debt is not as such excluded from the operation of section 19-A. Section 19-A has been introduced by the Madras Agriculturists Relief (Amendment) Act XV of 1943. Prior to the enactment of section 19-A, it is only a decree debt that was capable of being scaled down under the Act. Section 19-A provides only an additional remedy, a cheaper and simple method of obtaining declarations as to amounts due in respect of debts, which is to the advantage of both the creditor and the debtor, since upon such a declaration as to the exact amount due, the parties would generally be well advised not to take further proceedings, but pay or receive the amounts so declared. It is no bar to a suit being filed and since the Agriculturists Relief Act has been enacted to give relief to agriculturists, the obvious intention of the Legislature is to provide a less costly method of ascertaining the rights and liabilities of parties. Section 19-A extended the remedy by way of application to non-decree debts so as to enable the creditor or debtor to have a declaration from Court as to the proper amount due by an agriculturist. (1955) 2 M.L.J. 60: *See also* (1956) 1 M.L.J. 427, cited under section 9-A, *supra.*

SECTION 20: "SHALL STAY.—[*See also* notes under sections 15 and 19, *supra.*] No option or discretion is given to the executing Court regarding the stay of execution, and the section is mandatory.

"DOES NOT APPLY".—It is only the application that should be made within 60 days, and if the application should be pending in the Court which passed the decree even after this period, the executing Court cannot proceed with the execution of the decree until the disposal of the application.

"DECREE SHALL BE EXECUTED AS IT STANDS".—This would imply that the judgment-debtor would be debarred from making the application under section 19, both in cases where he fails to apply within 60 days of the stay, and where an application is made and rejected.

SCOPE OF SECTION.—Sections 19 and 20 should be read together and the explanation of the expression "Court which passed the decree" in section 20 equally applies to section 19. (1939) 1 M.L.J. 329: 1939 Mad. 483. Section 20 is ancillary to section 19 of the Act, and that being so, the expression "on application" should be construed to a mean "on an application by a person entitled to the benefits of section 19." (1948) 2 M.L.J. 164.

SECOND APPLICATION UNDER SECTION 20 WHEN AFTER PRIOR SIMILAR APPLICATION THE DEBTOR HAD NOT APPLIED UNDER SECTION 19—WHEN SUSTAINABLE.

A judgment-debtor would not have a right to file successive applications under section 20 or section 19 of the Madras Agriculturists Relief Act if the reliefs which he claims as being entitled to are the same in the several applications. But if a subsequent application is based upon a provision of law not in existence at the time of a prior application of his he will not be debarred from filing the later application simply because he had filed a prior application when the state of law did not entitle him to the relief to which he became entitled by a subsequent change in the law. Where the judgment-debtor alleges that he has become entitled to relief under the provisions of the Amending Act XXIII of 1948—relief which was not available to him before the amendment, a prior application under section 20 filed in 1946 will not be a bar to a fresh application under that section after the Amending Act came into force. NARAYANAN CHETTIAR *v.* RATHNASAMI PADAYACHI. (1955) 2 M.L.J. 859; 1952 Mad. W.N. 981: 66 Mad. L.W. 44: A.I.R. 1953 Mad. 421.

Section 20 has no application to sales by official receivers in insolvency. 1942 M. 254: 54 L.W. 513: (1941) 2 M.L.J. 698.

The terms of section 20 are wide enough to cover an application for stay of delivery of property sold in execution pending an application under sections 19 and 23 of the Act. Merely because full satisfaction of the decree has been entered up as a result of the sale and the confirmation thereof, it does not mean that

execution is at an end. If the property purchased has not been delivered up, then execution is not at an end, and section 20 can therefore be applied to stay a delivery proceeding. 1940 M.W.N. 760: 52 L.W. 244: (1940) 2 M.L.J. 234.

APPEAL—REVISION—ORDER AN APPLICATION FOR STAY—IF A "DECREE".—CIVIL PROCEDURE CODE, SECTION 2 (2).—An Order under section 20, staying or refusing to stay execution of a decree would be appealable only if that order conclusively determines the rights of the parties so far as the executing court is concerned. Such an order certainly would have the characteristics of a decree as defined in section 2 (2), Civil Procedure Code and as it is an order relating to the execution of a decree, it is covered by section 47, Civil Procedure Code, as well. As such, it affects the rights of the parties in different ways under different contingencies; whether the application is allowed or dismissed, so far as the executing court is concerned, the order is final and an appeal lies against the order. *See* (1951) Mad. 393: A.I.R. 1951 Mad. 56: (1951) 1 M.L.J. 23 (F.B.).

Since the order under section 20 is one from which an appeal lies, a revision petition is not maintainable—*Ibid., per Division Bench.*

Right to apply under section 20—Puisne mortgagee directed by decree in first mortgagee's suit to redeem—If debtor—Right of application under section 20. *See* A.I.R. 1940 Mad. 61.

Execution sale and confirmation—Application for stay of delivery pending application under sections 19 and 23—Maintainability. 191 I.C. 359.

SECTIONS 20 AND 21: CONSTRUCTION AND SCOPE—DECREE AGAINST HINDU FATHER IN RESPECT OF FAMILY LIABILITY.—The exclusion of an insolvent enacted in section 21 of the Act must be limited only to the insolvent and the debts payable by him, and even if the same debt is payable by another, *e.g.*, a Hindu son who is liable to pay his father's debts, the latter cannot be regarded as being virtually excluded by section 21. If a debt is payable by more than one person, the insolvency of one cannot deprive the other person liable for the debt of his right to apply under the Act, if it otherwise satisfies the provisions of the Act. The fact therefore that a Hindu father against whom a decree has been passed has been adjudicated an insolvent and a dividend has been declared cannot deprive the debtor's son of his right to apply under section 20 of the Act when such decree is sought to be executed against the family property which is allotted to him in a partition, although the father cannot apply by reason of section

21. 1940 M. 95: 50 L.W. 636: 1939 M.W.N. 1077: (1939) 2 M.L.J. 745.

In an application by a judgment-debtor other agriculturist co-judgment-debtors need not be joined as parties. (1941) 1 M.L.J. 218: 1941 M. 556. Hindu father not following up his stay application with one under section 19, but before expiry of 60 days. Son cannot file fresh application. 1941 M. 100: (1940) 2 M.L.J. 466: 52 L.W. 431.

Death of judgment-debtor just before expiry of the sixty days' time allowed under section 20 for applying for scaling down—Legal representative—If entitled to file a fresh application for stay. 194 I.C. 134: A.I.R. 1941 Mad. 100 (2): (1940) 2 M.L.J. 466: 52 L.W. 431: 1940 M.W.N. 951.

EXECUTION SALE AFTER ACT—PURCHASE BY DECREE-HOLDER WITH LEAVE TO SET-OFF—APPLICATION BY JUDGMENT-DEBTOR UNDER SECTIONS 20 AND 19—STAY—PROCEDURE.—A Court has no power to treat as satisfied a decree which at the time of the stay under section 20 of Madras Act IV of 1938 was unsatisfied and to allow a set-off by the decree-holder to be completed on the basis of the decree which the Court has to scale down under section 19. When execution proceedings are stayed and the petition under section 19 is filed when there is a subsisting decree-debt, the Court is obliged to apply the procedure laid down in section 19 and scale down that decree. There is clearly no procedure under the Act for setting aside a sale held after the Act; but that does not mean that the sale has to be confirmed regardless of the effect of the scaling down application. Where the decree-holder is the purchaser and has leave to set-off against the purchase price the amount due to him under the decree, if the scaling down of the decree results in the decree-debt being reduced to something below the purchase price, clearly the decree-holder has to put into Court the balance before the sale can be confirmed. 205 I. C. 631: A. I. R. 1943 Mad. 25: (1942) 2 M L.J. 484.

DISMISSAL OF STAY APPLICATION UNDER SECTION 20 FOR DEFAULT—EFFECT—APPROPRIATION OF PAYMENT.—Section 20 does not contemplate any final decision on the question of the right of the applicant to apply under section 19. Moreover, when the debtor allows his application under section 20 to be dismissed for default he is clearly abandoning only his right to a stay. That abandonment may be due to many causes. For instance, the execution may have stopped for some reasons quite apart from the proceedings under the Act. In such a case there is no point in the applicant going on his with his proceedings under section 20 if time is available to him without such proceedings for preferring his

Provided that where within 60 days after the application for stay has been granted the judgment-debtor does not apply to the Court which passed the decree for relief under section 19 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in this Act to the contrary.

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application to the Court which passed the decree under section 19. Accordingly when an agriculturist allows his application under section 20 to be dismissed because it is not necessary, such a dismissal would not bar the substantive application under section 19. The period of limitation prescribed under section 20 begins to run with the grant of a stay and not when there was no grant of stay. An amount realised in execution of a decree after 1st October, 1937, could not be appropriated by the decree-holder to interest accruing due before 1st October, 1937, so as to nullify the effect of section 8 (1) of the Act. 53 L.W. 227: 1941 M.W.N. 270: A.I.R. 1941 Mad. 433: (1941) 1 M.L.J. 296.

COMPUTATION OF THE PERIOD OF 60 DAYS—STARTING POINT.—Limitation for a proceeding under section 19 cannot run from the date of the interim order of stay. The order contemplated in the proviso to section 20 is the order of stay pending the disposal of an application under section 19 passed on the application under section 20; (*ii*) it is a desirable procedure that, when the judgment-debtor is an insolvent, both the insolvent and the Official Receiver should be parties to such an application but the proceedings would not be void by reason of the Official Receiver not having been made a party to the proceedings. I.L.R. (1945) Mad. 188: 57 L.W. 334: 1944 M.W.N. 410: A.I.R. 1944 Mad. 455: (1944) 1 M.L.J. 427. *See also* 1941 Mad. 487: (1941) 1 M.L.J. 197.

The procedure of an executing Court in granting an *ad interim* stay followed by an absolute order is not contemplated by section 20; when once a stay has been granted limitation for an application under section 19 begins to run. 1942 M.W.N. 789: 55 L.W. 844 (1) A.I.R. 1943 Mad. 245: (1942) 2 M.L.J. 735. *See also* 48 L.W. 762.

Construction of section—Period of sixty days—If period of limitation—Expiry of period on holiday—Application filed on re-opening day of Court—If in time. *See also* 49 L.W. 762: 1939 M. 613: (1939) 2 M.L.J. 308. *See also* 1943 M. 245.

PROCEEDINGS UNDER ORDER 21, RULE 90, CIVIL PROCEDURE CODE—STAY OF—DUTY OF COURT.—Proceedings under Order 21, Rule 90, Civil Procedure Code, are clearly proceedings in execution, which must necessarily be stayed when an order under section 20 of

Madras Act IV of 1938 has been passed, under the disposal of a pending application under section 19 of the Act. The fact that a sale held before 1—10—1937 cannot be set aside under the Act does not justify the Court in going on with proceedings relating to such a sale when all execution proceedings have been stayed. 204 I.C. 256: 1942 M.W.N. 550: 55 L.W. 531: A.I.R. 1942 Mad. 727: (1942) 2 M.L.J. 311. *See also* 1942 M. 119: (1941) 2 M.L.J. 682; 1943 M. 134: 55 L.W. 812.

DECREE FOR RENT—APPLICATION FOR SCALING DOWN UNDER SECTION 15—TIME LIMIT.—A procedure analogous as to that laid down in Section 19 has no doubt to be followed with reference to decrees for rent which do not strictly fall within section 19. But that does not mean that in dealing with applications for relief under section 15 of the Act, the time-limit specified in section 20 of the Act is applicable. That time-limit in section 20 applies in terms only to applications for relief under section 19 and should not be applied to applications for relief under section 15 in respect of decrees for rent. The Court has no power to enact a new rule of limitation based upon analogy. 1943 M.W.N. 43 (1): 56 L.W. 137 (1): 212 I.C. 214: A.I.R. 1943 Mad. 321: (1943) 1 M.L.J. 45.

Preliminary decree before the Act—Final decree after the Act—Failure to raise plea in final decree proceedings is no bar to such plea being raised in subsequent proceedings. (1942) 1 M.L.J. 314: 1942 Mad. 418.

OFFICIAL RECEIVER—Status of, to apply under sections 19 and 20. *See* 1944 M. W. N. 118: 1944 M. 256: (1944) 1 M.L.J. 38.

SECTION 20, PROVISO—SCOPE—LIMITATION.—The Proviso to section 20 fixes the period of limitation for an application by an agriculturist judgment-debtor when a decree is being executed against him. It is a special provision inserted in the Act to meet the case where an agriculturist against whom a decree has been passed has not taken the steps contemplated by section 19 and he finds that the decree-holder is taking active steps against him. If therefore the period of 60 days contemplated by section 20 expires when the Court is closed, an application for scaling down the debt under section 19 made on the first day when the Court re-opened would be deemed to have been filed in time. I.L.R. (1939) M. 886: 49 L.W. 762: (1939) 2 M.L.J. 308.

Even if the period of 60 days referred to in section 20 be not strictly regarded as a period of limitation for an application under section 19, the result would be the same. For, apart from section 20, there is no time-limit for such an application. The agriculturist's right to apply under section 19 must therefore be taken to accrue

de die in *diem*. His application would thus be a proceeding to which the Limitation Act does not apply and therefore the provisions of section 11, Madras General Clauses Act, would be applicable. A.I.R. 1939 Mad. 613 : (1939) 2 M.L.J. 308.

SECTION 20, PROVISO — APPLICABILITY — COURT EXECUTING DECREE ALSO THE COURT WHICH PASSED THE DECREE—ORDER FOR STAY—SECTION 20, IF INAPPLICABLE—It cannot be said that section 20 has no application to a case where the Court executing the decree was also the Court which passed the decree and that an application for stay made and ordered under the section must be ignored. Where stay has been ordered in such a case the proviso to the section is attracted so as to make it incumbent on the judgment-debtor to file an application for relief under section 19 within sixty days of the stay order. Any member of a Hindu joint family in the case of a family debt has the power to apply for relief under the Act and as ancillary thereto for stay under section 20 and any stay order obtained by him would operate to bar an application for relief made by the manager beyond sixty days of such order. 1945 M.W.N. 754 : 58 L.W. 632 : A.I.R. 1946 Mad. 158 : (1945) 2 M.L.J. 535. *See also* 1942 Mad. 127 : (1942) 2 M.L.J. 311.

STAY UNDER—DURATION OF.—A stay under section 20 operates until the Court which passed decree had passed orders on the application made under section 19, and the dismissal of that application would automatically vacate the stay. 58 L.W. 216 : A.I.R. 1945 Mad. 304 : (1945) 1 M.L.J. 480.

DELAY IN APPLYING FOR STAY—IF GROUND FOR DISMISSAL.—Madras Act IV of 1938 does not compel a judgment-debtor to make an application under section 20 of the Act for stay of execution at an early stage, and simply because he failed to ask for stay in a prior application for execution, he cannot be deemed to have waived his right to apply for a stay later. He can make his application at any stage, and even though it be made not in good faith, the terms of section 20 leave no discretion to the Court to reject it or to make a conditional order. The section does not permit of a conditional order. 202 I.C. 67 : 55 L.W. 251 : 1942 M.W.N. 185 : A.I.R. 1942 Mad. 398 (1) : (1942) 1 M.L.J. 335.

DISCRETION TO REFUSE STAY OR TO IMPOSE CONDITIONS—DELAY OR OBSTRUCTIVE TACTICS OF DEBTOR.—Section 20 does not allow the Court a discretion to refuse a stay in a case in which the conduct of the debtor has been obstructive ; nor does it contain any provision for imposing conditions for the grant of stay. Section 23 contains no time-limit within which the setting aside of a sale in execution has to be followed by an application under section 19. There is nothing in the Act to prevent the debtor waiting after a sale in execution has been set aside to the last possible minute and then filing

a stay petition under section 20 just at the time when a fresh sale is being held. 204 I.C. 147; 55 L.W. 721; 1942 M.W.N. 664: A.I.R. 1942 Mad. 731: (1942) 2 M.L.J. 585.

ORDER DISMISSING APPLICATION ON GROUND THAT JUDGMENT-DEBTOR IS NOT AGRICULTURIST—APPEAL.—*see* (1948) 1 M.L.J. 41: A.I.R. 1948 (P.C.) 12: 1948 M.W.N. 15.

SECTION 20, PROVISO—CONSTRUCTION—"DECREE SHALL BE EXECUTED AS IT STANDS"—NOTWITHSTANDING ANYTHING CONTAINED IN THE ACT TO THE CONTRARY"—MEANING.—The words "the decree shall be executed as it stands" in the proviso to section 20 of Madras Act IV of 1938, have reference to the frame of the decree at the time of the execution having regard to any changes which it may have undergone in the trial Court, and not to the frame of the decree as it stood at the time of the stay order. The words "notwithstanding anything contained in the Act to the contrary" in the proviso to section 20 have no application when the decree has in fact been amended, though erroneously, before execution has actually taken place but have reference presumably to the provisions of section 7 which prohibit the execution of a decree against an agriculturist in so far as a decree is for an amount in excess of the sum as scaled down under Ch. II of the Act. Where an application is made by a judgment-debtor for scaling down after the lapse of sixty days from the grant of stay and the decree is scaled down in spite of the objection of the decree-holder, it is not open to the latter to urge before the executing Court that the decree to be executed is the decree as it stood before the amendment. The decree-holder being bound by the amendment, though wrongly made, execution can proceed only on the basis of the decree as amended. 204 I. C. 517: 55 L. W. 718 (2): 1942 M. W. N. 694: A.I.R. 1942 Mad. 757: (1942) 2 M.L.J. 589.

"REJECTED"—MEANING OF—REJECTION FOR DEFAULT OF APPEARANCE.—"Rejected" in section 20 proviso, must be construed as signifying rejection on any ground whatever including default of appearance of the petitioner and should not be read in the narrow or restricted sense of rejected owing to some formal defect in the application. 58 L.W. 531; 1945 M.W.N. 709 (1): A.I.R. 1946 Mad. 78; (1945) 2 M.L.J. 374. *See also* 223 I.C. 407.

APPEAL.—An order dismissing an application to stay execution proceedings under section 20 of the Madras Agriculturists Relief Act on the ground that the judgment-debtor is not an agriculturist, relates to the execution, discharge or satisfaction of a decree within the meaning of section 47, Civil Procedure Code, and an appeal therefore lies under section 96, Civil Procedure Code. (1948) 1 M.L.J. 41: 1948 M.W.N. 15: A.I.R. 1948 P. C. 12.

Explanation.—The expression "the court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1908.

Adjudications in insolvency.

21. (1) Nothing contained in this Act shall apply to the debts payable by any person who has been adjudicated an insolvent, if prior to the coming into force of this Act, a dividend has been declared out of his assets.

*(2) If a dividend has not been so declared, the Court shall, on application made by the insolvent debtor, the Official Assignee or Official Receiver in whom the property of such debtor has vested, or any other person interested, apply the provisions of this Act to the debts payable by the insolvent debtor if he would have been agriculturist within the meaning of this Act but for his adjudication in insolvency.

LEG. REF.

*In section 21, the first sentence was renumbered as sub-section (1) of section 21; and for she second sentence of that section, the new sub-sections (2) and (3) were substituted by Amendment Act of 1948.

As to right of appeal from order of dismissed of application under section 20, *See* 1942 Mad. 418 : (1942) 1 M.L.J. 335 : 55 L.W. 251 : 1942 M.W.N. 185; 54 L.W. 283 : 1941 M. 831; (1941) 2 M.L.J. 497; 1939 M. 942.

LIMITATION.—*See* (1952) 2 M.L.J. 498 : 1953 M. 213.

SECTION 21.—[*See also* Notes under sections 19 and 20.] With reference to this section, the Select Committee observed as follows :—

This clause refers to adjudications in insolvency. The Committee thinks that the benefits of this measure should be extended to debtors against whom an order of adjudication has been made but whose assets have not yet been distributed.

For various reasons, an agriculturist might be taken to the Insolveney Court, and to exclude him from the benefits of the Bill, till a final dividend was declared, was not fair. The scaling down of such debts would also benefit the creditors to some extent.

'ADJUDICATED AN INSOLVENT.'—This section would apply whether the agriculturist has been adjudged insolvent on his own application or on an application by any creditor of his.

'A DIVIDEND HAS BEEN DECLARED.'—To disentitle an insolvent agriculturist to the benefits of this Act, it would be sufficient on a strict interpretation of the language of the section if a dividend has been declared. It would be immaterial whether or not subsequent dividends also may have to be declared, or whether or not the declared dividend has been actually paid out to the creditors concerned. But, however, see the observations of the Select Committee extracted above. *See also* 1943 M. 556: (1943) 1 M.L.J. 411.

SECTION 21, APPLICABILITY — CONDITIONS — CONTINUANCE OF INSOLVENCY AT TIME OF APPLICATION — IF ESSENTIAL. — Section 21 is intended to provide for pending insolvencies, and to lay down that when a dividend has been declared in such an insolvency, the Act would not apply but that if there had been no dividend, the Act would apply and the debts payable in insolvency would be liable to be scaled down if the insolvent was a person who, but for his insolvency, would have been an agriculturist. Section 21 cannot properly apply to the case of a person who has at some time in the distant past been adjudicated an insolvent, if he is not an insolvent during the relevant period. In order to come under section 21, the applicant should be an insolvent at the time of his application. 202 I. C. 298: 1942 M.W.N. 279: 55 L.W. 242: A.I.R. 1942 Mad. 523: (1942) 1 M.L.J. 491. *See also* (1941) 2 M.L.J. 698.

SECTION 21.—Right to claim benefit under—Absolute order of discharge of insolvent—Declaration and disbursement of dividend—Petition by insolvent thereafter to stay disbursement of further dividend in order to allow him to claim benefit of Act IV of 1938. (1946) 2 M.L.J. 209.

The exclusion of an insolvent enacted in section 21 of the Act must be limited only to the insolvent and the debts payable by him, and even if the same debt is payable by another, *e. g.*, a Hindu son who is liable to pay his father's debts, the latter cannot be regarded as being virtually excluded by section 21. If a debt is payable by more than one person, the insolvency of one cannot deprive the other person liable for the debt of his right to apply under the Act, if it otherwise satisfies the provisions of the Act. The fact therefore that a Hindu father against whom a decree has been passed has been adjudicated an insolvent and a dividend has been declared cannot deprive the debtor's son of his right to apply under section 20 of the Act, when such decree is sought to be executed against the family property which is allotted to him in a partition, although the father cannot apply by reason of section 21. 50 L.W. 636: 1939 M. W. N. 1077: (1939) 2 M. L. J. 745: 1940 Mad. 95. Claim to restitution against Hindu father—Insolvency of father—Application by son for scaling down—If barred. *See* (1941) 1 M.L.J. 467.

DEBTS OF INSOLVENT DUE BY ANOTHER WHO IS NOT INSOLVENT—RIGHT OF LATTER TO BENEFIT OF SCALING DOWN.—The object of section 21 is clearly to prevent a double scaling down of the debt of an individual. If that debt, has been subjected to the scaling down process of the insolvency law and dividends have been paid on the basis of that scaling down, it should not be subject to a fresh scaling down at the instance of the same person who has already had the benefit of one process of reduction. There is no reason to refuse the benefits to an entirely different person who has not had the benefit of the insolvency law and who is an agriculturist otherwise entitled to have his debts scaled down. Neither under the wording nor under the object of the section can it be said that the exclusion of the debts of insolvents should be extended to the same debts when due by another person who is not an insolvent. 52 L.W. 301 : 1940 M.W.N. 831 : A.I.R. 1940 Mad. 808 : (1940) 2 M.L.J. 291 : *see also* 1944 M. 256 : 1944 M.W.N. 118 : 57 L.W. 34.

INSOLVENCY OF MORTGAGOR AND DECLARATION OF DIVIDEND IN THE INSOLVENCY—PURCHASERS OF EQUITY OF REDEMPTION.—Where a mortgagor has been adjudged insolvent and a dividend has been declared in the insolvency, the purchasers of the equity of redemption who are agriculturists are entitled to have the mortgage deeree scaled down under Act IV of 1938. 203 I.C. 316 : 53 L.W. 229 : 1941 M.W.N. 191 (1) : A.I.R. 1941 Mad. 421 : (1941) 1 M.L.J. 304.

"DECLARATION OF DIVIDEND"—WHAT AMOUNTS TO.—The appellant was adjudged an insolvent on 1—10—1934. On 21-3-1938 the Official Receiver approved a statement containing the schedule of creditors, the rate of dividend declared and the amount of dividend due to each of the creditors. On the same date he also issued a notice to all the proved creditors requiring them to make their objections, if any, within a fixed period. *Held*, that on the 21st March, 1938, (before the coming into force of Madras Act IV of 1938), the Official Receiver definitely declared a dividend due under the insolvency to the proved creditors, and the fact that he issued the notice to the creditors prematurely, instead of after the distribution of the dividend has been sanctioned, would not detract from the completed character of the declaration of dividend. There was therefore a declaration of dividend before Act IV of 1938 came into force, within the meaning of section 21, and the insolvent was therefore not entitled to the benefits of the Act with reference to the debts due under the insolvency. 210 I. C. 489 : 1943 M.W.N. 350 : A.I.R. 1943 Mad. 556 : (1943) 1 M.L.J. 411.

APPLICATION BY INSOLVENT—PARTIES—OFFICIAL RECEIVER.—Section 21 in its plain terms seems to contemplate an application by the person who would have been an agriculturist but for his adjudication as an insolvent. To such an application the Official Receiver

(3) If the application aforesaid is not made by the Official Assignee or Official Receiver, he shall be impleaded as a party thereto.] (*Substituted by Madras Act, XXIII of 1948.*)

Special provision in the case of certain sales of movable property.

22. Where, in execution of an any decree, any movable property of an agriculturist has been sold on or after the 1st October, 1937, any judgment-debtor may apply to the court for an order that the provisions of section 8 or 9, as the case may be and of sections 11 and 12 be applied to the decree, and the court, shall, if satisfied that the applicant is an agriculturist entitled to the benefits of those sections, apply the same and order the decree-holder to refund any sum received by him on or after the 1st October, 1937, in excess of the amount to which he would have been entitled if the property had not been sold :

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

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in whom the estate vests should be impleaded as a party. 199 I. C. 854: 53 L. W. 105: 1941 M.W.N. 271: A.I.R. 1941 Mad. 487: (1941) 1 M.L.J. 199. *See also* I.L.R. (1945) Mad. 188: 1944 Mad. 455: (1944) 1 M.L.J. 42; 1942 Mad. 254: 1941 M.W.N. 947: (1941) 2 M.L.J. 698; 1944 Mad. 256 (status of official receiver to apply).

PARA. 2—'WOULD HAVE BEEN AN AGRICULTURIST . . . . INSOLVENCY'.—This expression has been adopted probably on account of the fact that an agriculturist on his adjudication would cease to be an agriculturist, having no property at all, all his property having become vested in the Official Assignee or Official Receiver as the case may be.

SECTION 22—OBJECT OF THE SECTION.—Shortly after the publication of the first Bill regarding agricultural debtors on 1st October, 1937, there was considerable agitation throughout the country over the merits of the Blll. In order to avoid any oppression due to any action having been taken in execution in the interval, this section has been enacted to help the judgment-debtors as against sales and execution proceedings in the interval.

'ANY JUDGMENT-DEBTOR'.—There words may include a surety to an agriculturist who may not himself be an agriculturist, provided a decree has been passed against him and the agriculturist (the principal debtor). It may not be necessary that the agricul-

Sales of immovable property to be set aside in certain cases.

23. Where in execution of any decree any immovable property, in which an agriculturist had an interest, has been sold or foreclosed on or after the 1st October, 1937, then notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor, claiming to be an agriculturist entitled to the benefits of this Act, may apply to the Court within 90 days of the commencement of this Act to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is an agriculturist entitled to the benefits of this Act, order the sale or foreclosure to be set aside and thereupon, the sale [or foreclosure][1] shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

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turist judgment-debtor himself should make the application under this section.

SECTIONS 22 TO 25—APPLICABILITY — SALE IN EXECUTION BEFORE ACT—APPLICATION TO SET ASIDE UNDER ORDER 21, R. 89, CIVIL PROCEDURE CODE — DEPOSIT.—Petitioner deposited the amount necessary under Order 21, Rule 89, Civil Procedure Code, to set aside a sale and the amount was withdrawn by the decree-holder in full satisfaetion. Though the deposit was made on the day when the Madras Act IV of 1938 came into force, an application for scaling down was not made until long after the decree was satisfied. *Held*, that sections 22 to 25 of the Madras Agriculturists' Relief Act did not apply as there was no subsisting sale to set aside and there no longer remained any debt to found an application under the Act or decree to scale down. 1940 M. W. N. 911 : 52 L.W. 386 : 1941 M. 74 : (1940) 2 M.L.J. 417.

LEG. REF.

1. Inserted by Madras Act XIII of 1938.

Section 23—Notes

SECTION 23—Bar of suit—Strict construction of sub-section (1) —Decree set aside, as a result of scaling down—Suit for possession

is not barred by section 144 (2), Civil Procedure Code. A. I. R. 1955 Mad. 173.

SECTION 23—SCOPE OF SECTION.—Section 23 is really an extension of section 7. The words "that the applicant is an agriculturist entitled to the benefits of this Act" in section 23 contemplate a state of affairs in which the applicant has a saleable interest in agricultural land at the time when he makes his application, and not at the time of the sale previously held. The remedy under section 23 is not open to a person who is not an agriculturist at the time of his making the application under the section. 1941 M. 205: (1940) 2 M.L.J. 943: 57 L.W. 836: 1941 M.W.N. 1257.

APPLICABILITY OF SECTION—AGRICULTURIST PARTING WITH INTEREST LONG BEFORE SALE.—It is clear that the words "property in which an agriculturist had an interest has been sold," must refer to the state of affairs at the time of the sale and cannot cover a case in which the agriculturist had parted with his interest in the property sold long before the sale. 201 I. C. 400: 54 L.W. 561 (1): 1941 M.W.N. 879 (2): A.I.R. 1942 Mad. 102: (1941) 2 M.L.J. 557.

CONSTRUCTION OF SECTION—"NOTWITHSTANDING THE SALE HAS BEEN CONFIRMED"—EFFECT OF.—The clause "notwithstanding the sale has been confirmed" in section 23 in no way affects the main provisions of the section, and obviously cannot be used to introduce any new proviso, as for example, 'that a sale shall not have been followed by delivery of property.' The section would retain exactly the same meaning without this clause. 52 L.W. 646: 1940 M.W.N. 1121: (1940) 2 M.L.J. 709: 1941 Mad. 73.

SALE CONFIRMED AND SATISFACTION OF DECREE ENTERED UP BEFORE ACT—APPLICATION TO SET ASIDE SALE—COMPETENCY.—Where before the commencement of Act IV of 1938, properties of the judgment-debtor had been sold away, the sale confirmed and satisfaction of the decree entered up, there is no longer a judgment-debtor, because the decree itself is wiped out before the commencement of Act IV of 1938, and after that no application under section 23 is competent by a person who had previously been a judgment-debtor. 53 L.W. 57: 1941 M.W.N. 89: A.I.R. 1941 Mad. 402: (1941) 1 M.L.J. 106. *See also* 1941 M. 37: (1940) 2 M.L.J. 1055: 1055: 1941 M. 277: 1941 M.W.N. 176; (1943) 1 M.L.J. 34. (Remedy of purchaser when sale is set aside.)

SALES HELD AFTER THE ACT CAME INTO FORCE.—Section 23 has no application to sales held after the Act came into force. 200 I. C. 765: 54 L.W. 228: 1941 M.W.N. 971: A.I.R. 1942 Mad. 278: (1941) 2 M.L.J. 309.

SALE HELD IN EXECUTION OF DECREE BEFORE 1ST OCOBER, 1937.—There is no provision in the Act empowering the Court to reopen a sale held under a decree before the 1st October, 1937. 1940 M.W.N. 894: 52 L.W. 387: (1940) 2 M.L.J. 340: 1941 Mad. 37. *See also* (1941) 1 M.L.J. 106.

DECREE OF FOREIGN COURT—EXECUTION SALE OF PROPERTIES IN BRITISH INDIA—LIABILITY TO BE SET ASIDE.—A judgment-debtor under a decree of a Court of a Native State is not entitled in respect of such decree to the benefits of section 23, as the Act has no application to foreign decrees or foreign Courts. Hence a sale of properties in British India in execution of such a decree cannot be set aside under section 23 of the Act. 1941 M.W.N. 879 (1): 54 L.W. 422: A.I.R. 1942 Mad. 204 (1): (1941) 2 M.L.J. 580.

DECREE FOR ARREARS OF RENT—SALE HELD IN EXECUTION—IF WIPES OFF ARREARS OF RENT.—The mere holding of a sale in execution of a decree for arrears of rent will not wipe off the arrears of rent so as to exclude the operation of section 23 of the Act. The arrears will remain outstanding until the proceeds of the sale in deposit in Court or with the Collector are paid to the landlord. 199 I.C. 591: 1941 M.W.N. 96: 53 L.W. 86: A.I.R. 1941 Mad. 500: (1941) 1 M.L.J. 156.

SALES UNDER MADRAS ESTATES LAND ACT.—Section 23 of Madras Aet IV of 1938 applies to sales held under any decree of Court, including sales under Madras Estates Land Act. 206 I.C. 359: 1942 M.W.N. 632: A.I.R. 1942 Mad. 741: (1942) 2 M.L.J. 450.

Section 23 of the Madras Act IV of 1938 is not inapplicable to sales in execution of decrees for rent under the Madras Estates Land Act. In terms the section applies to sales in execution of any decree whereby immovable property in which an agriculturist has an interest has been sold on or after 1st October. 1937, and if the application is made within 90 days of the commencement of the Act, the Court is obliged, if satisfied that the applicant is an agriculturist entitled to the benefits of the Act, to set aside the sale after giving notice to the persons interested and hearing them. The absence in section 23 of a *non obstante* provision regarding what is contained in the Estates Land Act, the absence of any necessity for confirmation of a sale under the Estates Land Act, the absence of provisions in section 23 of the Madras Act IV of 1938 regarding the setting aside of sales under the summary provisions contained in sections 112 to 118 of the Estates Land Act, and the non-mention of Estates Land Act in section 23 are not an indication that section 23 would have no application to sales for

arrears of rent in the ordinary Civil Courts under the procedure laid down by the Civil Precedure Code. The words "any decree" in section 23 are very wide and would include a decree for rent under the Estates Land Act. 199 I.C. 591: 1941 M.W.N. 96: 53 L.W. 86: A I.R. 1941 Mad. 500: (1941) 1 M.L.J. 157.

JUDGMENT-DEBTOR—DONEE OF PART OF MORTGAGED PROPERTY FROM MORTGAGOR IMPLEADED IN SUIT ON MORTGAGE—SALE OF ALL PROPERTIES IN ONE LOT—RIGHT OF DONEE TO APPLY TO SET ASIDE SALE.—*Held*, (i) that the petitioner was entitled to apply under section 23 of the Madras Agriculturists Relief Act, because her liability as a subsequent alienee of part of the hypotheca to discharge the mortgage was a "debt" liable to be scaled down under the Act, and she was a "judgment-debtor" as defined by section 2 (10) of Civil Procedure Code; (ii) that since all the items were sold in one lot, the petitioner was entitled to have the sale of all the items set aside in entirety, even though she may be entitled to be interested in only one item gifted to her, assuming that the release by her father did not have the effect of perfecting her title to the other items. 52 L.W. 680: 1940 M.W.N. 1148: A.I.R. 1940 Mad. 944: 192 I.C. 107: (1940) 2 M.L.J. 749.

PURCHASER OF PROPERTY FROM JUDGMENT-DEBTOR AFTER ATTACHMENT AND BEFORE EXECUTION SALE—RIGHT TO APPLY.—A purchaser of property from the judgment-debtor after it has been attached in execution of a decree against him and before the execution sale is not a person liable to pay the decree debt, and he is not therefore entitled to apply under section 23 to have the execution sale set aside. 205 I. C. 234; 1942 M.W.N. 137: 55 L.W. 170 (2): A.I.R. 1942 Mad. 323: (1942) 1 M.L.J. 341.

MORTGAGE DECREE FOR SALE—MORTGAGOR PARTING WITH EQUITY OF REDEMTION EVEN BEFORE PRELIMINARY DECREE—RIGHT TO APPLY TO SET ASIDE SALE IN EXECUTION.—Section 23 contemplates the existence of an interest owned by an agriculturist at the time of the sale. Where pending a suit on a simple mortgage the mortgagor sells his equity of redemption to another person, and subsequently a decree is passed, it is not open to the mortgagor to claim to have the sale in execution of the final decree set aside under section 23 of the Act, because he has no such interest in the property as would entitle him to apply under section 23. 200 I.C. 861: 54 L.W. 184: 1941 M.W.N. 975: A.I.R. 1942 Mad. 296: (1941) 2 M.L.J. 298.

APPLICATION AFTER 90 DAYS TO TRANSPOSE AS PETITIONER RESPONDENT HAVING RIGHT.—Where an application under section 23 of Madras Act IV of 1938 is filed by a wrong person within the period of 90 days prescribed, and an objection is raised that the

applicant is not a judgment-debtor entitled to apply under the section it is not open to the applicant after the expiry of the period of 90 days to apply to the Court to transpose as petitioner a respondent who has the necessary qualification to so apply. The Court has no jurisdiction to order the transposition to enable the original applicant to overcome a valid objection to the maintainability of the petition. 206 I.C. 252 : 1942 M.W.N. 558 : 55 L. W. 577 : A.I.R. 1942 Mad. 708 : (1942) 2 M.L.J. 412.

APPEAL.—An order under section 23 is not appealable, as the question involved is not one relating to execution, discharge or satisfaction of the decree within the meaning of section 47, Civil Procedure Code. 50 L. W. 201 : 1939 M.W.N. 735 (2) : 1939 M. 796 : (1939) 2 M.L.J. 398. [N. B.—*See* now amended Rule 8 under the Act.]

Revision of order under section 23. *See* (1940) 2 M.L.J. 709.

"OTHER PERSONS INTERESTED IN SUCH SALE."—These words in the proviso to section 23 do not contemplate all persons who were parties to the suit, but only those that are interested in upholding the sale. 1941 Mad. 205 : (1940) 2 M.L.J. 943 : 1940 M. W. N. 1257.

"OTHER PERSONS INTERESTED IN SUCH SALE." — This would evidently refer to other decree-holders who may have obtained rateable distribution from out of the sale proceeds and also perhaps subsequent alienees from auction purchasers. (*Vide* section 24 *infra*). On this section *see also* (1953) 2 M.L.J. 183.

SECTIONS 23 AND 24—PROFITS OF LAND AFTER PURCHASE AT SALE IN EXECUTION AND BEFORE SETTING ASIDE UNDER SECTION 23 —LIABILITY OF PURCHASER TO ACCOUNT.—It does not appear to have been the intention of the Legislature to deprive the purchaser of the profits which his purchase has earned in the internal between the original execution of the decree and the cancellation of the sale on an application under section 23. Section 24 is altogether silent on the subject of interest and on the subject of profits. The Act is an expropriatory measure, and the process of expropriation should not proceed beyond that which is laid down either by the express language of the Act, or by necessary implication therefrom. There is no express provision that the judgment-debtor should be entitled to the profits of the land the sale of which is set aside, and no such provision can be read into the Act by necessary implication from its terms. 200 I.C. 876 : 1942 M.W.N. 27 : 55 L.W. 33 (2) : A. I. R. 1942 Mad. 271 : (1941) 2 M.L.J. 1060.

SECTIONS 23 AND 25-A—APPLICATION UNDER SECTION 23 TO SET ASIDE SALE ON THE GROUND THAT APPLICANT WAS AN AGRICULTURIST—DISMISSAL FOR DEFAULT.—By virtue of section 141 of

[23-A. Where in execution of any decree, any immovable property, in which any person entitled to the benefits of the Madras Agriculturists Relief (Amendment) Act, 1948, had an interest, has been sold or foreclosed on or after the 30th September, 1947, and the sale has not been confirmed before the commencement of the said Act, or ninety days have not elapsed from the confirmation of the sale or from the foreclosure, at such commencement, then, notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor, claiming to be entitled to the benefits of the said Act, may apply to the Court within ninety days of such commencement or of the confirmation of the sale, whichever is later, to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is a person entitled to the benefits of the said Act, order the sale or foreclosure to be set aside, and thereupon the sale or foreclosure shall be deemed not to have taken place at all:

Power of Court to set aside sales of immovable property in certain cases.

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the Civil Procedure Code, the procedure under Order 9 is attracted to the trial of petitions under the main provisions of Madras Act IV of 1938. An order dismissing an application under section 23 of Madras Act IV of 1938 to set aside a sale on the ground that the applicant was an agriculturist entitled to the benefits of the Act, on the vakil reporting "no instructions," cannot be regarded as one on the merits refusing to set aside the sale and appealed against under section 25-A of the Act. The order is not a decision either to grant or to refuse the prayer in the petition but is an order of a procedural nature under Order 9, Rule 8 of the Civil Procedure Code, giving rise to the remedy of an application for restoration and a special right of appeal conferred under Order 43, Rule 1 of the Code in case such an application is dismissed. 60 L.W. 219: 1947 M.W.N. 207: A.I.R. 1947 Mad. 372: (1947) 1 M.L.J. 228.

SECTION 23-A.—Section 23-A was inserted by the Amending Act of 1948. The scope and application of the section, and the reasons for its enactment are explained in the following extracts from the proceedings of the Legislative Assembly.

Provided that no such order shall be made without notice to the decree-holder, the auction-purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.] (*Inserted by Amending Act XXIII of 1948*).

Modification in the application of section 23-A to certain cases.

23-B. The provisions of section 23-A shall apply to a judgment-debtor claiming to be entitled to the benefits of the Madras Agriculturists Relief (Amendment) Act, 1950, subject to the modification that for the reference to the Madras Agriculturists Relief (Amendment) Act, 1948, a reference to the Madras Agriculturists Relief (Amendment) Act, 1950 and for the reference to the 30th September, 1947, a reference to the 25th April, 1950, shall be substituted.] (*Section 23-B inserted by Madras Act XXIV of 1950*).

Consequential provision on setting aside of sale.

24. [Where a sale is set aside under [1] (Section 23, section 23-A or section 23-B)] a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to whom it has been paid:

LEG. REF.

1. Substituted by Madras Act XXIV of 1950.

NEW SECTION 23-A.—"In order to give the full benefits of the amendments made in favour of agriculturist debtors by the Amend. Act it is considered necessary to have a provision on the lines of section 23 of the existing Act for the setting aside of sales or foreclosures of immovable property shortly ordered before the Bill becomes law. According to the original Bill the benefits will apply only in cases of the sales or foreclosures before the commencement of the Amendment Act which had not been confirmed before such commencement or ninety days had not elapsed from the confirmation of the sale or from the foreclosure at such commencement. The Select Committee has however suggested the application of the provisions in the section to sales or foreclosures effected on or after the 30th September 1947." (Speech of the Law Minister in introducing the Bill in the Assembly).

SECTION 23-A—(*XXIII of 1948*)—*Scope and applicability.*

It is only sales or foreclosure which had taken place after the 30th September, 1947, and that have not been confirmed before the commencement of the Act or confirmed within 90 days of the commencement of the Act that are governed by section 23-A. In other words, this applies only to sales whose confirmation had not yet taken place at the commencement of the Act or which have been confirmed within 90 days of the commencement of the Act. The section does not touch sales which have been confirmed more than 90 days before the coming into force of the Act. SETHURAMAN THEVAR *v.* KAMEETHA ROWTHER. (1953) 2 M.L.J. 742 : 1953 Mad. W.N. 829 : A.I.R. 1954 Mad. 368.

Section 24—Notes.

SCOPE OF SECTION—Section 24 of Madras Act IV of 1938 is a species of restitution specifically conferred upon a purchaser who has lost the fruits of his purchase as a result of a compulsory setting aside of the sale not in accordance with the ordinary provisions of law but as a result of the special enactment of section 23 of the Madras Agriculturists Relief Act. Where the money paid by the purchaser can be deemed to have been paid over to the judgment-debtors who had accepted and had the benefit of such deposit the auction-purchaser is entitled to recover the amount from the judgment-debtor. SESHAMMA *v.* RATTAYYA. 65 L.W. 455: (1952) 1 M.L.J. 684. On this section *see also* (1953) 2 M.L.J. 183.

SECTION 24—"NO POUNDAGE SHALL BE PAYABLE.—This is because it has been provided in section 23 that the sale "shall be deemed not to have taken place at all". *See* 55 L.W. 33 : (1942) Mad. 271 : (1941) 2 M.L.J. 1060 cited under section 23, *supra.*

MORTGAGE-DECREE EXECUTION SALE—DECREE-HOLDER WITHDRAWING DECREE AMOUNT—SUBSEQUENT SETTING ASIDE OF SALE UNDER SECTION 23—DECREE SCALED DOWN—REMEDY OF PURCHASER.—Where after the decree-holder in a mortgage suit has drawn out from the proceeds of the sale held in execution of the decree an amount necessary to satisfy his decree, the execution sale is set aside on an application under section 23 of Madras Act IV of 1938 and the decree is scaled down, the remedy of the auction-purchaser under section 24 of the Act is is to get back his money in full from the person to whom it has been paid, *i.e.*, the decree-holder, as the sale is to be deemed not to have taken place at all. The decree-holder is required to give back the money which he has drawn out and he is at liberty to execute any amended decree with might be passed in the scaling down proceedings. There can be no question in such a case of any

Provided that no poundage shall be payable in respect of any such sale and provided further that where poundage has been collected the court shall direct the same to be refunded. (*Substituted by Amending Act XXIII of 1948*).

Power of Court to disallow costs in certain cases.

[24-A. If in any suit or proceeding for the recovery of a debt, the Court is satisfied that the claim therein is made in evasion of the provisions of this Act and that the document upon which the claim is based, although purporting to be executed by a different debtor or in favour of a different creditor, was in fact in renewal or part renewal of a prior debt to which the provisions of this Act would have applied, the Court shall disallow the costs:

Provided that where in any such suit or proceeding two or more distinct claims are made, the provisions of this section shall apply separately in respect of each such claim.] (*Inserted by Amending Act XXIII of 1948*).

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refund of the sale price by the judgment-debtor, nor can the auction-purchaser retain possession of the property and resist the judgment-debtor's claim for re-delivery pending a payment by the judgment-debtor of the amount due from him under the mortgage decree. Where the auction-purchaser resists the application for re-delivery of the property after the sale is set aside under section 23 the judgment-debtor is entitled to mesne profits for the period subsequent to the setting aside of the sale. 1943 M.W.N. 65: 56 L.W. 206: A.I.R. 1943 Mad. 274: (1943) 1 M.L J. 34.

Section 24-A was inserted by the Amending Act XXIII of 1948.

"NEW SECTION 24-A.—According to the original Bill the new section 24-A enabled the Court to reject *in toto* claims based on documents which had been executed with a view to evade the provisions of the Act. The Select Committee has however suggested that the Court should disallow the costs only." (Extract from the speech of the Hon. Law Minister in introducing the Bill in the Assembly).

Alienation by debtor.

25. All alienations of immovable property made by an agriculturist debtor on or after the 1st October, 1937, shall be invalid as against every creditor whose sale in execution or foreclosure decree has been set aside under section 23 or who became entitled to rateable distribution of the proceeds of such sale under section 73 of the Code of Civil Procedure, 1908.

Appeals.

[25-A. (1) An appeal shall lie from any of the following orders passed by a Court under this Act, as if such order related to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908:—

(*a*) An order under sub-section (1) of section 18 amending or refusing to amend a decree;

(*b*) An order under section 19 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree;

(*c*) An order under clause (*a*) of sub-section (4) of section 19-A declaring the amount due to the creditor or declaring the debt to have been discharged;

[(*cc*) An order under clause (*b*) of sub-section (4) of section 19-A dismissing the application on the ground that the debtor was not an agriculturist.] (*Inserted by Amending Act* XXIII *of* 1948).

(*d*] An order under section 22 directing or refusing to direct the refund of any excess realised in execution of a decree;

Section 25—Notes.

SCOPE AND EFFECT OF SECTION 25—The effect of section 25 of the Madras Agriculturists Relief Act is only to safeguard the rights of a creditor and so long as such rights are not affected, the alienation by the debtor would not be void between the parties.

Where in a suit for redemption filed by the debtor-mortgagor and his assignee, the plaintiffs do not rely on the assignment to defeat the rights of the defendant mortgagee as creditor, but make

(*e*) An order under [1][section 23, section 23-A or section 23-B] setting aside or refusing to set aside any sale or foreclosure of immovable property. (*Inserted by Amending Act* XXIII *of* 1948).

(*f*) An order under section 24 directing or refusing to direct the repayment of any purchase money realised in execution of a decree.

(2) From any order passed on an appeal presented to it under the provisions of sub-section (1) by a Court subordinate to the High Court, an appeal shall lie to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908.] (*Inserted by Madras Act XV of 1943*).

LEG. REF.

1. Substituted by Madras Act XXIV of 1950.

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the assignment the basis of that suit for redemption and desire to discharge the debt due to the creditor-defendant (mortgagee) the latter cannot resist the suit for redemption on the ground that the assignment is invalid under section 25 of Madras Act (IV of 1938). (1956) 1 M.L.J. 297.

SECTION 25-A.—*See* 1947 M. 377 : (1947) 1 M.L.J. 228 : 1947 M.W.N. 207 : 60 L.W. 219, cited under section 23.

SECTION 25-A (AS AMENDED BY ACT XV OF 1943) : SCOPE—RETROSPECTIVE RIGHT OF APPEAL—EXTENT OF.—The effect of the Madras Agriculturists Relief Amending Act (XV of 1943) is that it gives the right of appeal retrospectively from 27—10—1939, but that right of appeal cannot take away vested rights which had accrued as a result of final orders passed before that date. Where the order on an application under section 19 of the Act was passed on 28—4—1939, such order being thus non-appealable, the right of appeal conferred by the Amending Act would not render it appealable. 58 L.W. 216 : A.I.R. 1945 Mad. 304 : (1945) 1 M.L.J. 480.

SECTION 25-A.—Limitation—Appeal filed out of time—Power of Court to excuse delay—Section 5, Limitation Act—Applicability of, if excluded by section 29 of that Act. *See* (1949) 1 M.L.J. 271.

Under Madras Act IV of 1938, as amended by Act XV of 1943, no right of appeal is given when an application for a declaration is dismissed on the ground that the debtor is not an agriculturist or that the debt is not one which can be scaled down under the Act. 215 I.C. 28: 1944 M.W.N. 165: 57 L.W. 400: A.I,R. 1944 Mad. 133: (1943) 2 M.L.J. 630. (*See* now Amending Act of 1948). On this section *see also* (1953): 1 M.L.J. 851, cited under section 19, *supra*.

SCOPE OF SECTION 25-A—RIGHT OF APPEAL—ORDER RETURNING PETITION.—Section 25-A is wide enough to authorise an appeal against an order for the return of the petition under section 19 for presentation to the proper Court on the ground of want of jurisdiction in the Court to which it is presented. VENKATA REDDI *v.* VENTRAPRAGADA. (1953) 1 M.L.J. 240: 1953 Mad. W.N. 56: 66 Mad. L.W. 109: A.I.R. 1953 Mad. 417.

SECTIONS 25-A (1) (*c*) AND 19-A—ORDER DISMISSING APPLICATION UNDER SECTION 19-A AS NOT MAINTAINABLE.—The petitioner filed petitions under section 19-A of the Madras Agriculturists Relief Act for declaration of the amount due under the alleged mortgages executed by him in 1938 or, for a declaration that the said mortgages were discharged. The District Munsif held that those documents were not mortgages but leases and, therefore, there was no debt to which the provisions of the Act would apply. In these circumstances, the applications were dismissed not on the ground that the mortgages were discharged but only on the ground that the applications were not maintainable.

Held that the order did not fall within section 25-A (1) (*c*) and therefore was not appealable. A.I.R. 1944 Mad. 133: (1943) 2 M.L.J. 630 and A.I.R. 1946 Mad. 264: (1946) 1 M.L.J. 54, Foll. MANDUVU KOTAIAH *v.* VENKATA SUBBA RAO. 1955 Andhra W. R. 930 (D. B.).

SECTION 25-A (1) (*c*)—COMPETENCY OF APPEAL.—Where in the applications filed under section 19-A by the debtors for a declaration that no sums were due under the documents executed by them or their predecessors in favour of the creditors, and the decision of the District Munsif in all the cases is to the effect that though moneys were due to the creditors, they were discharged long ago by the execution of the lease deeds and that consequently the terms of section 9-A do not apply, then as the applications are dismissed on the ground, namely, that no moneys were due from the debtors to the creditors the orders tantamount to a decision that the debts had been discharged and they fall within Cl. (*c*) of section 25-A (1); hence an appeal from such orders is competent. POLINEDI HANUMAYYA *v.* ADDANKI SRINIVASA RAO, 1955 Andhra W.R. 178.

District Collector to furnish information as to certain facts.

26. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to income-tax in terms of proviso (A) to section 3 (ii) or to profession, property or house-tax under the Cantonments Act, 1924, in terms of provisos (*B*) and (*C*) to that section, for information as to the above facts and the Collector shall thereupon ascertain such information and grant to such creditor a memorandum in the prescribed form as to whether the debtor has been so assessed to income-tax or to profession, property or house-tax. Such memorandum shall be received in every court as evidence of the facts stated therein,

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SECTIONS 25-A (1) (*c*), AND 19-A—ORDER REJECTING PETITION ON GROUND THAT ACT IS NOT APPLICABLE.—Reading the provisions of section 19-A, sub-section 4 (*a*) and section 25-A (*c*) and (*cc*) together, it is clear that there is no right of appeal to a party whose petition is rejected on the ground that the provisions of the Act are inapplicable to his case as neither of the two clauses contemplate such a case. A.I.R. 1946 Mad. 133; (1945) 2 M.L.J. 448 and A.I.R. 1946 Mad. 264: (1946) 1 M.L.J. 54, Rel. on.

Such an order cannot be said to be a decree within the meaning of section 2 (2), Civil Procedure Code, as it requires the determination of the rights of parties with regard to the matters in controversy to be in a suit. The section does not apply to orders on petitions. There can, therefore, be no appeal against the order under the provisions of Civil Procedure Code.

The assumption that if a Court has power to pass an order it carries with it the implication of a right of appeal against that order is unwarranted. If no appeal is provided for specifically against an order in the enactment such an order cannot be appealed against. An appeal is a creature of statute and it cannot be created by implication. GONTHIREDDI LAKSHMIDEVI *v.* JAMMI RAJARAO. 1954 Mad. W. N. 307: (1954) 2 M.L.J. 192.

SECTION 26:—"SHALL BE RECEIVED IN EVERY COURT AS EVIDENCE OF THE FACTS STATED THEREIN."—It must be noted that it is not made conclusive evidence of such facts.

Executive authorities of local bodies to furnish information as to certain facts.

27. Any creditor may apply to the executive authority of a municipality, the president of a local board or the Revenue Officer of the Corporation of Madras for information as to whether his debtor was or is assessed to profession, property or house tax in terms of provisos (*B*) and (*C*) to section 3 (*ii*), and the executive authority, president or Revenue Officer shall thereupon grant to such creditor a certificate in the prescribed form as to whether the debtor named in the application has been so assessed to profession, property or house tax. Such certificate shall be received in every court as evidence of the facts stated therein.

Power to make rules.

28. (1) The [1][State Government] may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the [1][State Government] may make rules :—

(*a*) in regard to any matter which is required to be prescribed by this Act ;

(*b*) prescribing the form of, and the fees to be paid in respect of, applications under this Act ; and

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LEG. REF.

1. Substituted by A. L. O., 1950.

SECTION 27.—There is nothing in the section to warrant the view that a certificate given by a Local Board is conclusive of the facts which it states. It is open to the other side to let in evidence that the certificate is not true—whether the error alleged relates to the amount of the tax or the nature of the income in respect of which it was levied. 1940 M.W.N. 948 : 52 L. W. 430 : (1940) 2 M.L.J. 468 ; 1941 Mad. 73.

SECTION 28.—The power to make rules reserved to the Government under this clause is very wide, and the only restriction is that the rules should not be inconsistent with the provisions of the Act.

(c) for removing any difficulty in giving effect to the provisions of this Act.

(3) All rules made under this section shall be consistent with the provisions of this Act. They shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Act.

The Madras Agriculturists Relief (Amendment) Act (XV of 1943)

Short title.

1. This Act may be called THE MADRAS AGRICULTURISTS RELIEF (AMENDMENT) ACT, 1943.

2 and 3. [Amendments inserted in their proper places in the Main Act.]

Saving of certain orders.

4. An order passed by a Court before the commencement of this Act dismissing an application for a declaration of the amount of the debt due to a creditor or for a declaration that the debt has been discharged on the ground that a suit for the recovery of the debt was instituted subsequently by the creditor shall not be called in question or re-opened in any Court

Amendment made by section 3 to have retrospective operation.

5. The amendment made by section 3 of this Act shall be deemed to have come into operation on the 27th October, 1939.

"PRESCRIBED BY THIS ACT."—For example, *See* sections 26 and 27.

'AS IF ENACTED IN THIS ACT.'—These words would probably import that the rules framed by the Government would govern even cases pending at the time of the publication of the rules.

For rules framed under the Act, *see* Appendix I, *infra*.

RULES UNDER, R. 2—SCOPE—IF ULTRA VIRES.—R. 2 of the Rules (prescribing the procedure whereby either a creditor or a debtor can apply to the Court for a declaration of the amount of a non-decretal debt) framed under section 28 of the Madras Act IV of 1938 is neither *ultra vires* the State Government nor in contravention of any provision of law. I.L.R. (1942) Mad. 647: 1942 M.W.N. 151: 55 L.W. 136: A.I.R. 1942 Mad. 362: (1942) 1 M.L.J. 303,

The Madras Agriculturists Relief (Amendment) Act (XXIII of 1948)

(*Extracts.*)

An Act further to amend the Madras Agriculturists Relief Act, 1938.

WHEREAS it is expedient further to amend the Madras Agriculturists Relief Act, 1938, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may called THE MADRAS AGRICULTURISTS RELIEF (AMENDMENT) ACT, 1948.

Whatever may be the position, when a debtor is seeking to resist an application by the creditor under the rules framed under Madras Act IV of 1938, he cannot ask the Court for a declaration under the rules, of the amount of the debt unless he concedes that there is a debt upon which the provisions of Act IV can operate. Though under sub-rule (2) of rule 2 the Court may inquire into a petition in which the debtor asserts that the debt has been discharged by the provisions of Act IV of 1938, itself, there is no occasion for the Court under the rules to go into a claim by the debtor to scale down a debt which has been discharged in full or has become unenforceable by the operation of some other law than Act IV (for instance the law of limitation) for to do so would be to give an adjudication on hypothetical facts. 205 I. C. 396: 55 L.W. 693 (1): 1942 M.W.N. 696: A.I.R. 1943 Mad. 7: (1942) 2 M.L.J. 551. *See* now Amending Act of 1948.

R. 7: SCOPE—IF ULTRA VIRES.—R. 7 of the rules framed under Madras Act IV of 1938, which makes it clear that the term "assessed to property tax" in Proviso C. to section 3 (ii) of the Act would not cover the case of a person in whose name an assessment has been made when he was not in fact the owner of the property during the relevant period is not *ultra vires*. There is nothing repugnant to the apparent intention of Proviso C in this rule, nor can it be said that the rule gives to the proviso a meaning which is not its probable meaning. The use of the word "owner" in the last sentence of Proviso C. gives considerable support to the view that the Legislature intended to disqualify from a claim to be an agriculturist only a person from whom tax had been demanded by virtue of ownership. It is within the powers of the Government to make a rule, such as rule 7, which merely removes an

ambiguity in a clause of the statute, and is not beyond the powers of the Government under section 28. I.L.R. (1941) Mad. 840: 198 I.C. 843: 1941 M.W.N. 400: 53 L. W. 518: A.I.R. 1941 Mad. 704: (1941) 1 M.L.J. 605.

R. 8: APPLICABILITY—IF CONFINED TO APPLICATION IN COURT OF FIRST INSTANCE—"COURT"—IF INCLUDES APPELLATE COURT. —When R. 8 of the Rules under Madras Act IV of 1938 speaks of an application pending in the Court, this phrase must cover not merely an application pending in the Court of first instance but also an application pending in appeal before the appellate Court. The term "Court" includes the appellate Court having jurisdiction under the rules and not merely the Court of first instance. There is no logical reason for applying the procedure prescribed by R. 8 only when the application is pending in the trial Court and not when the application is pending in appeal. 1944 M.W.N. 373: 57 L.W. 16 (1): 1943 M.W.N. 832: A.I.R. 1944 Mad. 206: (1944) 1 M.L.J. 27.

R. 8 is not retrospective in its operation. 1940 M. 417: (1940) 1 M.L.J. 317: 51 L. W. 447: 1940 M.W.N. 301.

SCOPE—IF ULTRA VIRES — ORDER ON APPLICATION UNDER SECTION 19 — APPEAL.—An appeal does not lie as of right but must be conferred by express enactment. Proceedings under section 19 of the Act for scaling down decrees are not proceedings in execution and no appeal will therefore lie under section 47, Civil Procedure Code. The pendency of execution proceedings does not make an application under section 19 a matter relating to the execution of the deeree in any sense. 108 I.C. 760: I. L. R. (1941) Mad. 261: 53 L.W. 79: 1941 M.W.N. 131: A. I. R. 1941 Mad. 235: (1941) 1 M.L.J. 164 (F.B.).

R. 9: APPEAE.—Under R. 9 a right of appeal is given against an order declaring the amount of a debt under R. 7. Where the Court holds that a debt which is sought to be scaled down was one falling within the purview of section 10 (2) (ii) of the Act and therefore exempt from the operation of the Act, the decision is a decision that the debt is immune from reduction under the Act and is not a declaration of the amount of the debt. No appeal therefore lies against such a decision. 208 I.C. 113: 1942 M.W.N. 751: A.I,R. 1943 Mad. 213: (1942) 2 M.L.J. 806. *See also* 1942 M. 362: (1942) 1 M.L.J. 303.

Appeal under Court-fee payable. *See* (1941) 1 M.L.J. 721: 1941 M. 639: 53 L.W. 637.

SCOPE—IF ULTRA VIRES—TESTS TO DETERMINE VALIDITY OF RULES UNDER STATUTE—The validity of a rule framed under a

Sections 2 to 15.—[Amendments carried out in the proper places in the main Act.]

Amendments to have retrospective effect in certain cases.

16. The amendments made by this Act shall apply to the following suits and proceedings, namely :—

(*i*) all suits and proceedings instituted after the commencement of this Act ;

(*ii*) all suits and proceedings instituted before the commencement of this Act, in which no decree or order has been passed, or in which the decree or order passed has not become final, before such commencement ;

(*iii*) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act.

Provided that no creditor shall be required to refund any sum which has been paid to or realized by him, before the commencement of this Act.

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statute is to be determined not so much by ascertaining whether it confers rights or merely regulates procedure, but by determining whether the rule is in conformity with the powers conferred under the statute and whether it is consistent with the statute, reasonable and not contrary to general principles. R. 9 of the new rules framed under section 28 of the Act providing for an appeal and second appeal from an order under R. 7 as if it were a decree in an original suit, is a reasonable and convenient qualification of the procedure for giving effect to the substantive provisions of the Act, not offending against any principle of law and not inconsistent with anything in the Act. The rule is properly framed and not *ultra vires* the State Government. I. L. R. (1942) Mad. 654 : 206 I.C. 568 : 55 L. W. 186 : 1942 M.W.N. 230 : A.I.R. 1942 Mad. 466 : (1942) 1 M.L.J. 390.

Scope and effect of—Appeals from orders—Forum—Determination—Madras Civil Courts Act, section 13—Application of. *See* (1943) 2 M.L.J. 352.

Amending Act (XXIII of 1948)—Notes.

SECTION 16.—Applicability of section—Decree passed before Act but execution not taken out—Right to scaling down of debt

under decree. *See* (1955) 1 M.L.J. 1, cited *supra* under S. 19 (1) and (2).

AS TO SCOPE OF SECTION, *see* (1953) 2 M.L.J. 174; (1952) 2 M L.J. 430, cited *supra* under section 19. *See also* (1955) 1 M.L.J. 215 cited under section 3 (iii), *supra*.

SECTION 16—Cl. (ii)—"PROCEEDINGS"—MEANING OF.—Execution proceedings are not contemplated by the word "proceedings" in Cl. (ii) of section 16 of the amending Act. The proceedings in section 16 must relate to proceedings instituted for repayment of a debt. JAGANNATHAM CHETTY v. PARTHASARATHY IYENGAR. (1952) 2 M.L.J. 430: A.I.R. 1953 Mad. 777.

SECTION 16, CLAUSES (ii) AND (iii)—RESPECTIVE SCOPE AND APPLICATION.

Clause (ii) of section 16 of Madras Agriculturists Relief (Amendment) Act (XXIII of 1948) applies to pending proceedings, that is proceedings which were instituted before the commencement of the Act but which did not become final before such commencement. It implies therefore that if the decree or order passed in a suit or proceeding became final before the commencement of the Act the provisions of the Act cannot be applied to such suit or proceeding. But in clause (iii) of section 16, the words "in which the decree or ordet passed has not become final" do not occur. It is quite general and applies to all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act so thai it seems to apply to decrees or orders even if they had become final before the commencement of this Act provided the decree or order has not been executed or fully satisfied. A reading of section 16, clause (ii) and and (iii) would suggest that clause (iii) would apply exclusively to executable decrees or orders which though they have become final before the commencement of the Act are still in the stage of unfinished execution and at the stage at which satisfaction was not fully received. VENKATARATNAM v. SESHAMMA. I. L. R. (1952) Mad. 492; 65 L.W. 168: 1952 M.W.N. 169: A.I.R. 1952 Mad. 591: (1952) 1 M.L.J. 264 (F. B.).

SECTION 16 (ii) AND (iii)—APPLICABILITY TO FINAL DECREES ALREADY SCALED DOWN.—Sub-section (iii) of section 16 of the Amending Act applies to all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of the Amending Act and so it is intended to apply also to decrees or orders even if they had become final before the commencement of the Act, provided the decree or order has not been executed or fully satisfied. A.I.R. 1952 Mad. 591:

(1952) 1 M.L.J. 264 (F. B.), Foll. A.I.R. 1953 Mad. 914: (1953) 2 M.L.J. 174 and A.I.R. 1953 Mad. 421: (1952) 2 M. L. J. 859, Ref. HEMAVATHI v. PADMAVATHI. (1954) 2 M.L.J. 724: I.L.R. (1954) Mad. 891: 67 Mad. L.W. 598.

SECTION 16, CL. (iii)—SCOPE OF.—Section gives retrospective operation only in regard to suits and proceedings before the Act in which the decrees or orders had not become final and also had not been fully satisfied. (1950) 1 M. L. J. 224, considered. JAGANNATHAM CHETTY v. PARTHASARATHY IYENGAR. (1952) 2 M. L. J. 430: A.I.R. 1953 Mad. 777.

The Madras Agriculturists Relief (Amendment) Act (V of 1949).

An Act further to amend the Madras Agriculturists Relief Act, 1938.

Whereas it is expedient fnrther to amend The Madras Agriculturists Relief Act, 1938, for the purpose hereinafter appearing; It is hereby enacted as follows:—

1. SHORT TITLE.—This Act may be called THE MADRAS AGRICULTURISTS RELIEF (AMENDMENT) ACT, 1949.

2. [Amendment carried out in the main Act.]

3. *Amendment made by section 2 to have retrospective effect*:—The amendment made by this Act shall apply to—

(*i*) all suits and proceedings instituted after the commencement of thls Act;

(*ii*) all suits and proceedings instituted before the commencement of this Act, in which no decree or order has been passed, or in which the decree or order passed has not become final, before such commencement; and

(*iii*) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act:

Provided that no creditor shall be required to refund any sum which has been paid to or realised by him, before the commencement of this Act.

The Madras Agriculturists Relief (Amendment) Act (XXIV of 1950).

An Act to amend The Madras Agriculturists Relief Act. 1938.

Whereas it is expedient further to amend the Madras Agriculturists Relief Act, 1938, for the purposes herein after appearing; It is hereby enacted as follows :—

1. SHORT TITLE.—This Act may be called THE MADRAS AGRICULTURISTS RELIEF (AMENDMENT) ACT, 1950.

Sections 2 to 8. [Amendments carried out in the Main Act.]

9. *Amendments to have retrospective effect in certain areas :* —The amendments made by this Act shall apply to—

(*i*) all suiis and proceedings instituted after the commencement of this Act;

(*ii*) all suits and proceedings commenced before the commencement of this Act in which no deeree or order has been passed, or in which the decree or order passed has not become final, before such commencement; and

(*iii*) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act;

Provided that no creditor shall be required to refund any sum which has been paid to or realised by him before the commencement of this Act.

[This Act XXIV of 1950, is not applicable to the scheduled areas in the State of Madras on and from 31—10—1950. *Vide* Notification, G. O. Ms. No. 4621, Development, 17—11—1950. Fort St. George Gazette, dated 5—12—1950, part I, page 3183].

APPENDIX I

Rules under The Madras Agriculturists Relief Act, 1938. (as Amended).

In exercise of the powers conferred by clauses (*a*) and (*b*) of sub-section (2) of section 28 of the Madras Agriculturists Relief Act, 1938, the Government of Madras are hereby pleased to make the following rules :—

1. For the purposes of proviso (*c*) to clause (ii) of section 3 of the Madras Agriculturists Relief Act, 1938, the annual rental value of any land which is not appurtenant to any building or which is occupied by or appurtenant to huts, and whose assessment is not based on the annual rental value or on the capital value shall (i) in case the land is situated in the City of Madras be deemed to be the value in respect of which the assessment is fixed by the Commissioner of the Corporation of Madras under clause (*b*) of the proviso to section 102 of the Madras City Municipal Act, 1919, with reference to the extent of the land; and (ii) in case the land is situated elsewhere in the *State* of Madras be deemed to be 5 per cent. of its capital value as determined by the Collector in the manner laid down in the rules under sub-section (3) of section 81 of the Madras District Municipalities Act, 1920. (Rule 1 inserted and other rules re-numbered by Notification in G. O. No. 132, Dev. d/23-1-1941).

2. Any tenant desirous of paying into Court any amount towards the rent due or claimed to be due by him for fasli 1347 or 1346 or both, under sub-section (4) of section 15 of the Act, shall present to the Court an application in writing for the purpose. The application shall specify the name and address of the applicant, the amount of rent paid by him into Court, the fasli or faslis for which it is paid and the name and address of the landholder, under-tenure holder, janmi or intermediary to whom it is to be paid. The application shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

3. Where a tenant has paid into Court an amount which he believed to be the full amount of the rent due in respect of the holding—(i) for fasli 1347, on or before the 30th September, 1938, or (ii) for fasli 1346, on or before the 30th September, 1939, and it is subsequently found by the Court that owing to a *bona fide* mistake in calculating the price of paddy or other article payable as rent, or the interest on the rent, or otherwise, the amount actually paid fell short of the correct rent due for the fasli concerned as finally determined by the Court, the tenant shall be entitled to pay into Court the deficiency within fifteen days of the date on which the Court determined the correct rent; and such payment shall, for the purposes of the Act, be deemed to have been made on the date on which the original payment into Court was made.

4. An application under sections 18, [19-A] [1], 20, 22 or 23 of the Act shall be in writing, shall specify the name and address of the applicant, the name and address of the respondent, a clear

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1 Figure '19-A' inserted by G. O. Ms. No. 2309, dated 20-9-1943 — Amendment deemed to have been and to have come into force on 27-10-1939.

statement of the facts of the case and the nature of the relief prayed for and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure.

5. (1) Any debtor may apply to the executive authority of a municipality, the President of a Local Board or the Revenue Officer of the Corporation of Madras for information as to whether such debtor was or is assessed to profession, property or house-tax in terms of provisos (*b*) and (*c*) to section 3 (ii) of the Act and the Executive Authority, President or Revenue Officer shall thereupon grant to such debtor a certificate in Form B appended to these rules, with such variations as circumstances may require as to whether he has been so assessed to profession, property or house-tax. Such certificate shall be received in every Court as evidence of the facts stated therein.

(2) An application under section 26 or 27 of the Act or sub-rule (1) shall be in writing, shall specify the name and address of the person in respect of whom, and the purpose for which, such information is required, and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908. A single application may be made to cover all the taxes referred in section 27 of the Act or in sub-rule (1) in respect of all the four half-years mentioned in provisos (*b*) and (*c*) to section 3 (ii) of the Act.

(3) In respect of every application under section 27 of the Act or under sub-rule (1), there shall be paid to the municipality, the Local Board or the Corporation of Madras, as the case may be, a fee of twelve annas in cash for each half year in respect of which it is applied for.

6. There shall be affixed to every application under section 15 (4) read with rules (2), (18), (19), (19-A), (20), (22), (23) or (26) of the Act a Court-fee stamp of the value of twelve annas. [1]

7. There shall be paid—

(*a*) in respect of every application under sub-section (4) of section 15 of the Act read with rule 2 process fees in accordance with the scale prescribed in item 1 of Appendix III to Order No. 200 of the Standing Orders of the Board of Revenue; and

(*b*) in respect of every application under sections 18, 19, 19-A, 20, 22, or 23 of the Act process fees in accordance with the scales prescribed in the Civil Rules of Practice and Circular Orders. (This was newly added. Vide *Fort St. George Gazette*, dated 7th May, 1940). [1]

[1] *See* previous foot-note.

8. (1) A memorandum granted to a creditor under section 26 of the Act shall be in Form A appended to these rules with such variations as circumstances may require.

(2) A certificate granted to a creditor under section 27 of the Act shall be in Form B appended to these rules, with such variations as circumstances may require.

9. (1) All suits and execution proceedings for the recovery from an agriculturist of the arrears of rent due from him to a landholder or an under-tenure-holder under the Madras Estates Land Act, 1908, or to a janmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis, whether solely or in combination with the arrears of rent which has accrued for fasli 1346 or 1347 or both, pending on the 21st June, 1938, or instituted thereafter, shall stand stayed until the 30th September, 1938, or if the rent for fasli 1347 is paid on or before the 30th September, 1938, until the 30th September, 1939 :

Provided that nothing in this sub-rule shall be deemed to deprive the agriculturist of any remedy or relief which may be available to him in any such suit or proceeding.

Explanation 1.—In this sub-rule, the expression " execution proceeding " shall include the sale of an agriculturist's holding under the provisions of Chapter VI of the Madras Estates Land Act, 1908. (This was newly added. Vide *Fort St. George Gazette*, dated 12th March, 1940).

Explanation 2.—In this sub-rule the expression " fasli year " and " fasli " shall have the same meaning as in section 15 of the Act.

(2) All suits and execution proceedings stayed under sub-rule (1) shall, after the 30th September, 1938, or the 30th September, 1939, as the case may be, proceed, subject to the provisions of the Act, from the stage which had been reached at the time when they were so stayed.

10. Where a person in whose name an assessment to property or house-tax has been made in terms of proviso (*c*) to section 3 (*ii*) of the Act, proves that he was not the owner of the property or house assessed, at any time during the period mentioned in the said proviso, such assessment shall not by itself have the effect of excluding such person from the category of " agriculturist " as defined in said section. (This was added in September, 1938).

[1] 11. For the purposes of section 9-A of the Act, the proportion between the principal amount secured by the mortgage and the

[1] Original Rule 11 was omitted by G. O. No. 2309, dated 20—9—1943 and new Rule 11 added by G. O. No. 4190, dated 20—9—1951 (20th September, 1951).

portion thereof which is attributable to the portion of the property in the possession of the mortgagee shall be the same as that between the market value of the entire mortgaged property at the date of the mortgage and the market value of the portion of the property in the possession of the mortgagee at that date.

RULES RELATING TO APPLICATIONS TO CIVIL COURTS FOR SCALING DOWN OF NON-DECREED DEBTS.

In exercise of the powers conferred by sub-section (1) and clauses (*b*) and (*c*) of sub-section (2) of section 28 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938), His Excellency the Governor of Madras is hereby pleased to make the following rules:—

1. In these rules—

(*a*) "Act" means the Madras Agriculturists Relief Act, 1938;

(*b*) "Court" means the Court having jurisdiction under these rules; and

(*c*) Expressions used in these rules but not defined herein shall have the same meaning as in the Act.

2. (1) Where any debt, other than a decree-debt, is due by any person claiming to be an agriculturist entitled to the benefits of the Act in respect of such debt, the debtor or the creditor may apply to the Court for a declaration as to the amount of the debt due by the debtor to the creditor:

Provided that no such application shall be presented or be maintainable if any suit for the recovery of the debt be pending.

(2) The provisions of sub-rule (1) shall also apply to any person claiming that his debt has been discharged by virtue of the provisions of the Act. (*See* now section 19-A of the Act).

3. (1) Every application under rule 2 shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

(2) There shall be affixed to every such application whether by the debtor or by the creditor a Court-fee stamp of the value of 12 annas.

(3) There shall be paid in respect of every such application whether by the debtor or by the creditor, process fees in accordance with the scales prescribed in the Civil Rules of Practice and Circular Orders. (This sub-rule was newly added. Vide *Fort St. George Gazette*, dated 7th May, 1940).

4. (1) Every application presented by a debtor shall contain the following particulars, namely :—

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

(*b*) the name and address of the creditor in respect of whose debt the application is presented;

(*c*) a statement that the debtor claims to be an agriculturist entitled to the benefits of the Act in respect of the debt of the creditor as against whom the application is presented;

(*d*) the particulars of the debt in respect of which the declaration is claimed, including all matters necessary to invoke the jurisdiction of the Court to have the debt scaled down; and

(*e*) the amount for which the applicant prays that the debt may be reduced.

(2) The provisions of sub-rule (1) shall apply *mutatis mutandis* to an application presented by a creditor.

5. The application shall be rejected if it does not comply with any of the requirements of rule 4.

The rejection of an application under this rule shall not preclude the applicant from presenting a fresh application.

6. (1) On receipt of an application under rule 4, the Court shall, unless it rejects it under rule 5, pass an order fixing a date for hearing the application.

(2) Notice of the order under sub-rule (1) shall be served on the creditor and the debtor.

7. On the date originally fixed under rule 6 or on any subsequent date to which the application may be adjourned by the Court, the Court shall, after taking such evidence or making such enquiry as it may consider necessary, pass such order on the application as it thinks fit.

8. If, at any time, while an application is pending in the Court, a suit is filed by the creditor for the recovery of the debt which is the subject-matter of the application, the Court shall dismiss the application.

9. The order of the Court declaring the amount of the debt under rule 7 shall be subject to appeal and second appeal as if it were a decree in an original suit.

10. The Courts having jurisdiction under these rules shall be the Courts which would have jurisdiction to entertain suits for the recovery of the debts as unscaled.

FORMS.

FORM A.

[*See rule* 8 (*i*).]

Memorandum granted by the Collector of.....under section 26 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938).

Read application form.....dated.....Mr./Mrs./Miss .....of.....has been assessed to—

(1) income-tax under[1] .....in the financial year ending.....

(2) profession tax by the.....cantonment for the half year ending.....on a half yearly income of.....rupees, derived from a profession other than agriculture, under[1] .....

(3) property or house-tax by the.....cantonment in respect of buildings or lands other than agricultural lands under[1] ..... and that the aggregate annual rental value of such buildings or lands is.....rupees.

Signature of the Collector.

FORM B.

[*See* rules 5 (1) and 8 (2)].

Certificate granted under rule 5 (1) of the rules made under clauses (*a*) and (*b*) of section 28 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938).

Certificate granted under section 27 of the Madras Agriculturists Relief Act 1938[2] (Madras Act IV of 1938).

Read application form.....dated.....

I.....the executive authority of.....Municipality, the President of.....Board, the Revenue Officer of the Corporation of Madras, do hereby certify that Mr./Mrs./Miss..... of.....has been assessed to—

(1) profession tax for the half-year ending:.....on a half-yearly income of.....rupees derived from a profession other than agriculture, under[1] .....

(2) property or house-tax in respect of buildings or lands other than agricultural lands under[1] ..... and that the aggregate annual rental value of such buildings or lands is ..... rupees.

1. The appropriate Act or law under which assessment is made shall be entered here.

2. Amended by G. O. No. 3072, Development, dated 18th December, 1939.

Signature of the authority granting the certificate.

Rate of interest on loans under Madras Agriculturists Relief Act. (*G. O. Ms. No. 2919, Development, 7th July, 1947*).

No. 587.

In exercise of the powers conferred by the proviso to section 13 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938), His Excellency the Governor of Madras hereby alters the rate of 6¼ per cent. per annum simple interest specified in the said section and fixes in lieu thereof 5½ per cent per annum simple interest. (*Fort St. George Gazette*, dated 29th July, 1947, Part I, p. 632).

APPENDIX II

THE MADRAS DEBT CONCILIATION ACT (XI OF 1936).

REFERENCES TO PAPERS CONNECTED WITH THE ACT.

1. *The Madras Debt Conciliation Act, 1936* (*Madras Act XI of 1936*).

[For Statement of Objects and Reasons, see *Fort St. George Gazette*, Part IV, dated the 13th March, 1934, pages 100-102, for Proceedings in Council, see the Madras Legislative Council Proceedings, Volume LXX, dated the 8th March, 1934, pages 585-586, *ibid.*, Volume LXXIV, dated the 23rd January, 1935, pages 346-351; for Report of the Select Committee, see the Madras Legislative Council Proceedings, Volume LXXVIII, dated the 5th November, 1935, Appendix IX, pages 739-754; for Proceedings in Council, see *ibid.*, pages 606-640 and 968-1020; *ibid.*, Volume LXXIX, dated the 5th February, 1936, pages 561-576.]

2. *The Government of India* (*Adaptation of Indian Laws*) *Order, 1937.*

[See *Fort St. George Gazette*, Part I, dated the 20th April, 1937, pages 691-772.]

3. This Act has been amended by Madras Acts XVII of 1942; IX of 1943; XXXI of 1943; V of 1946; VII of 1948; Adaptation of Laws Order, 1950; and (Madras Act XIV of 1951).

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THE MADRAS DEBT CONCILIATION ACT (XI OF 1936).

(As modified up to the 22nd May, 1951.)

[*28th April, 1936.*

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE MADRAS DEBT CONCILIATION ACT, 1936.

(2) It extends to the whole of the Presidency of Madras.

(3) It shall come into force on such date [1] as the [2] *State* Government may, by notification, appoint.

Definitions.

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

(*a*) 'landholder' means a person holding land under a Sanad-i-Milki-yat-i-istimrar, a zamindar, shrotriyamdar, jagirdar of inamdar, a person farming the land revenue under Government, and a holder of any land under ryotwari settlement or in any way subject to the payment of revenue direct to Government;

(*b*) 'tenant' means a ryot having a permanent right of occupancy in his holding and includes a kanamdar in Malabar and a 'Mulgeni' tenant in South Kanara;

(*c*) 'agriculture' includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(*d*) 'board' means a Debt Conciliation Board established under sub-section (1) of section 3;

LEG. REF.

1. Came into force on 1st January, 1937.
2. Substituted by A. L. O., 1950.

(*e*) 'creditor' means a person to whom a debt is owing and includes a co-operative society;

(*f*) 'debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, rent as defined in the Madras Estates Land Act, 1908; or any money for the recovery of which a suit is barred by limitation;

(*g*) 'debtor' means a person—

(i) who earns his livelihood mainly by agriculture or who is an occupancy tenant or landholder whether he cultivates the land personally or otherwise; and

(ii) whose debts exceed one hundred rupees;

(*h*) 'prescribed' means prescribed by rules made under this Act;

(*i*) 'secured debt' includes mortgage debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise;

(*j*) 'secured creditor' means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

Establishment and constitution of boards.

3. (1) The [1][*State* Government] may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a chairman and two members appointed by the Government. The chairman shall be a person who holds or has held an office not lower in rank than that of a Subordinate Judge or a Deputy Collector. One at least of the members shall be a non-official. The [1][*State* Government] may, for reasons to be recorded in writing, cancel the appointment of the chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

LEG. REF.

1. Substitutes by A. L. O., 1950.

(4) Where the chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the chairman shall have [*and exercise*] [1] a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the [2][*State* Government] may, at any time establish another board for the area for which the former board was established and may declare the board newly established to be the successor in office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

Application for settlement between debtor and his creditors.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

[4-A. *Power of Government to prohibit receipt of fresh applications and direct certain applications not to be further proceeded with.* [(1)] Notwithstanding anything contained in this Act, the [2][State] Government may direct—

(*a*) that after a specified date, a board shall not receive applications under section 4; and

(*b*) that applications under section 4 received by the board after a date (whether before or after the issue of a direction under this clause) fixed in this behalf and not finally disposed of by it on or before the date specified under clause (*a*), shall not be further proceeded with.

LEG. REF.

1. Inserted by Madras Act XIV of 1951.
2. Substituted by A. L. O., 1950.

The applications referred to in clause (*b*) shall be deemed to huve been dismissed.] (*Inserted by Madras Act XXXI of 1943 and renumbered as sub-section* (*1*) *by Madras Act V of 1946*).

[(2) All applications received by a board and not finally disposed of by it before it ceased to exist, shall be deemed to have been dismissed on the date on which this sub-section comes into force.

Explanation.—Nothing contained in this sub-section shall-- apply to applications deemed to have been dismissed under sub-section (1).] (*Added by Act V of* 1946).

Verification of application.

5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

Particulars to be stated in application.

6. (1) Every application made by a debtor to a board shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he resides ;

(*c*) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him ; and

(*d*) particulars of the debtors's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely :—

(*a*) the place where the debtor resides ; and

(*b*) the amount and particulars of his claim against such debtor.

Rejection of application

7. The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

Procedure on application.

8. (1) On receipt of an application under section 4 the board shall unless it rejects the application under section 7 pass an order fixing a date and place for hearing the application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor, the debtor shall, on his appearance, furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

Dismissal of application.

9. An application under section 4 may be dismissed by the board at any stage of the proceedings—

(*a*) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts; or

(*b*) if, in the opinion of the board, the applicant fails to pursue his application with due diligence:

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act; or

(*c*) if the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

Notice calling upon creditors to submit statements of debts.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be:

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

[(2) If no statement is submitted by a creditor in compliance with the provisions of sub-section (1) in respect of debts owed to him by the debtor, then, subject to the provisions of sub-section (3)—

(*a*) in the case of any debt included in the particulars furnished by the debtor under sub-section (1) of section 6 or sub-

section (3) of section 8, the creditor shall not be entitled, in any proceeding before a board or civil court or on any other occasion, to dispute the accuracy of the said particulars in regard to such debt; and

(*b*) every other debt shall be deemed for all purposes and on all occasions to have been duly discharged. (*Substituted by Act IX of* 1943 *and re-enacted permanently by Act VII of* 1948).

(3) If a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may [1][remove the difficulty imposed by clause (*a*) of sub-section (2) in regard to the debts referred to in that clause and revive the debts referred to in clause (*b*) of that sub-section], if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section:

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or a civil court after having applied to the other.

Procedure on submission of statement of debts.

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt:

Provided the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to

LEG REF.

1. Substituted by Act IX of 1943.

grant reasonable time for producing the same in any proceeding pending before it.

Power of board to decide dispute as to the existence or amount of debts or assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board:

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

Power of board to require attendance of persons and production of documents.

13. (1) Subject to rules made under this Act a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil court by the Code of Civil Procedure, 1908.

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

Agreement of amicable settlement, its registration and effect.

14. (1) If the creditors to whom more than fifty per cent. of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement:

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies:

Provided further that when a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property.

(2) An agreement made under sub-section (1) shall, within thirty days from the date of the making thereof, be registered under the Indian Registration Act, 1908, by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court and be excutable as such.

[(3) (*a*) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for the chairman or any member of the board or any party who has signed or otherwise authenticated the agreement referred to in sub-section (1), to appear in person or by agent at any registration office in any proceeding connected with the registration of such agreemenr, or to sign as provided in section 58 of that Act.

(*b*) The registering officer to whom any such agreement is sent for registration may, if he thinks fit, refer to the chairman of the bqard or to any other person for information respecting the same, and on being satisfied of the execution thereof, shall register the agreemeut.] (*Substituted by Act XVII of* 1942.)

(4) If, after the making of an agreement under sub-section (1), [the disability in respect of any debt is removed or][1] any debt is revived by the board or a civil court under sub-section (3) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of [1][such removal or reviver], and all the provisions of this Act shall apply in respect of the application accordingly.

Properties exempt from attachment not to be taken into account.

15. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908, shall not be taken into account and shall be left to the judgment-debtor free from any liability for his debts.

Maximum amount allowable in satisfaction of a debt.

16. In any scheme of debt conciliation under this Act, no creditor shatl be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal and if the debt was incurred before the first day of June 1933 twice the amount due on the said date.

Power of board to dismiss application.

17. If no amicable settlement is arrived at under sub-section (1) of section 14 within twelve months from the date of the application under section 4, the board shall dismiss the application.

LEG. REF.

1. Inserted and substituted by Madras Act IX of 1943.

Grant of certificate in respect of certain debts.

18. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor.

The board, in coming to a decision whether the offer made is fair or not, may take into consideration—

(*i*) the fall or rise in the value of land and its produce, in the locality;

(*ii*) the amount of consideration actually received;

(*iii*) the reasonableness of the rates of interest;

(*iv*) the onerous conditions, if any, subject to which the loan was granted;

(*v*) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were; and

(*vi*) any other particulars which the board thinks it desirable to take into account.

Power of Court to disallow cost or interest.

(2) Where any creditor sues in a civil Court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent. per annum on the principal amount due on the date of such certificate.

Decrees in suits after registration of agreement not to be executed.

(3) Where after the registration of an agreement under sub-section (2) of section 14, any unsecured creditor sues for the recovery of a debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

Bar of civil suits.

19. No civil Court shall entertain—

(*a*) any suit, in respect of—

(1) any matter pending before a board, or

(2) the validity of any procedure or the legality of any agreement made under this Act, or

(3) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 14 from any person who, as a debtor, was party to such agreement; or

(4) the recovery of any debt which has been deemed to have been duly discharged under [clause (*b*) of][1] sub-section (2) of section 10, except a debt which is revived under sub-section (3) of that section; or

(*b*) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 18.

Avoidance of certain transfers of debtors' property.

20. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4 and until the agreement registered in pursuance of such application has been fully carried out shall be voidable by order of the board on application by the creditors so defeated or delayed.

Alienation made with sanction of board not to be considered as a fraudulent preference.

21. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 14 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882.

Bar of appeal or revision.

22. No appeal or application for revision shall lie against any order passed by a board.

Power of board to review its order.

23. A board may, on application from any person interested made within ninety days of the passing of an order, or on its own motion at any time review any order passed by it and pass such order in reference thereto as it thinks fit:

LEG. REF.

1 Inserted by Madras Act IX of 1943.

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

Appearance of parties before board.

24. In any proceedings before a board any party may appear in person or with the permission of the board by a legal practitioner or an agent authorized in writing.

Stay of pending suits or other proceedings.

25. When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil Court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has dismissed the application.

Report by board regarding sums due to Government.

26. Where in the course of an enquiry in an application made under section 4 a board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists' Loans Act, 1884, or the Land Improvements Loans Act, 1883, or otherwise, the board shall report this fact to the Collector.

Computation of period of limitations for suits and proceedings.

27. (1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil Court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil Courts to recover debts, be excluded from computation under section 48 of the Code of Civil Procedure, 1908, or under the Indian Limitation Act, 1908.

Members of the board deemed to be public servants.

28. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code.

Power to make rules.

29. (1) The [1][State Government] may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

LEG. REF.

1 Substituted by A. L. O:, 1950.

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules—

(*a*) with reference to all matters expressly required or allowed by this Act to be prescribed;

(*b*) regulating the procedure before a board;

(*c*) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;

(*d*) prescribing the records to be kept and the returns to be made by a board;

(*e*) prescribing the allowances, if any, to be paid to the chairman and members of a board;

(*f*) regulating the power of a board to summon parties and witnesses and the production of documents under section 13 and the grant of expenses to witnesses; and

(*g*) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 14.

(3) All rules made under this Act shall be subject to the condition of the rules being made after previous publication.

(4) In making any rule, the [1][State Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to ten rupees for every day during which the breach continues after [conviction for the first breach.][2]

APPENDIX III.

THE MADRAS DEBT CONCILIATION (AMENDMENT) ACT, 1943 (ACT IX OF 1943).

WHEREAS it is expedient further to amend the Madras Debt Conciliation Act, 1936, for the purposes hereinafter appearing;

AND WHEREAS the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the [1][State] Legislature;

LEG. REF.

1 Substituted by A. L. O., 1950.

2 Substituted by Madras Act XIV of 1951.

NOW, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows :—

SECTION 1.—This Act may be called the Madras Debt Conciliation (Amendment) Act, 1943.

SECTIONS 2 TO 4.—[Amendments carried out in their proper places in the Madras Act.]

5. *Transitional Provision.*—Any debt deemed to have been duly discharged before the commencement of this Act under sub-section (2) of section 10 of the said Act shall, for the purpose of applying the said Act as amended by this Act to such debt, be deemed to have been duly discharged under clause (b) of sub-section (2) of section 10 of the said Act as amended by this Act,

APPENDIX IV.

THE MADRAS DEBTORS' PROTECTION ACT, 1934 (ACT VII OF 1935).

[Amendment by Madras Act IV of 1936. (*See also* Madras Act VII of 1948) Madras Act XXIII of 1943 and Adaptation Order, 1950].

PREFATORY NOTE.—The reason for the enactment of this new provision (Section 6-A) has been explained as follows :—"The Madras Debtors' Protection Bill, XXI of 1932, as amended by the Select Committee contained a clause providing for the maximum rate of interest payable on secured and unsecured loans coming within its scope, *viz.*, loans for less than Rs. 500. During the second reading of the Bill, the Government moved an amendment to omit the clause on the ground that the Government of India were considering the question of dealing with the subject by central legislation. The amendment was carried by the Council and the clause was omitted. Subsequently, the Government of India intimated to the Madras Government that they did not propose to undertake central legislation on the subject in view of the diversity of the conditions prevailing in the province and that the Provincial Government might, if they considered it necessary, initiate legislation dealing with the subject. This decision of the Government of India was mentioned at the third reading of the Bill and a statement was made on behalf of the Government that a separate amending Bill would be introduced in regard to rates of interest after consulting the High Court and the Board of Revenue.

This Bill, which is modelled on the lines of section 3 of the Bengal Money-lenders' Act 1933 (Bengal Act VII of 1933), section 8 of the Assam Money-lenders' Act (Assam Act IV of 1934) and section 3 of the Usurious Loans (Central Provinces Amendment)

Act, 1934, (Central Provinces Act XI of 1934), is introduced in pursuance of the undertaking mentioned above. New section 6-A provides that the Court should, until the contrary is proved, presumed that the interest is excessive and that they should give relief under the Usurious Loans Act, 1918 (X of 1918), where the rate of interest exceeds 12 per cent. per annum simple interest in the case of a secured loan (now fixed at 9 per cent.) and 18 per cent. per annum simple interest (now fixed at 15 per cent.) in the case of an unsecured loan. The new provision has been made specifically applicable to cases where compound interest is charged. It has also been made clear that the new section does not in any way affect the jurisdiction now vested in Courts under sections 3 and 4 of the Usurious Loans Act, 1918, to re-open transactions which are substantially unfair even in cases where the rate of interest charged is less than 9 per cent. simple interest or 15 per cent. simple interest as the case may be. The Act will have no retrospective operation and will apply to loans advanced after it becomes law." (*Fort St. George Gazette*, Part IV, Extra., dated 3rd August, 1935, pp. 2-3).

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THE MADRAS DEBTORS' PROTECTION ACT, 1934, (ACT VII OF 1935.)

[*26th March, 1935.*

An Act for the protection of certain classes of debtors in the Presidency of Madras.

WHEREAS it is expedient to make provision for the protection of certain classes of debtors in the Presidency of Madras, and for that purpose to regulate the keeping of accounts by certain classes of creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the MADRAS DEBTORS' PROTECTION ACT, 1934.

(2) It extends to the whole of the Presidency of Madras.

(3) It shall come into force on such date *as the †[State Government] may, by notification in the *Official Gazette*, appoint.

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

Definitions.

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

(*a*) registered under any of the enactments for the time being in force [1][in any State or] in the United Kingdom or in any of the colonies or dependencies of the United Kingdom, [2][. . . . .]; or

(*b*) incorporated by an Act of Parliament of the [3][United Kingdom] or by Royal Charter or Letters Patent or by any [4][Central Act];

(2) "company" means a company—

(*a*) registered under any of the enactments relating to companies for the time being in force [1][in any State or] in the United Kingdom or in any of the British Dominions or in any of

LEG. REF.

1. Inserted by Adaptation (Amendment) Order, 1950.

* Came into force on 15th January, 1936.

† Substituted by A. L. O., 1950.

1. Inserted by Adaptation (Amendment) Order, 1950.
2. Words "or in British India or in any state in India", omitted by *ibid.*
3. Inserted by *ibid.*
4. Substituted by *ibid.* for the words, "Act of the Indian Legislature".

the Colonies or Dependencies of the United Kingdom, [1][* * *] or; (*b*) incorporated by an Act of Parliament [2][of the United Kingdom] or by Royal Charter or Letters Patent or by any [2][Central Act]; [3][* * *].

(3) "Co-operative Society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932;

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

(5) "creditor" means a person [4][. . . . . .] who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan;

(6) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or on account of costs, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan;

(7) "loan" means an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—

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

(ii) an advance made by a bank, a company or a co-operative society;

(iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority;

LEG. REF.

1. Words "in British India or in any State in India," omitted by *ibid.*
2. Substituted by *ibid.*
3. Words "and includes a Life Assurance Company, etc." omitted by Madras Act XXIII of 1943. (*See also* Madras Act VII of 1948, section 3 and second schedule).
4. Words "including a pawn-broker" omitted by Madras (Act XXIII of 1943).

(iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business;

(v) an advance made by a landlord to his tenant, by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture;

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

[1] [* * * *]

[1] [* * * *]

[1] (8) "prescribed" means prescribed by rules made under this Act; and

(9) "principal" means in relation to a loan the amount actually lent to the debtor.

Duty of creditor to maintain accounts and to give receipts.

3. (1) Every creditor shall—

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

(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; and

(ii) the amount of every payment received by the creditor in respect of the loan, and the date of such payment;

(*b*) give to the debtor or his agent, a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment; and

(*c*) on requisition in writing made by the debtor, furnish to the debtor or, if he so requires, to any person mentioned by him in that behalf in his requisition a statement of account signed by himself or his agent showing the particulars referred to in clause (*a*) and also the amount which remains outstanding on account of the principal and of interest and charge such sums as the [State Government] [2] may prescribe as fee therefor.

1. Original clauses (8) and (9) omitted and clauses (9) and (10) re-numbered as (8) and 9, by Madras Act XXIII of 1943.

2. Substituted by A. L. O., 1950.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (*a*) of sub-section (1) certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(3) A person to whom a statement of account has been furnished under clause (*c*) of sub-section (1) and who fails to object to the correctness of the account shall not by such failure alone be deemed to have admitted the correctness of such account.

[1][4 * * * *]

5. In the receipt to be given under clause (*b*) of sub-section (1) of section 3, [and][2] in the statement of account to be furnished under clause (*c*) of that sub-section [* * *][3] the figures shall be entered only in Arabic numerals.

Figures in accounts and receipts to be in Arabic numerals.

6. (1) In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (*a*) of sub-section (1) of section 3 [* *][3] he shall not be allowed his costs.

Penalty for non-compliance with sections 3 and 4.

(2) If a creditor fails to give to the debtor or his agent a relief as required by clause (*b*) of sub-section (1) of section 3 or to furnish, on a requisition made under clause (*c*) of that sub-section, a statement of account as required therein within one month after such requisition has been made [3][* * *] he shall not be entitled to any interest for the period of the default.

[4][6-A. (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1935, it is found that the interest charged exceeds, in the case of a secured loan, nine per cent. per annum simple interest and in the case of an unsecured loan, fifteen per cent. per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Presumption in the case of certain loans.

LEG REF.

1. Section 4 omitted by Madras Act XXIII of 1943.
2. Inserted by *ibid*.
3. Omitted by *ibid*.
4. Section 6-A inserted by Madras Act IV of 1946.

Explanation.—In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of nine per cent. per annum or fifteen per cent. per annum as the case may be, the court shall draw the presumption referred to in this sub-section until the contrary is proved.

(2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the Court under sections 3 and 4 of the Usurious Loans Act, 1918, in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent. per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties thereto, substantially unfair.]

Savings.

7. Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

Rules.

8. (1) The [1] [State Government] may make rules not inconsistent with this Act for the purpose of carrying out all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power the [1] [State Government] may make rules prescribing—

(*a*) the sum which may be charged as fee for a statement of account, furnished under clause (*c*) of sub-section (1) of section 3, [and][2] ;

(*b*) the manner in which a copy of the account shall be certified for the purpose of sub-section (2) of section 3, [* * *][3]

[3] [(*c*) * * * *].

[4] [9. Nothing contained in this Act shall be deemed to apply to pawnbrokers, that is to persons who carry on the business of taking goods and chattels in pawn for a loan.]

1. Substituted by A. L. O. 1950.
2. Inserted by Madras Act XXIII of 1943.
3. Omitted by *ibid.*
4. Added by *ibid.*

APPENDIX V.

THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ORDINANCE, 1953.

[*Published in the Fort St. Gerge Gazette, Extraordinary, Part IV-B, page 71, dated 5th December*, 1953.]

(MADRAS ORDINANCE NO. V OF 1953.)

[*5th December*, 1953.

An Ordinance to provide temporary relief to indebted agriculturists.

WHEREAS, after successive years of drought by the bounty of Nature there has been adequate rainfall this year and agriculturists are applying themselves with assiduity to the cultivation of crops;

AND WHEREAS agriculturists have borrowed or added to their debts during the years of drought and may, if freed for a year from the pressure of creditors, be enabled to rehabilitate themselves; and it is in the interests of the general public that, at the present time, agriculturists be spared the distractions and expenditure involved in litigation launched by their creditors, in order that the maximum possible advantage may result to the State in the matter of production of food crops;

AND WHEREAS the Legislature of the State is not in session and the Governor of Madras is satisfied that if the matter be delayed and proposals for legislation take the ordinary course, there is likely to be a large recourse to Courts of law on the part of creditors, and this and other circumstances render it necessary for him to take immediate action to provide temporary relief to indebted agriculturists;

AND WHEREAS the instructions of the President have been obtained in pursuance of the proviso to Article 213, clause (1) of the Constitution;

NOW, THEREFORE, in exercise of the powers conferred by Article 213, clause 1 of the Constitution, the Governor hereby promulgates the following Ordinance:—

Short title and commencement.

1. (1) This Ordinance may be called THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ORDINANCE, 1953.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires—

(*a*) 'agriculturist' means any person, not being an incorporated company or a registered firm, regularly engaged in the

cultivation of land to the possession of which he is entitled or out of the produce of which he is to be maintained.

Explanation I.—Where a number of persons jointly cultivate land to the possession of which they are entitled or out of the produce of which they are entitled to be maintained, each such person shall be deemed to cultivate such land.

Explanation II.—The land cultivated by a person either wholly or in part by hired labour shall be deemed to be cultivated by such person provided that such labour is under his direct supervision and control:

(*b*) 'creditor' includes the heirs, legal representatives and assigns of the creditor;

(*c*) 'debt' means any liability in cash or kind, whether secured or unsecured whether payable under a decree or order of a civil or revenue court or otherwise, but does not include—

(i) rent;

(ii) damages for breach of contract, not being a contract for payment of money, whether a decree has been obtained therefor or not;

(iii) any liability arising out of a breach of trust;

(iv) any liability in respect of maintenance, whether under decree of Court or otherwise;

(v) any sum payable to the State or the Central Government or to any local authority, whether by way of revenue, tax, cess or loan or otherwise;

(vi) any debt due to any co-operative society, including a land-mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), or to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian law, provided that the right of the society or the corporation to recover the debt did not arise by reason of an assignment made subsequent to the 1st October, 1953;

(vii) any wages due to an agricultural or other rural labourer;

(*d*) 'rent' means rent as defined by the Madras Estates Land Act, 1908 (Madras Act I of 1908), or rent or michavaram as defined by the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), or quit-rent, jodi, kattubadi, poruppu or the like, payable to the landholder of an estate as defined by the Madras Estates Land Act, 1908 (Madras Act I of 1908), whether a decree or order

of a civil or revenue court has been obtained therefor or not, and includes interest payable thereon and costs incurred in respect of the recovery thereof through a civil or revenue court.

Bar of suits and applications.

3. No suit for the recovery of a debt shall be instituted, and no application for the execution of a decree for payment of money passed in any such suit shall be made, against any agriculturist in any civil Court before the expiry of a year from the commencement of this Ordinance.

Explanation.—Where a debt is payable by an agriculturist jointly or jointly and severally with a non-agriculturist, no suit or application of the nature mentioned in this section shall be instituted or made, either against the non-agriculturist or against the agriculturist, before the expiry of the period mentioned in this section.

Stay of proceedings.

4. All further proceedings in suits and applications of the nature mentioned in section 3, not being proceedings for the amendment of pleadings or for the addition, substitution, or the striking off of parties, but otherwise inclusive of proceedings consequent on orders or decrees made in appeals, revision petitions, or applications for review, shall stand stayed until the expiry of a year from the date of commencement of this Ordinance:

Provided that in regard to property under attachment, the Court may pass such orders as it deems necessary for the custody or preservation of the property or for the sale of such property if it is subject to speedy or natural decay or, if in respect of it, the expenses of custody or preservation are considered excessive.

Exclusion of time for limitation.

5. In computing the period of limitation prescribed for a suit for the recovery of a debt or an application for the execution of a decree passed in a suit for the recovery of a debt, the time during which the institution of the suit or the making of the application was barred by section 3, or during which the creditor refrained from instituting the suit or making the application in the honest belief that section 3 applied to such suit or such application, shall be excluded.

Effect of transfer of immovable property by the debtor.

6. Every transfer of immovable property by a debtor entitled to the benefit of section 3 or section 4 made after the commencement of this Ordinance and before the expiry of a year thereafter shall, in a suit instituted under section 53(1) of the Transfer of Property Act, 1882 (Central Act IV of 1882), with respect to such transfer, be presumed to have been made with intent to defeat or delay the creditors of the transferor.

Power to make rules.

7. The State Government may make rules to carry out the purposes of this ordinance.

[Since repealed by Madras Act V of 1954.]

APPENDIX VI.

THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ACT, 1954.

[Received the assent of the President on 5th February, 1954. Published in the *Fort St. George Gazette*, Extraordinary, Part IV-B, page 15, dated 6th February, 1954.]

ACT NO. V OF 1954.

An Act to provide temporary relief to indebted agriculturists.

WHEREAS, after successive years of drought, by the bounty of Nature there has been adequate rainfall this year and agriculturists are applying themselves with assiduity to the cultivation of crops ;

AND WHEREAS agriculturists have borrowed or added to their debts during the years of drought and may, if freed for a time from the pressure of creditors, be enabled to rehabilitate themselves ;

AND WHEREAS it is in the interests of the general public that, at the present time, agriculturists be spared the distractions and expenditure involved in litigation launched by their creditors, in order that the maximum possible advantage may result to the State in the matter of production of food crops ;

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ACT, 1954.

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

(3) It shall come into force at once.

Definitions.

2. In this Act, unless the context otherwise requires—

(*a*) 'agriculturist' means a person who owns an interest in land, and who, by reason of such interest, is in possession of such land or is in receipt of the rents or profits thereof and shall include a lessee ; but shall not include—

(i) a firm registered under the Indian Partnership Act, 1932 (Central Aet IX of 1932), or a company as defined in the Indian

Companies Act, 1913 (Central Act VII of 1913), or a corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian law; or

(ii) any person who was assessed to income-tax under the Indian Income-tax Act (Central Act XI of 1922) in any of the years, 1951-52, 1952-53, 1953-54.

Explanation.—Where a joint Hindu family or a tarwad, tavazhi, kutumba or kavaru is an agriculturist, every coparcener or member of the tarwad, tavazhi, kutumba or kavaru, as the case may be, shall be deemed to be an agriculturist provided that he has not been assessed to income-tax in any of the years 1951-52, 1952-53, 1953-54.

(*b*) 'debt' means any sum of money which a person is liable to pay under a contract (express or implied) for consideration received and includes rent in cash or kind which a person is liable to pay or deliver in respect of the lawful use and occupation of land.

Explanation.—It is immaterial that the sum or produce is recoverable only by sale of property in enforcement of a mortgage or charge or that the contract was entered into by the person's predecessor-in-title or by the manager of the joint Hindu family or the karnavan of the tarwad or tavazhi or the yajaman of the kutumba or kavaru of which such person was or is a member.

Exception.—'Debt' does not include—

(i) rent or compensation for the use and occupation of house property;

(ii) rent or compensation for the use and occupation of immovable property not being house property, accrued due after the 31st March, 1953;

(iii) any liability arising out of a breach of trust;

(iv) any liability in respect of maintenance;

(v) any sum payable to the State or the Central Government or to any local authority, whether by way of revenue, tax, cess, or loan or otherwise;

(vi) any sum payable to any co-operative society, including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), provided that the right of the society to recover the sum did not arise by reason of an assignment made subsequent to the 1st October, 1953;

(vii) wages or remuneration due as salary, or otherwise for services rendered;

(*c*) 'land' means land used for agriculture or horticulture, not being land appurtenant to a residential building;

(*d*) 'Ordinance' means the Madras Indebted Agriculturists (Temporary Relief) Ordinance, 1953 (Madras Ordinance V of 1953);

(*e*) 'pay' with its grammatical variations, includes deliver;

(*f*) 'suit' or 'application' does not include an appeal from a decree or order passed in a suit or application, or an application for revision or review.

Bar of suits and applications.

3. No suit for the recovery of a debt shall be instituted, no application for the execution of a decree for payment of money passed in a suit for the recovery of a debt shall be made, and no suit or application for the eviction of a tenant on the ground of non-payment of a debt shall be instituted or made, against any agriculturist in any civil or revenue Court [before the 1st March, 1955.]

Explanation I.—"Suit" does not include a claim to a set-off made in a suit instituted by an agriculturist.

Explanation II.—Where a debt is payable by an agriculturist jointly or jointly and severally with a non-agriculturist, no suit or application of the nature mentioned in this section, shall be instituted or made either against the non-agriculturist, or against the agriculturist [before the date] [2] mentioned in this section.

Explanation III.—A suit shall be deemed to be a suit for the recovery of a debt notwithstanding that other reliefs are prayed for in such suit, and a decree shall be deemed to be a decree for payment of money passed in such suit notwithstanding that other reliefs are granted by such decree:

Provided that a suit for possession of land shall not be deemed to be a suit for recovery of a debt by reason merely of mesne profits being also prayed for in such suit.

Stay of proceedings.

4 (1) All further proceedings in suits and applications of the nature mentioned in section 3 in which relief is claimed against an agriculturist, not being proceedings for the amendment of pleadings or for the addition, substitution, or the striking off of

1. These words were substituted for the words "before the expiry of a year from the date of commencement of this Act" by Madras Act XXXVII of 1954.

2. Substituted for the words "before the expiry of the period" by *ibid*.

parties, but otherwise inclusive of proceedings consequent on orders or decrees made in appeals, revision petitions, or applications for review, shall, subject to the next succeeding sub-section, stand stayed [1] [until the 1st March, 1955;]

Provided that, in regard to property under attachment, the Court may pass such orders as it deems necessary for the custody or preservation of the property or for the sale of such property if it is subject to speedy or natural decay, or, if in respect of it, the expenses of custody or preservation are considered excessive.

(2) On application made by the defendant or the respondent or by all the defendants or all the respondents, as the case may be, the stay effected by sub-section (1) in a suit or application shall be dissolved and the suit or application shall be proceeded with from the stage which had been reached when further proceedings in the suit or the application were stayed.

(3) In the case of suits or applications of the nature mentioned in section 3, instituted or made against an agriculturist, the provisions of the Madras Tenants and Ryots Protection Act, 1949 (Madras Act XXIV of 1949), or of section 54 or section 55 of the Malabar Tenancy (Amendment) Act, 1951 (Madras Act XXXIII of 1951), shall not have effect in so far as the said provisions are inconsistent with the provisions of sub-section (1).

Exclusion of time for limitation.

5. (1) In computing the period of limitation or limit of time prescribed for a suit for the recovery of a debt or an application for the execution of a decree passed in such suit, the time during which the institution of the suit or the making of the application was barred by section 3 of the Ordinance or section 3 of this Act, or during which the plaintiff or his predecessor-in-title, believing in good faith that section 3 of the Ordinance or section 3 of this Act applied to such suit or such applications, refrained from instituting the suit or making the application, shall be excluded.

Explanation.—"Good faith" shall have the meaning assigned to it in section 3 (22) of the General Clauses Act, 1897 (Central Act X of 1897).

(2) Where in a suit or an application in which the question of the exclusion of time under sub-section (1) arises, the defendant or the respondent, or one of the defendants or respondents, with respect to whom the question is raised, would have been an agriculturist but for the fact that in the years ending 1951-52, 1952-53, or 1953-54, he had been assessed to income-tax (Central Act XI

1 Substituted for the words "until the expiry of a year from the date of commencement of this Act" by Madras Act XXXVII of 1954.

of 1922), it shall be conclusively presumed that, in refraining from instituting the suit or making the application, the creditor believed in good faith that such defendant or respondent was an agriculturist.

Effect of transfer of immovable property by the debtor.

6. Every transfer of immovable property by a debtor entitled to the benefit of section 3 or section 4, made after the commencement of the Ordinance and [1] [before the 1st March, 1955] shall, in any suit or other proceeding, with respect to such transfer, be presumed, until the contrary is proved to have been made with intent to defeat or delay the creditors of the transferor.

Power to make rules.

7. The State Government may make rules to carry out the purposes of this Act.

Repeal of Madras Ordinance V of 1953:

8. The Madras Indebted Agriculturists (Temporary Relief) Ordinance, 1953 (Madras Ordinance V of 1953), is hereby repealed.

APPENDIX VII.

THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) AMENDMENT ACT, 1954.

[*Received the assent of the President on the 18th January.* 1955. *Published in the Fort St. George Gazette, Part IV-B, page* 23, *dated 26th January,* 1955.]

ACT NO. XXXVII OF 1954.

WHEREAS it is expedient to amend the Madras Indebted Agriculturists (Temporary Relief) Act, 1954 (Madras Act V of 1954), for the purposes hereinafter appearing;

BE it enacted in the Fifth year of the Republic of India as follows:—

Short title.

1. This Act may be called THE MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) AMENDMENT ACT, 1954.

Sections 2 to 4. [Amendments carried out in main Act.]

1: Substituted by Madras Act. XXXVII of 1954.

APPENDIX VIII.

RULES UNDER MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ACT [1]

(*G. O. No.* 355, *Revenue*, 16*th February*, 1954.)

In exercise of the powers conferred by section 7 of the Madras Indebted Agriculturists (Temporary Relief) Act, 1954 (Madras Act V of 1954), the Governor of Madras hereby makes the following rules :—

RULES.

1. In these rules, "the Act" means the "MADRAS INDEBTED AGRICULTURISTS (TEMPORARY RELIEF) ACT, 1954."

2. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to income-tax in any of the years 1951-52, 1952-53, and 1953-54, for information as to that fact and the Collector shall thereupon ascertain such information and grant to such creditor a memorandum in that behalf. Such memorandum shall be received in every Court as evidence of the facts stated therein.

3. An application made under rule 2 shall be in writing, shall specify the name and address of the applicant and the name and address of the debtor and shall give a clear statement of the facts of the case. It shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908, and shall bear a Court-fee stamp of the value of twelve annas.

4. Every application under sub-section (2) of section 4 of the Act shall be in writing and shall be signed and verified by the applicant. It shall also specify the names and addresses of the defendants or respondents, as the case may be, and the amount or amounts covered by the debt. Every such application shall be stamped with a court-fee stamp of the value of twelve annas.

APPENDIX IX.

THE MADRAS INDEBTED AGRICULTURISTS (REPAYMENT OF DEBTS) ACT, 1955.

[*Received the assent of the President on the* 27*th February*, 1955. *Published in the Fort St. George Gazette, Extraordinary, part IV-B, page* 31, *dated* 1*st March*, 1955.]

ACT NO. I OF 1955.

An Act to give relief to indebted agriculturists in the State of Madras.

1. Published in Rules Supplement to Part I, page 78, of the *Fort St. George Gazette*, dated 24th February, 1954.

WHEREAS it is expedient to enable the indebted agriculturists to repay their debts in easy instalments;

BE it enacted in the Sixth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE MADRAS INDEBTED AGRICULTURISTS (REPAYMENT OF DEBTS) ACT, 1955.

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

(3) It shall be deemed to have come into force on the 1st March, 1955.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) 'agriculturist' means a person who has an interest other than interest as a simple mortgagee in any agricultural or horticultural land not being a land appurtenant to a residential building, but shall not include—

(i) any person liable to pay land revenue (which shall be deemed to include peshkash and quit-rent) exceeding one hundred and fifty rupees per annum in any year after 1952-53;

(ii) any person assessed to profession tax on income derived from a profession other than agriculture under any law governing municipal or local bodies in India on a half-yearly income of more than nine hundred rupees in any half-year after 1952-53;

(iii) any person assessed in any half-year after 1952-53 to property or house tax on an annual rental value of rupees six hundred in respect of buildings (other than a building in which he lives) or lands other than agricultural lands under any law governing municipal or local bodies in India;

(iv) any person assessed to sales tax on a total turnover of not less than twenty thousand rupees in any year after 1952-53 under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), or under the law of any other State relating to sales tax;

(v) any person assessed to income-tax under the Indian Income-tax Act, 1922 (Central Act XI of 1922), in any year after 1950–51;

(vi) a firm registered under the Indian Partnership Act, 1932 (Central Act IX of 1932), or a company as defined in the Indian Companies Act, 1913 (Central Act VII of 1913), or a corporation formed in pursuance of an Act of Parliament of the United Kingdom or of any special Indian law;

Explanation I.—Where a joint Hindu family or tarwad, tavazhi, kutumba or kavaru, is an agriculturist, every co-parcener or

member of the tarwad, tavazhi, kutumba or kavaru, as the case may be, shall be deemed to be an agriculturist provided that he does not fall under any of the categories specified in sub-clauses (i) to (v).

Explanation II.—The provisions of this Act shall not apply to any person who though an agriculturist was not an agriculturist on the 1st October, 1953 ;

(*b*) 'debt' means any liability in cash or kind, whether secured or unsecured, due from an agriculturist on the 1st October, 1953, whether payable under a contract or decree or order of a Court, civil or revenue, or otherwise, but shall not include—

(i) any sum payable to the State or the Central Government or to any local authority ;

(ii) any sum payable to any co-operative society including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), provided that the right of the society to recover the sum did not arise by reason of an assignment made subsequent to the 1st October, 1953 ;

(iii) any liability arising out of a breach of trust ;

(iv) any liability in respect of maintenance ;

(v) any liability in respect of wages or remuneration due as salary or otherwise for services rendered ; or

(vi) any liability incurred or arising under any Chit Fund Scheme.

Explanation I.—Where a debt has been renewed or included in a fresh document executed after the 1st October, 1953, whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest or as a result of a partition, in favour of the same creditor or his heirs, legal representatives or assigns or any other person acting on his behalf or in his interest or as a result of a partition, the amount outstanding on the 1st October, 1953 and included in the document executed after the 1st October, 1953, shall alone be treated as the debt for the purposes of this Act.

Explanation II.—Where a debt has been split up after the 1st October, 1953, among the heirs, legal representatives or assigns of a debtor or a creditor or as a result of a partition and fresh documents have been executed in respect of different portions of the debt, each of the different portions shall be a debt for the purposes of this Act.

Bar of suits and applications.

3. (1) No suit for recovery of a debt shall be instituted, and no application for execution of a decree in respect of a debt shall be made, against any agriculturist in any civil or revenue Court

before the expiry of four months from the commencement of this Act.

Explanation I.—Where a debt is payable by an agriculturist jointly or jointly and severally with a non-agriculturist, no suit or application of the nature mentioned in this sub-section shall be instituted or made either against the non-agriculturist or against the agriculturist before the expiry of the period mentioned in this sub-section.

Explanation II.—For the purposes of this Act, a suit in which a decree in respect of a debt is prayed for shall be deemed to be a suit for the recovery of a debt notwithstanding that other reliefs are prayed for in such suit and a decree shall be deemed to be a decree in respect of a debt notwithstanding that other reliefs are granted in such decree:

Provided that a suit for possession of land shall not be deemed to be a suit for recovery of a debt by reason merely of mesne profits being also prayed for in such suit:

Provided further that nothing contained in this section shall apply to any portion of a decree other than that relating to a debt.

(2) Where a creditor files a suit for recovery of a debt during the period specified in sub-section (1) or after the agriculturist has paid or deposited into Court the sums and instalments specified in sub-section (1) of section 4 and during the period when he is so entitled to pay, the Court shall in decreeing the suit direct the plaintiff to bear his own costs and pay the costs of the defendant who is an agriculturist:

Provided that nothing contained in this sub-section shall be a bar to the Court passing any order as to costs as between the plaintiff and other defendants who are not agriculturists.

Payment of debt in instalments.

4. (1) Notwithstanding any law, custom, contract, or decree of Court to the contrary, an agriculturist shall be entitled to pay within four months of the commencement of this Act the interest due on any debt due by him up to the commencement of this Act and one-eighth of the principal outstanding or one-fourth of the total amount outstanding, whichever is less, and the balance of the debt in three equal annual instalments on or before the 1st July of each of the succeeding three years with the interest due on such instalments up to that date.

Explanation.—In the case of a decree, the amount decreed shall be deemed to be the principal.

(2) Where in respect of a decree for debt passed before the commencement of this Act, a debtor fails to make any one of the payments specified in sub-section (1) the decree-holder shall be entitled to execute the decree in respect of the instalment which is in default.

(3) In any suit filed after the commencement of this Act, the Court in decreeing the suit shall provide for the immediate payment of such instalment or instalments as would have become due under provisions of sub-section (1) and the balance in further instalments as specified therein.

(4) Where in any suit for the recovery of a debt pending at the commencement of this Act, the debtor claims to be an agriculturist the Court shall, if the debtor is an agriculturist, pass a decree for immediate payment of such instalment or instalments as would have become payable under the provisions of sub-section (1) and the balance in further instalments as specified therein.

(5) Nothing contained in this Act shall bar the Court from passing a decree or making an order in an application for execution of the decree under such terms and conditions as may be more favourable to the debtor than those provided for in this section either of its own motion upon a consideration of all the circumstances of the case or upon an agreement between the parties.

(6) Where in any suit to recover a debt or in any application for the execution of a decree therefor the debt is payable by an agriculturist jointly or jointly and severally with a non-agriculturist, the Court shall pass a decree or make an order for the payment of the debt found due from the agriculturist as provided in this section as against the agriculturist and make such provision in the decree or order against the non-agriculturist as the circumstances of the case may warrant.

(7) The provisions of sub-section (1) shall, for purposes of execution, be deemed to be a subsequent order of Court within the meaning of clause (B) of section 48 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

Deposit of debt into Court.

5. (1) An agriculturist may deposit any of the instalments as provided in section 4 into the Court having jurisdiction to entertain a suit for recovery of the debt or into the Court which passed the decree, as the case may be, and apply to the Court to record part-satisfaction of the debt.

(2) Where any such application is made, the Court shall pass an order recording part-satisfaction of the debt if the amount deposited is the correct amount.

(3) The Court shall dismiss the application—

(*a*) if the applicant is not an agriculturist, or

(*b*) if the liability is not a debt, or

(*c*) if the amount deposited is insufficient and the applicant on being required by the Court to deposit the deficit amount within a time fixed by the Court, fails to do so.

(4) Any agriculturist entitled to make such deposit may, before the date on which any instalment is due, apply to the Court having jurisdiction under sub-section (1) for an extension of time for making the deposit of the whole or any portion of such instalment and the Court may, after notice to the creditor, extend the time for payment of such instalment or part thereof for such period as it thinks fit.

(5) The procedure laid down in the Code of Civil Procedure, 1908 (Central Act V of 1908), for the trial of suits shall, as far as may be, apply to the applications under this section.

Appeals.

6. An appeal shall lie from an order passed by a Court under section 5, as if such an order relates to the execution, discharge or satisfaction of a decree within the meaning of section 47 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

Presumption as to transfer of immovable property of the debtor.

7. (1) Every transfer of immovable property made by a debtor entitled to the benefits of this Act after the 1st October, 1953, and before the complete discharge of his debt, shall, in any suit or other proceeding with respect to such transfer, be presumed, until the contrary is proved, to have been made with intent to defeat or delay the creditors of the transferor.

(2) Where a debtor entitled to the benefits of this Act has allowed, in collusion with another, his immovable property to be sold after the 1st October, 1953, through Court with a view to defeat or delay his creditors, the sale shall be voidable at the option of any creditor so defeated or delayed.

Exclusion of time for limitation.

8. In computing the period of limitation for a suit for recovery of a debt or an application for the execution of a decree in respect of a debt, the time during which the institution of the suit or the making of the application was barred under section 3 shall be excluded.

Effect of payment or deposit under section 4 or section 5.

9. Where a debt is payable by an agriculturist either by himself or jointly or jointly and severally with a non-agriculturist and where the agriculturist makes payment or deposits amount towards that debt as provided for in section 4 or section 5, a fresh period of limitation shall be computed from the time when the payment or deposit was made both against the agriculturist and non-agriculturist.

Power to make rules.

10. (1) The State Government may make rules for carrying out the purposes of this Act.

(2) The rules so made shall be placed on the table of each House of the Legislature as soon as they are published and shall be subject to such modification whether by way of repeal or amendment as the Legislature may make during the session in which they are so laid.

APPENDIX X.

RULES UNDER MADRAS INDEBTED AGRICULTURISTS (REPAYMENT OF DEBTS) ACT, 1955.[1]

(*G. O. No.* 2017, *Industries, Labour and Co-operation, 7th June*, 1955.)

In exercise of the powers conferred by section 10 (1) of the Madras Indebted Agriculturists (Repayment of Debts) Act, 1955 (Madras Act I of 1956), the Governor of Madras hereby makes the following rules :—

RULES.

1. In these rules "the Act" means the "MADRAS INDEBTED AGRICULTURISTS (REPAYMENT OF DEBTS) ACT, 1955."

2. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to any of the taxes mentioned in clauses (i) to (v) of sub-section (*a*) of section 2 of the Act in any of the years specified therein, for information as to those facts and the Collector of the district shall thereupon ascertain such information and grant to such creditor a memorandum or memoranda, as the case may be in, in that behalf. This memorandum shall be in the form annexed and shall be issued under the seal of the Collector of the district. Such memorandum shall be received in every Court as evidence of the facts stated therein.

1. Published in the Rules Supplement to Part I, page 232, of the *Fort St. George Gazette*, dated 22nd June, 1955.

3. Applications made under rule 2 shall be in writing, shall specify the name and address of the applicant and the name and address of the debtor and shall give a clear statement of the facts of the case. Every application shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

4. A separate application shall be made for information as to each kind of tax referred to in clauses (i) to (v) of sub-section (*a*) of section 2 of the Act in the manner prescribed in rule 3 and each application shall bear a court-fee stamp of the value of twelve annas.

5. A debtor depositing any of the instalments of his debt under section 5 (1) of the Act shall give notice of such deposit to the creditor in the same way as laid down in rule 155 of the Civil Rules of Practice.

ANNEXURE.

Form.

(*See* rule 2.)

Memorandum granted by the Collector of under rule 2 of the rules issued under the Madras Indebted Agriculturists (Repayment of Debts) Act, 1955.

Read application from date

It is ascertained that Sri of has been assessed to—

Land Revenue of Rs. in the year or Profession tax for the half-year ending on a half-yearly income of Rs. derived from a profession other than agriculture under* or property or house-tax in respect of buildings or lands other than agricultural lands under* for the half-year ending and that the aggregate annual rental value of such buildings or land is Rs. or Salestax on a total turn over of not less than twenty thousand rupees in the year under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939). or Income-tax under the Indian Income-tax Act, 1922 (Central Act XI of 1922) in the year.

Seal of the Collector of

District Collector of District.

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* Enter the appropriate Act or law under which assessment is made.

APPENDIX XI.

Andhra Amendments to Rules under Act IV of 1938.

(G. O. Ms. No. 1808, Development, 28th October, 1954.)[1]

In exercise of the powers conferred by clause (*c*) of sub-section (2) of section 28 of the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938), the Governor of Andhra hereby makes the following amendments to the rules published with Notification No. 272 of the Government of Madras in the Development Department, dated the 24th March, 1938 and published in the *Fort St. George Gazette*, Extraordinary, dated the 24th March, 1938, as subsequently amended.

The amendments hereby made shall be deemed to have come into force on the 1st October, 1953.

AMENDMENTS.

In the said rules—

(1) for rule 1, the following rule shall be substituted, namely:—

"1. For the purposes of proviso (C) to clause (ii) of section 3 of the Madras Agriculturists Relief Act, 1938, the annual rental value of any land which is not appurtenant to any building or, which is occupied by or appurtenant to huts, and whose assessment is not based on the annual rental value or on the capital value shall be deemed to be 5 per cent. of its capital value as determined by the Collector in the manner laid down in the rules under sub-section (3) of section 81 of the Madras District Municipalities Act, 1920";

(2) in rule 2, for the words "under-tenure holder, janmi or intermediary", the words "or under-tenure holder" shall be substituted;

(3) in sub-rule (1) of rule 5, for the words "the President of a district board or the Revenue Officer of the Corporation of Madras", the words "or the President of a district board" and for the words "President or Revenue Officer", the words "or president" shall be substituted;

(4) in sub-rule (3) of rule 5, for the words "the district board or the Corporation of Madras", the words "or the district Board" shall be substituted;

(5) in sub-rule (i) of rule 9, the words and figures "or to a janmi or intermediary under the Malabar Tenancy Act, 1929" shall be omitted; and

(6) in Form B, the words "the Revenue Officer of the Corporation of Madras" shall be omitted.

1. Published in the Rules Supplement to Part II, page 168 of the Andhra Gazette, dated 18th November, 1954.

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