



ANNO QUARTO
GEORGI VI REGIS.
 A.D. 1940.

No. 59 of 1940.

An Act to consolidate and amend the law relating
 to money-lenders.

[Assented to 5th December, 1940.]

BE IT ENACTED by the Governor of the State of South
 Australia, with the advice and consent of the Parliament
 thereof, as follows :

PART I.

PART. I.

PRELIMINARY.

1. This Act may be cited as the " Money-lenders Act, 1940 ". Short title.
2. This Act shall come into operation upon a day to be fixed by proclamation. Commencement.
3. The Money-lenders Act, 1924, is hereby repealed. Repeal.
4. The provisions of this Act are arranged as follows :— Arrangement.
 - PART I.—Preliminary.
 - PART II.—Licensing of money-lenders.
 - PART III.—Money-lending transactions.
 - PART IV.—Re-opening of hire purchase transactions.
 - PART V.—Miscellaneous.
5. (1) In this Act, unless the context otherwise requires— Interpretation.

" authorized name " and " authorized address " mean respectively the name under which and any address at which a money-lender is authorized by a licence to carry on business as a money-lender ; and " authorized address " includes any substituted or additional authorized address indorsed pursuant to this Act upon a licence :

" cash order transaction " means a transaction for a loan whereby the borrower is authorized by the lender to

Cf. 1617, 1924, s. 3.
 Cf. Vic. 4625, 1938, s. 3.
 Cf. U.K. 63 & 64 Vic. c. 51, s. 6.
 Cf. U.K. 17 & 18 Geo. 5 c. 21, s. 15.

Money-lenders Act, 1940.

obtain goods or services from any other person and such other person agrees either expressly or impliedly to receive payment for such goods or services from the lender or from some other person on behalf of the lender :

“ company ” includes any body corporate :

“ firm ” means an unincorporate body of two or more individuals, or one or more individuals and one or more companies, or two or more companies, who have entered into partnership with one another with a view to carrying on business for profit :

“ interest ” does not include any sum lawfully agreed to be paid in accordance with the provisions of this Act on account of stamp duty, or on account of fees payable to the Registrar-General of Deeds, or on account of costs or fees payable to a solicitor or licensed land broker for the preparation of any document, but save as aforesaid includes any amount (by whatsoever name called) in excess of the principal which has been or is to be paid or payable in consideration of or otherwise in respect of a loan :

“ licence ” means a valid and unexpired money-lender’s licence or renewed licence issued under this Act, and “ licensed ” has a corresponding interpretation :

“ loan ” includes advance, discount, money paid for or on account of or on behalf of or at the request of any person, or the forbearance to require payment of money owing on any account whatsoever, and includes every contract (whatever its terms or form may be) which is in substance or effect a loan of money, and also a contract to secure the repayment of any such loan, and “ lend ” has a corresponding interpretation :

“ local court ” means a local court of full jurisdiction :

“ money-lender ” includes every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business : the term does not include—

(a) any pawnbroker in respect of business carried on by him in accordance with the laws for the time being in force in relation to pawnbrokers ; or

s. 5. (Definition of “ money-lender.”) ALLCHURCH v. POPULAR CASH ORDER COMPANY LIMITED (1929) S.A.S.R. 212; 14 Austn. Digest 1188; reversing ALLCHURCH v. POPULAR CASH ORDER COMPANY LIMITED (1928) S.A.S.R. 189. Held that where a company issued what are commonly known as “ cash orders,” the transaction between the company and a person obtaining such an order was, in effect, a contract to lend money and that the company was carrying on the business of a money-lender.

- (b) any society registered under the Friendly Societies Act, 1919-1938, or the Industrial and Provident Societies Act, 1923-1935, or the Building Societies Act, 1881-1938 ; or
- (c) any company empowered by a special Act of Parliament to lend money in accordance with the special Act ; or
- (d) any person or company *bona fide* carrying on the business of banking or insurance ; or
- (e) any person or company *bona fide* carrying on any business not having for any of its principal objects the lending of money, in the course of which and for the purposes whereof he or it lends money at a rate of interest not exceeding twelve pounds per centum per annum ; or
- (f) any company for the time being exempted from licensing under this Act by proclamation :

“ principal ” means in relation to a loan the amount actually lent :

“ renewed licence ” means licence for a further year in respect of any address issued under this Act to the holder of a licence in respect of that address.

(2) The Governor may, by proclamation, exempt any company from licensing under this Act. The Governor may, by proclamation, revoke any such proclamation.

PART II.

PART II.

LICENSING OF MONEY-LENDERS.

6. (1) Every money-lender (whether carrying on business alone or as a partner in a firm) shall as hereinafter in this Act provided take out annually a licence in the prescribed form in respect of the address or addresses at which he carries on business as a money-lender or has an agency in connection with his money-lending business. For the purposes of this Act any address at which a money-lender has such an agency shall be deemed to be an address at which he carries on business as a money-lender.

Licences to be taken out by money-lenders. Cf. 1617, 1924, s. 6. Cf. Vic. 4025, 1938, s. 4. Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 1 (1).

Money-lenders Act, 1940.

(2) Any licence required by this Act to be taken out by a company shall be taken out on behalf of the company by some person appointed in writing by the company.

(3) Notwithstanding anything in this Act, where in respect of any period licences are taken out by more than two money-lenders in respect of any address or addresses at which they carry on business as partners in a firm, no fee shall be payable under this Act in respect of the issue of more than two of such licences.

(4) The registration of any money-lender under the Money-lenders Act, 1924, in force at the commencement of this Act shall notwithstanding the repeal of that Act be deemed to be a licence under this Act and subject to this Act shall continue in force until the thirtieth day of September next after the commencement of this Act: Provided that no such registration shall entitle a money-lender to proceed to take out a renewed licence under this Act.

(5) Where any such registration of a money-lender would, if this Act had not been passed, have continued in force beyond the said thirtieth day of September there shall be refunded to the money-lender from moneys provided by Parliament for the purpose such sum as bears to the amount of the fee paid on the registration the same proportion as the period for which the registration would have continued in force as aforesaid after the said thirtieth day of September bears to the period for which the registration was granted.

Applications
for licences.
Cf. Vic. 4625,
1938, s. 5.
Cf. U.K.
17 & 18
Geo. 5
c. 21, s. 2.

7. (1) Every person who desires to obtain a licence shall lodge an application in duplicate in the prescribed form with the clerk of the local court nearest to the place of business or principal place of business of the applicant.

(2) Every such application shall—

- (a) contain such particulars as are prescribed ;
- (b) be accompanied by a statement containing true and correct particulars regarding the names and addresses of the partners (if any) of the applicant and in the case of an application on behalf of a company the name and address of each of the members of the governing body thereof ;
- (c) if made on behalf of a company be accompanied by a statement showing the names of all the shareholders in the company and the share holdings of all such shareholders ; and

(d) be lodged with the clerk of the local court at least fourteen days before the day mentioned in the application as the day on which the application will be made.

(3) Any person making any such application who fails to supply any such particulars or statement or supplies any such particulars or statement which are or is false or incorrect shall be guilty of an offence against this Act and liable to a penalty of not more than fifty pounds.

(4) The local court—

(a) shall consider the application and any objection thereto made as hereinafter in this Act provided ; and

(b) may, if satisfied that the applicant is a fit person to be the holder of a licence, order a licence to be issued to the applicant.

(5) The licence shall be issued by the clerk of the local court, but shall not be issued unless the prescribed fee is paid within fourteen days after the court has ordered the issue of the licence.

(6) The local court shall not refuse to order the issue of a licence except on some one or more of the following grounds :—

- i. That satisfactory evidence has not been produced of the good character of the applicant, and in the case of an application on behalf of a company of the persons responsible for the management thereof :
- ii. That satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money-lending business, is not a fit and proper person to manage or conduct such a business :
- iii. That satisfactory evidence has not been produced that the applicant is of the age of twenty-one years or upwards :
- iv. That the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money-lending business, is by order of a court disqualified from holding a licence :
- v. That the applicant has not complied with the provisions of this Act or the regulations with respect to applications for licences :
- vi. That the applicant, or any person responsible or proposed to be responsible for the management or conduct of the money-lending business, is not a natural born or naturalized subject of His Majesty :

Money-lenders Act, 1940.

- VII. That the applicant has not been continuously resident in Australia for the twelve months immediately prior to the making of the application or in case of an application on behalf of a company, that the company is not incorporated in Australia :
- VIII. That the applicant is a shareholder in a company which is licensed under this Act :
- IX. That the spouse of the applicant is a shareholder in a company which is licensed under this Act and the applicant has not satisfied the court that the applicant is living separate and apart from his or her spouse :
- X. If the applicant is a company, that any shareholder in the company is licensed under this Act :
- XI. That the spouse of the applicant is licensed under this Act (other than in respect of a money-lending business carried on as a partnership by the applicant and the spouse of the applicant) and the applicant has not satisfied the court that the applicant is living separate and apart from his or her spouse :
- XII. That the applicant has not satisfied the court that he has not any direct or indirect financial interest in any other money-lending business in respect of which a licence is issued under this Act.

Issue of renewed licence on unopposed application.
 Cf. Vic. 4625, 1938, s. 8.

8. Notwithstanding anything in the last preceding section or the next succeeding section, if the holder of a licence applies for a renewed licence and the application is made not less than fourteen days before the day appointed for the holding of the local court next prior to the thirtieth day of September upon which the licence expires, the following provisions shall apply:—

- I. If no notice of objection is as hereinafter in this Act provided lodged by any person in respect of the application, the clerk of the local court shall, if the prescribed fee is paid to him not later than the first day of October following the application, issue to the applicant a renewed licence :
- II. If the application is not determined on or before the thirtieth day of September following the application, the licence shall be deemed to be extended until the application is disposed of by the local court in accordance with this Act.

9. (1) Subject to this Act, every licence shall—

- (a) be in the prescribed form ;
- (b) take effect from a day (not being earlier than the day of payment of the prescribed fee) to be stated therein ;
- (c) expire on the thirtieth day of September next following ;
- (d) be taken out in the true name of the money-lender and be void if taken out in any other name ; and
- (e) show the name under which, and the address or addresses at which the money-lender is thereby authorized to carry on business as such.

Form and duration of licences.
 Cf. 1617, 1924, ss. 6, 7.
 Cf. Vic. 4625, 1938, s. 7.

(2) No licence shall authorize a money-lender to carry on business under more than one name, or under any name which includes the word “ bank ” or otherwise implies that he carries on banking business.

(3) No licence shall authorize a money-lender to carry on business under any name except—

- (a) his true name ; or
- (b) where he is a partner in a firm which is registered pursuant to the Registration of Business Names Act, 1928-1932, his true name with the addition of the words “ carrying on business as [*here insert the name of the firm*] ”; or
- (c) where at the commencement of this Act he or a firm in which he is a partner—
 - (i.) was registered under a business name under the Registration of Business Names Act, 1928-1932 ; and
 - (ii.) was registered under that business name as a money-lender under the Money-lenders Act, 1924,

his business name with the addition of his true name.

(4) If any person—

- (a) takes out a licence in any name other than the true name of the money-lender ; or
- (b) carries on business as a money-lender without having in force a licence or, being licensed as a money-lender, carries on business as such in any name other than his authorized name or at any place other than an authorized address ; or

- (c) lends money or takes any security for a loan in the course of his business as a money-lender otherwise than in his authorized name,

he shall be guilty of an offence against this Act and liable—

- (i.) if a company—for a first offence to a penalty of not less than twenty pounds and not more than one hundred pounds and for a second or any subsequent offence to a penalty of not less than one hundred pounds and not more than five hundred pounds :
- (ii.) if any other person—to a penalty of not less than ten pounds and not more than fifty pounds or to imprisonment for a term of not more than three months or to both such penalty and imprisonment.

(5) No contract or agreement or transaction entered into by a licensed money-lender with any person shall be void or voidable by reason only that the money-lender has, whether in connection with that contract or agreement or transaction or not, been at any time guilty of a contravention of any of the foregoing provisions of this section, whether convicted thereof or not.

(6) Every licensed money-lender shall on demand at any premises upon which he carries on his business produce his licence to any member of the police force, and if without reasonable excuse he refuses or fails so to produce his licence he shall be guilty of an offence against this Act and liable to a penalty of not more than twenty pounds.

Transfer of
licence.
Cl. Vic. 4625,
1938, s. 8.

10. (1) The local court nearest to the place of business or principal place of business of the applicant may upon application in the prescribed form—

(a) for the transfer of a licence—

- (i.) by a licensed money-lender, order the transfer of the licence to any person approved by the court in that behalf and the indorsement of the transfer on the licence ;
or
- (ii.) by a person licensed on behalf of a company, order the transfer of the licence from that person to any other person approved by the court in that behalf to hold the same on behalf of the company and the indorsement of the transfer on the licence :

- (b) for the substitution of a new authorized address of the money-lender for any authorized address of the money-lender shown in his licence, order the substitution of the new authorized address and the indorsement of the substitution on the licence :
- (c) for the approval of an authorized address in addition to the authorized address or addresses of the money-lender shown in his licence, order the addition of the new authorized address and the indorsement of the addition on the licence.

(2) A licence issued to any person on his own behalf shall not be transferable to any person on behalf of a company and a licence issued to any person on behalf of a company shall not be transferable to any person on his own behalf.

(3) Every application for the transfer of a licence or for the substitution or addition of a new authorized address as aforesaid shall be in the prescribed form and shall be lodged in duplicate with the clerk of the local court at least fourteen days before the day mentioned in the application as the day on which the application will be made, and the application and any objection thereto made as hereinafter in this Act provided shall be heard and determined by the local court.

(4) No transfer or substitution or addition under the provisions of this section shall be of any force or effect until the licence is indorsed accordingly by the clerk of the local court and the prescribed fee is paid.

11. (1) In the cases provided for in this section the business of a licensed money-lender may be carried on and a licence may be transferred as follows :—

i. If a licensed money-lender dies—

- (a) the widow or widower or any member of the family of the deceased licensed money-lender of the age of twenty-one years or upwards or any person on behalf of the family may apply to the local court nearest to the place of business or principal place of business of the deceased money-lender to have his or her name indorsed on the licence as agent pending the granting of probate of the deceased licensed money-lender's will or of letters of administration of the estate :
- (b) on the grant of probate or letters of administration the executor, administrator, or trustee shall forthwith apply to the local court nearest to the place of business or

Power to executors, trustees, etc., to carry on business in case of death, etc., of licensee.

Cf. Vic. 4625, 1938, s. 9.

Money-lenders Act, 1940.

principal place of business of the deceased money-lender to have his name or the name of some nominee on his behalf indorsed on the licence :

ii. On a licensed money-lender becoming a mental defective within the meaning of the Mental Defectives Act, 1935-1939, the wife or husband of the licensed money-lender or any member of the family of the licensed money-lender of the age of twenty-one years or upwards or any person on behalf of the family may apply to the local court nearest to the place of business or principal place of business of the money-lender to have his or her name or the name of a nominee indorsed on the licence.

(2) Every such application shall—

(a) be in the prescribed form and contain such particulars as are prescribed ; and

(b) be lodged with the clerk of the local court at least fourteen days before the day mentioned in the application as the day on which the application will be made.

(3) The local court shall consider the application and any objection thereto made as hereinafter in this Act provided and on being satisfied as to the fitness of the applicant or nominee may order the indorsement to be made by the clerk of the local court on payment of the prescribed fee.

(4) Every person whose name is so indorsed on any such licence (other than a person whose name is indorsed pursuant to subdivision (b) of paragraph i. of subsection (1) of this section)—

(a) may carry on the business under the licence until probate of the will or letters of administration of the estate of the deceased licensed money-lender are granted or until the money-lender ceases to be a mental defective or until the licence is transferred or a new licence is granted in respect of the same place of business in the name of some other person (as the case may be) ; and

(b) shall be subject to the same duties, liabilities, obligations, disqualifications and penalties as if he were the licensed money-lender.

(5) No person shall otherwise than as provided in this section carry on any such business for a longer period than twenty-eight days after the death of the money-lender or his becoming a mental defective.

Any person who contravenes or fails to comply with the provisions of this subsection shall be guilty of an offence against this Act and liable to a penalty of not less than ten pounds and not more than fifty pounds or to imprisonment for a term of not more than three months or to both such penalty and imprisonment.

(6) Subject to this section, every licence shall confer on the executors or administrators of a deceased licensed money-lender the same rights and privileges and (if the executors or administrators avail themselves of those privileges) shall impose on them the same duties, liabilities, obligations, disqualifications and penalties as if the licence had been issued to them originally.

12. Forthwith after the receipt by the clerk of a local court of any application for a licence or for the transfer of a licence or for the substitution of a new authorized address for an authorized address shown in a licence, or for the addition of a new authorized address, or for an indorsement on the licence of a money-lender who has died or become a mental defective, the clerk shall—

Notice of applications to be given by clerk of court.

Cf. Vic. 4625, 1938, s. 10.

- (a) send a copy of the application to the Commissioner of Police :
- (b) cause a notice thereof to be posted in a conspicuous place in the building in which the local court for considering the same is to be held and keep the same posted as aforesaid until the day appointed for the hearing of the application.

13. (1) The Commissioner of Police or any other person may at least three days before the day appointed for the hearing of an application for the issue of a licence or for the transfer of a licence or for the substitution of a new authorized address for an authorized address shown in a licence, or for the addition of a new authorized address, or for any indorsement on the licence of a money-lender who has died or become a mental defective, lodge with the clerk of the local court a notice in the prescribed form of his objection and of the grounds thereof.

Objections to applications.
Cf. Vic. 4625, 1938, s. 11.

(2) The person lodging any such notice of objection shall cause a copy of the notice to be served personally or by post upon the applicant at least three days before the day appointed for the hearing of the application.

(3) If any objection of which due notice has not been lodged and a copy thereof served upon the applicant as aforesaid is brought before the local court at the hearing of the application,

the court, if it thinks that the objection is one that should be considered, may adjourn the hearing to such day as it thinks fit.

(4) If under this section any objection to the application has been lodged or brought before the court, the court may determine what costs (if any) shall be paid to or by the objector and may order that such costs be paid.

Cancellation
of licences.
Cf. Vic. 4625,
1938, s. 12.

14. (1) The Commissioner of Police may apply to the local court nearest to the place of business or principal place of business of any licensed money-lender for any order directing any or all of the following things, namely :—

- I. That the licence be cancelled or suspended :
- II. That the holder of the licence be disqualified either temporarily or permanently, from holding a licence.

(2) An order under this section may be made upon any of the following grounds, namely :—

- I. That the licence was improperly obtained contrary to the provisions of this Act ; or
- II. That the licensed money-lender or any person responsible for the conduct or management of the money-lending business is not a fit and proper person to continue any longer to conduct or manage such a business ; or
- III. That the licensed money-lender or any person responsible for the conduct or management of the money-lending business has been guilty of such conduct as renders him unfit to continue any longer to conduct or manage such a business ; or
- IV. That the licensed money-lender has published an advertisement containing a statement of the terms of interest on which he is prepared to make loans or any particular class of loans and has without proper cause made any such loan or (as the case may be) any loan of any such class on terms of interest less favourable to the borrower than those so advertised.

(3) Every application under this section shall be made, and notice thereof shall be served on the licensed money-lender, in accordance with the regulations.

(4) Upon being satisfied of the existence of any of the grounds aforesaid the local court may make any order authorized by this section and any order as to costs which it thinks just.

(5) Where a licensed money-lender is a party to an action in the Supreme Court or in a local court, and the court is satisfied, on the evidence before it in the action, that a proper case exists for making any such order as is mentioned in subsections (1) and (2), the court may, of its own motion, make any such order.

15. Where any person is by any court convicted of any offence against this Act the court—

(a) may order that any licence held by or on behalf of that person, and in the case of a partner in a firm, by or on behalf of any other partner in the firm, shall either be suspended for such time as the court thinks fit or be cancelled, and may also, if the court thinks fit, declare any person so convicted or any person by whom or on whose behalf any such licence is held or any person responsible for the management or conduct of the money-lending business, to be disqualified from obtaining a licence or managing or conducting a money-lender's business for such time as the court thinks fit ; and

(b) shall cause particulars of the conviction and of any order made by the court to be indorsed on every licence held by or on behalf of the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be sent forthwith to the clerk of the local court by which any such licence was issued and to the Commissioner of Police.

16. While his disqualification continues a person disqualified under this Act shall not be capable of becoming or continuing a director, manager, or secretary of any company licensed under this Act.

17. Any licence required by a court under this Act for indorsement or cancellation shall be produced in such manner and within such time as the court directs by the person by whom it is held, and any person who without reasonable cause makes default in producing any licence so required shall be guilty of an offence against this Act and liable to a penalty of not more than five pounds for each day during which the default continues.

18. In any case where satisfactory proof is given of the loss or destruction of a licence the local court which ordered the issue thereof may order the issue of a duplicate licence on payment of the prescribed fee.

Effect of convictions on licences.

Cf. Vic. 4625, 1938, s. 13.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 3.

Disqualified money-lender becoming director, etc., of company,
Cf. Vic. 4625, 1938, s. 14.

Production of licence for indorsement, etc.
Cf. Vic. 4625, 1938, s. 15.

Duplicate licences.
Cf. Vic. 4625, 1938, s. 17.

PART II.

Record of
licences, etc.
Cf. Vic. 4625,
1938, s. 18.

19. (1) A record of licences issued and of transfers, suspensions and cancellations of licences and of substitutions and additions of new authorized addresses and of indorsements on licences and of such other matters and things as are prescribed shall be kept by the Commissioner of Police.

(2) The Commissioner of Police shall as early as practicable in each month cause to be published in the *Government Gazette* particulars of all licences issued, renewed, transferred and cancelled and of all substitutions and additions of new authorized addresses and of all indorsements on licences of money-lenders who have died or become mental defectives and of all other prescribed matters and things aforesaid done during the last preceding month.

(3) The *Government Gazette* containing any such particulars published as aforesaid shall be *prima facie* evidence of the facts therein contained.

Transmission
of records to
Commissioner
of Police.
Cf. Vic. 4625,
1938, s. 20.

20. (1) Every clerk of a local court shall at the times and in the manner prescribed forward to the Commissioner of Police returns of licences issued, renewed, transferred, cancelled or suspended and of substitutions and additions of new authorized addresses and of indorsements of licences.

(2) In every case where a licence is cancelled and delivered up to a court under this Act it shall be transmitted forthwith by the clerk or other proper officer of the court to the Commissioner of Police.

Fees.
Cf. Vic. 4625,
1938, s. 21.

21. (1) The following fees shall be payable under this Act :—

- I. For each licence issued to any person whether carrying on business alone or as a member of a firm—fifteen pounds :
- II. For each renewed licence issued to any person whether carrying on business alone or as a member of a firm—five pounds :
- III. For each transfer of a licence—two pounds :
- IV. For each substitution of a new authorized address for an authorized address shown in a licence—one pound :
- V. For each addition of a new authorized address to the authorized address or addresses shown in a licence—ten pounds :
- VI. For each indorsement authorized by a local court with respect to the licence of a money-lender who has died or become a mental defective—one pound :

- VII. For each duplicate licence—one pound :
- VIII. On searching any book or record of money-lenders kept by a clerk of a local court or by the Commissioner of Police—one shilling :
- IX. On certified copies of or extracts from entries in any such book or record—five shillings for each certified copy or extract not exceeding five folios of seventy-two words to the folio and ninepence for each additional folio (or part thereof) of seventy-two words after the first five folios.

(2) Where a licence referred to in subdivision I. or subdivision II. of subsection (1) authorizes the carrying on of business at more than one authorized address, an additional fee of ten pounds shall be payable in respect of every authorized address in excess of one: Provided that if the licence is a renewed licence the additional fee to be paid pursuant to this subsection shall be five pounds.

(3) Where the duration of a licence referred to in subdivision I. or subdivision II. of subsection (1) is for not more than six months the fee for the licence shall be one-half of the sum otherwise payable.

PART III.

PART III.

MONEY-LENDING TRANSACTIONS.

22. No money-lender shall be entitled to recover in any court any money lent by him after the twentieth day of November, nineteen hundred and twenty-four, or any interest in respect thereof, or to enforce any contract made or security taken in respect of any loan made by him after the said date, unless he satisfies the court by the production of his licence or otherwise that at the date of the loan or the making of the contract or the taking of the security (as the case may be) he was the holder of a licence under this Act or was registered as a money-lender under the Money-lenders Act, 1924.

Restriction on recovery of loan by unlicensed money-lender.
Cf. Vic. 4625, 1938, s. 22.

23. (1) If any contract is made for the repayment of money lent by a money-lender after the commencement of this Act or for the payment of interest on money so lent—

Form of money-lenders' contracts.
Cf. 1617, 1924, ss. 13, 14.
Cf. Vic. 4625, 1938, s. 23.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 8.

- (a) the contract shall be in writing and signed personally by the borrower or by the agent of the borrower authorized in writing by the borrower ;

Money-lenders Act, 1940.

- (b) the contract shall set out all the terms of the loan, and in particular shall show—
- (i.) the date of the making of the loan ;
 - (ii.) the amount of the principal of the loan ;
 - (iii.) the total amount of the interest to be paid ;
 - (iv.) an itemized statement of any amounts paid or payable by the borrower on account of stamp duty or on account of fees payable to the Registrar General of Deeds or on account of costs or fees payable to a solicitor or licensed land broker for the preparation of any document ; and
 - (v.) the terms of repayment including a separate and distinct statement of the amount of the final payment to be made pursuant to the contract ;
- (c) the contract shall be signed by the borrower or by the agent of the borrower authorized in writing by the borrower before any money is lent and before any security is given to the money-lender in respect of the contract or loan ;
- (d) a copy of the contract, together with a summary in writing in the prescribed form of the provisions of this Part which afford protection to borrowers shall be delivered to or sent by prepaid registered letter through the post addressed to the borrower within seven days of the making of the contract.
- (2) For the purposes of the last preceding subsection—
- (a) the date of the making of the loan shall be deemed to be the date on which under the loan any money is first paid or is first at call (whichever is the earlier) and in the case of a cash order transaction such date shall be deemed to be the date of the issue of the cash order ; and
 - (b) if the contract provides for the making of a loan and further advances of principal, the amount of the principal in fact lent at the time of the making of the contract shall be deemed to be the amount of the principal.
- (3) No such contract or copy thereof shall be deemed insufficient by reason only that in the contract or copy there is an omission or an incorrect or insufficient description or a misdescription in respect of the particulars required to be contained in the contract or copy if the court before which the enforceability of any such contract or security comes in

question is satisfied that the omission, incorrect or insufficient description, or misdescription was accidental or due to inadvertence or was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage. A copy of a contract shall be deemed sufficient for the purposes of paragraph (d) of subsection (1) notwithstanding that any of the signatures of the parties do not appear therein.

(4) If any loan is made on the security of a negotiable instrument, it shall be a sufficient compliance with the provisions of this section if a note or memorandum in writing of the contract is made setting out the matters referred to in subsection (1) and is signed by the borrower or by the agent of the borrower authorized in writing by the borrower and if a copy of the note or memorandum together with the summary referred to in subsection (1) is delivered or sent to the borrower in manner provided by subsection (1).

(5) If in respect of any loan made after the commencement of this Act, any of the requirements of the preceding subsections of this section as qualified by subsections (3) and (4) are not complied with, no interest in excess of the rate of twelve pounds per centum per annum shall be payable or recoverable under the contract for the loan or any security given in respect thereof and if any sum is paid on account of any such interest in excess of the said rate, the excess may be recovered back or deducted from any principal or interest payable under the contract or in respect of the security, notwithstanding any contract to the contrary.

24. (1) If after the commencement of this Act any contract is made for the loan by a money-lender of a sum of money of less than fifty pounds to a borrower who is married, the contract and any security taken in respect of the loan so far as they provide for the payment of any interest shall be void and of no effect unless—

Regulation of
loans to
married
persons.

- (a) the purported consent in writing to the loan was given by the spouse of the borrower and delivered to the money-lender prior to the making of the loan ; or
- (b) the borrower prior to the making of the loan produced and delivered to the money-lender a statutory declaration to the effect that the spouse of the borrower was under such a legal incapacity as to render him or her unable to give consent as aforesaid,

or unless the money-lender had reasonable grounds for believing that—

- (c) the borrower was at the time the loan was made living separate and apart from the spouse of the borrower ; or

Money-lenders Act, 1940.

- (d) the spouse of the borrower was outside South Australia at the time the loan was made.

This subsection shall not apply to any loan made to a borrower who is married if, prior to the making of the loan, the borrower delivered to the money-lender a statement in writing signed by the borrower to the effect that the borrower was not married at the time of the delivery of the statement, unless the money-lender had reasonable grounds for believing that the statement was false.

(2) If after the commencement of this Act any person who is married guarantees the repayment to any money-lender of any loan of a sum of money of less than fifty pounds, the guarantee and any security given by way of guarantee shall be void and of no effect unless—

- (a) the purported consent in writing to the making of the guarantee was given by the spouse of the guarantor and delivered to the money-lender prior to the giving of the guarantee ; or

- (b) the guarantor prior to the giving of the guarantee produced and delivered to the money-lender a statutory declaration to the effect that the spouse of the guarantor was under such a legal incapacity as to render him or her unable to give consent as aforesaid,

or unless the money-lender had reasonable grounds for believing that—

- (c) the guarantor was at the time the loan was made living separate and apart from the spouse of the guarantor ; or

- (d) the spouse of the guarantor was outside South Australia at the time the loan was made.

This subsection shall not apply to any such guarantee given by a person who is married if, prior to the making of the guarantee, the guarantor delivered to the money-lender a statement in writing signed by the guarantor to the effect that the guarantor was not married at the time of the delivery of the statement, unless the money-lender had reasonable grounds for believing that the statement was false.

(3) If any money-lender—

- (a) makes any loan or accepts any guarantee in contravention of this section ; or

- (b) fails to preserve any consent or declaration delivered to him in respect of any loan or guarantee until the expiration of twelve months after the transaction in respect of which it was given is finally closed,

the money-lender shall be guilty of an offence against this Act and liable—

- (i.) if a company—to a penalty of not less than twenty pounds nor more than two hundred pounds :
- (ii.) if any other person—to a penalty of not less than ten pounds or to imprisonment for a term of not more than two months or to both such penalty and imprisonment.

(4) If, for the purpose of obtaining or guaranteeing a loan, any person who is married delivers to any money-lender a statement in writing that such person is not married, the said person shall be guilty of an offence against this Act and liable to a penalty of not more than ten pounds.

25. (1) If any security is after the commencement of this Act made or taken to secure the payment of any money lent by a money-lender or any interest thereon the money-lender shall not be entitled to institute any proceedings, other than for the enforcement of the security, to recover any amount payable under the contract or payable pursuant to any guarantee for the repayment of the loan or any interest thereon, unless the contract or guarantee, as the case may be, expressly provides prominently on the face thereof, that the borrower or guarantor, as the case may be, undertakes a personal liability to pay or, as the case may be, guarantee the payment of the loan and any interest thereon and that the said liability is additional to any liability under any security taken in respect of the loan.

Provision where money-lender enforces security for loan.

(2) In this section “ security ” includes bill of sale, mortgage, lien, and charge of any real or personal property and any assignment, conveyance, transfer or dealing with any real or personal property to secure the repayment of any loan.

(3) The provisions of this section shall apply notwithstanding the provisions of The Real Property Act, 1886-1939, the Bills of Sale Act, 1886-1935, or any other Act or law to the contrary.

26. (1) A money-lender—

- (a) shall not for the purposes of his business as such issue or publish or cause to be issued or published any advertisement, circular, business letter, or other similar document which does not show his authorized

Use of authorized name by money-lenders.
Cf. 1617, 1924, s. 7.
Cf. Vic. 4625, 1938, s. 24.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 4.

Money-lenders Act, 1940.

name in such manner as to be not less conspicuous than any other name ; and

- (b) shall outside the premises occupied by him at his authorized address display or cause to be displayed his authorized name in such manner as to be conspicuous and not less conspicuous than any other name displayed in the vicinity of the premises in connection with his business as a money-lender.

Any money-lender who contravenes the provisions of this subsection shall be guilty of an offence against this Act and liable to a penalty of not more than twenty pounds.

(2) If a money-lender for the purposes of his business as such issues or publishes or causes to be issued or published any advertisement, circular, or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall be guilty of an offence against this Act and liable—

- (a) if a company—to a penalty of not less than twenty pounds and not more than one hundred pounds :
- (b) if any other person—to a penalty of not less than ten pounds and not more than fifty pounds or to imprisonment for a term of not more than two months or to both such penalty and imprisonment.

List of Shareholders.

27. (1) Any money-lender being a company shall cause to be displayed at all times in the main public office at every authorized address of the money-lender a statement showing the names of all the shareholders of the company and the share holdings of all such shareholders.

(2) Any money-lender who contravenes the provisions of this section shall be guilty of an offence against this Act and liable to a penalty of not more than twenty pounds.

Restrictions on money-lending advertisements.

Cf. 1617, 1924, s. 7.
Cf. Vic. 4625, 1938, s. 25.
Cf. U.K. 17 & 18 Geo. 5, s. 21, s. 5.

28. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person, except in response to his written request, any circular advertising particulars of the name, address, or telephone number of a money-lender or containing an invitation—

- (a) to borrow money from a money-lender ; or
- (b) to enter into any transaction involving the borrowing of money from a money-lender ; or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money-lender.

(2) No person shall publish or cause to be published in any newspaper, magazine, programme, handbill, or other printed paper issued for public circulation, or by wireless telegraphy, or by cinematograph, or by lantern slides, or by means of any poster or placard, an advertisement advertising any such particulars or containing any such invitation as aforesaid: Provided that an advertisement, in conformity with the requirements of section 26 may be published by or on behalf of a money-lender in any newspaper, magazine, programme, or other printed paper aforesaid or by means of a poster or placard exhibited at any authorized address of the money-lender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars :—

- I. Any authorized address at which he carries on business as a money-lender and the telegraphic address and telephone number thereof :
- II. Any address at which he formerly carried on business as a money-lender :
- III. A statement that he lends money with or without security, and of the highest and lowest sums that he is prepared to lend :
- IV. A statement showing in respect of any particular class of loans which he is prepared to make, the amount of such loans, the amount of interest to be payable on such loans, the number of the instalments by which the loans and interest are repayable, the intervals between the successive payments of instalments, and the class of security upon which he is prepared to make such loans :
- V. A statement of the date on which the business carried on by him was first established.

(3) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser or demand or receive directly or indirectly from any money-lender or any person on behalf of any money-lender any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money-lender any person desiring to borrow money.

(4) No person shall issue or publish any document which purports to indicate the terms of interest upon which a money-lender is willing to make loans or any particular loan unless the document clearly expresses the total amount of interest payable in respect of such loans or loan.

(5) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act and liable—

(a) if a company—to a penalty of not less than twenty pounds and not more than two hundred pounds :

(b) if any other person—to a penalty of not less than ten pounds and not more than fifty pounds or to imprisonment for a term of not more than two months or to both such penalty and imprisonment,

unless he proves that the contravention or failure occurred without his consent or connivance.

(6) Where it is shown that a money-lending transaction entered into after the commencement of this Act was brought about by a contravention of or failure to comply with any of the provisions of this section (whether the person offending has been convicted thereof or not) the transaction shall, notwithstanding that the money-lender was duly licensed, be illegal in so far as it provides directly or indirectly for the payment of any interest, unless the money-lender proves that the contravention or failure occurred without his consent or connivance.

Prohibition of compound interest.

Cf. Vic. 4625, 1938, s. 26.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 7.

29. (1) Any contract made after the commencement of this Act for the loan of money by a money-lender shall be void in so far as it provides directly or indirectly for—

(a) the payment of interest upon any sum which is not paid upon the due date upon which it is payable under the contract ; or

(b) any increase of interest by reason of any default in the payment of sums due under the contract or by reason of any default in any other term or condition of the contract :

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, the money-lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid at a rate specified in the contract to be payable upon any sum in default as aforesaid, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

(2) If default is made in the payment upon the due date of any sum payable to a money-lender under a contract made before or after the commencement of this Act for the loan of money by the money-lender and the said sum is subsequently paid or tendered to the money-lender by or on behalf of the borrower together with such further sums as have become due and payable by the borrower under the said contract up to the date of such payment or tender and together with such costs, charges, or expenses as have been properly incurred by the money-lender by reason of such default, then, notwithstanding anything in the contract to the contrary, the contract shall be deemed not to be in breach.

30. (1) Where any contract made before or after the commencement of this Act for the loan of money by a money-lender is determined, either by reason of breach of the contract by the borrower or pursuant to agreement between the parties for the variation or extension of the contract, and any amount is outstanding under the contract, the amount which shall be payable as interest at the time of the determination of the contract shall be calculated as follows :—

Provision for payment of interest on determination of contract on default or otherwise.

- I. If the contract expresses the interest chargeable (other than interest payable in accordance with the proviso to subsection (1) of section 29) in terms of a rate per centum per annum the interest payable upon such determination shall be the interest calculated up to the date of the determination of the contract :
- II. If the contract does not express the interest chargeable (other than interest payable in accordance with the proviso to subsection (1) of section 29) in terms of a rate per centum per annum the interest payable upon such determination shall be that proportion of the total interest payable under the contract as the period from the making of the contract to the end of the quarter of three months in which the determination of the contract occurs bears to the whole of the term of the contract.

For the purposes of this subsection a “ quarter of three months ” shall be deemed to commence from the date of the contract or from the beginning of a successive period of three months.

(2) If any money-lender receives or recovers any such excess interest and fails within a period of three months after the receipt or recovery thereof to—

- (a) pay the same to the borrower or to the agent of the borrower authorized in writing by the borrower ; or

Money-lenders Act, 1940.

(b) set off the same against any amount which became due and payable to the money-lender by the borrower within the said period or at any time prior to the commencement of that period ; or

(c) pay the same to the Treasurer,

the money-lender shall be guilty of an offence against this Act and liable—

(i.) if a company—to a penalty of not less than twenty pounds and not more than two hundred pounds :

(ii.) if any other person—to a penalty of not less than ten pounds and not more than fifty pounds or to imprisonment for a term of not more than two months or to both such penalty and imprisonment.

(3) Any money paid to the Treasurer as aforesaid shall be paid into the general revenue but if within seven years of the payment to the Treasurer any person makes any demand to the Treasurer for the payment to him of any such money, the Treasurer upon being satisfied that the claimant is the owner of the money shall, without any further appropriation than this subsection, make payment thereof to the claimant.

Prohibition of charge for expenses on loans by money-lenders.
Cf. 1617, 1924, s. 15.
Cf. Vic. 4625, 1938, s. 27.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 12.

31. (1) Any contract entered into after the commencement of this Act between a money-lender and a borrower or intending borrower for the payment by the borrower or intending borrower to the money-lender of any sum for or on account of costs, charges, or expenses (other than stamp duties and fees payable to the Registrar-General of Deeds, and costs or fees payable for the preparation of any document to any solicitor or licensed land broker) incidental to or relating to the negotiations for or the granting of the loan or proposed loan or the guaranteeing or securing of the repayment thereof shall be illegal.

(2) It shall not be lawful for any money-lender or his partner, employer, employee, principal, or agent or any person acting for or in collusion with any money-lender to charge, recover, or receive any sum as for or on account of any such costs, charges, or expenses (other than stamp duties and fees payable to the Registrar-General of Deeds, and costs or fees payable for the preparation of any document to any solicitor or licensed land broker) or any remuneration or reward whatsoever for or in connection with or preliminary to procuring, negotiating or obtaining any loan made after the commencement of this Act or guaranteeing or securing the repayment thereof.

(3) If any money or money's worth is directly or indirectly paid or allowed to or received by any person in contravention of this section, the amount or the value thereof to the extent of such contravention and notwithstanding any contract to the contrary, may be recovered by the borrower from such person or if such person is the money-lender or a partner, employer, employee, principal, or agent of the money-lender or is in any way acting for or in collusion with him, may be set off against the amount actually lent (and that amount shall be deemed to be reduced accordingly) or may be recovered by the borrower from such person or from the money-lender.

32. (1) Where proceedings are taken in any court by a money-lender (or by the assignee or transferee or holder of a debt or security in respect of a loan by a money-lender) for the recovery of any money lent either before or after the commencement of this Act, or the enforcement of any contract or security made or taken either before or after the commencement of this Act in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that—

Re-opening of transactions of money-lender.
Cf. 1617, 1924, s. 4.
Cf. Vic. 4625, 1938, s. 28.
Cf. U.K. 63 & 64 Vict. c. 51, s. 1.
Cf. U.K. 17 & 18 Geo. 5, c. 21, ss. 10 (2), 13 (2).

- (a) the interest charged in respect of the sum actually lent is excessive ; or
- (b) the amounts charged for expenses, inquiries, fines, bonus, premiums, renewals, or any other charges are excessive ; or
- (c) the transaction is harsh and unconscionable, or is such that a court of equity would give relief,

the court may—

- (i.) re-open the transaction and take an account between the plaintiff and the defendant ; and
- (ii.) notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation, re-open any account in connection with the transaction ; and
- (iii.) relieve the defendant from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk, the value of the security, the time of repayment, the amount of the loan, and all the other circumstances, may adjudge to be reasonable ; and
- (iv.) if any such excess has been paid or allowed in account by the borrower or defendant, order the plaintiff to repay it ; and

Money-lenders Act, 1940.

(v.) set aside either wholly or in part, or revise or alter, any security given or contract made in connection with the transaction ; and

(vi.) if the security has been parted with or the debt has been assigned, order the plaintiff to indemnify the borrower or defendant.

(2) If, at the time when any such proceedings are taken in respect of a default in the payment of any sum due to a money-lender or to any such assignee, transferee or holder under a contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court, without prejudice to its powers under subsection (1), may determine the contract and order the principal outstanding to be paid with such interest thereon, if any, as the court may allow up to the date of payment.

(3) Any court in which proceedings might be taken for the recovery of money lent shall have and may, on the application of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent ; and the court shall have power, notwithstanding any provision or contract to the contrary, to entertain any such application, notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived.

(4) In any proceedings relating to the admission or amount of a proof of debt, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money lent.

(5) When it appears to the court that any person other than the money-lender has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction, the court may cite that person as a party to the proceedings, and may make such order in respect to the said person as it deems fit.

(6) No proceedings to obtain any relief under this section shall be taken after six months from the time when the transaction in respect of or in connection with which relief is sought was finally closed, but the legal personal representative of any deceased person who had entered into the transaction may take such proceedings at any time within twelve months thereafter.

(7) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the court as it deems necessary or proper.

(8) Where the court re-opens a transaction of a money-lender under this section, the court may cause such particulars as the court thinks desirable to be indorsed on any licence held by the money-lender and a copy of the particulars to be sent to the clerk of the local court by which the licence was issued and to the Commissioner of Police.

(9) Every person who in any transaction lends money at a rate of interest exceeding twelve pounds per centum per annum shall be deemed to be a money-lender for the purposes of this section.

33. (1) In respect of every contract, whether made before or after the commencement of this Act, for the repayment of money lent by a money-lender, the money-lender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of one shilling for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing—

Obligation of money-lender to supply information as to state of loan.
 Cf. Vic. 4025, 1938, s. 30.
 Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 8.

- (a) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made ;
- (b) the amount of every sum due to the money-lender, but unpaid, and the date upon which it became due ; and ;
- (c) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A money-lender shall, on any reasonable demand in writing by the borrower, supply a copy of any document signed by the borrower relating to a loan made by him or any security therefor to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, and the borrower shall pay therefor ninepence for each folio (or part thereof) of seventy-two words.

(3) If a money-lender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

PART III.

Notice and information to be given on assignment of money-lender's debts.

Cf. Vic. 4625, 1938, s. 31.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 16.

34. (1) Where any debt in respect of money lent by a money-lender whether before or after the commencement of this Act or in respect of interest on any such debt or the benefit of any contract made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

- (a) give to the assignee notice in writing that the debt, contract, or security is affected by the operation of this Act ; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of or failing to comply with any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall, unless he proves that the contravention or failure was accidental or was due to inadvertence, also be guilty of an offence against this Act and liable—

- (i.) if a company—to a penalty of not less than fifty pounds and not more than three hundred pounds :
- (ii.) if any other person—to a penalty of not less than twenty-five pounds and not more than two hundred pounds or to imprisonment for a term of not more than six months or to both such penalty and imprisonment.

(2) In this section “ assigned ” means assigned by an assignment other than an assignment by operation of law or on death, and the expressions “ assignor ” and “ assignee ” have corresponding interpretations.

Application of Act as respects assignee.

Cf. Vic. 4625, 1938, s. 32.
Cf. U.K. 17 & 18 Geo. 5, c. 21, s. 17.

35. (1) The provisions of this Act shall continue to apply as respects any debt to a money-lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any contract made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the contract or security is assigned to any assignee and, except where the context otherwise requires, any reference in this Act to a money-lender shall accordingly be construed as including a reference to any such assignee as aforesaid :

Provided that—

(a) notwithstanding anything in this Act—

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

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

(b) for the purposes of this Act the provisions of section 117 of the Law of Property Act, 1936, shall apply as if the expression “ purchaser ” included a person making any such payment or transfer as aforesaid.

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

36. If any infant, who has contracted a loan with a money-lender which is void or voidable in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan and is not a new advance, the contract and any instrument, negotiable or other, given in pursuance of or for carrying into effect the contract or otherwise in relation to the payment of money representing or in respect of the loan shall, so far as it relates to money which represents or is payable in respect of the loan and is not a new advance, be void absolutely as against all persons whomsoever.

Avoiding contract for payment of loan advanced during infancy. Cf. 1617, 1924, s. 11. Cf. U.K. 55 & 56 Vict., c. 4, s. 5.

PART III.

Execution and
attestation of
certain
assignments.
1617, 1924,
s. 12.
Cf. Vic. 4625,
1938, s. 33.

37. (1) No assignment to a money-lender, whether absolute or by way of security or otherwise howsoever made after the twentieth day of November, nineteen hundred and twenty-four, by any person (hereinafter in this section called the grantor) of or in respect of all or any part of his right, title, or interest whether actual or expectant, in possession, remainder, reversion, or contingency, or of any nature whatsoever, in or under any will, codicil, or deed or in, under, or to the estate of any deceased person, whether the decease of the last-mentioned person was before or after the making of the assignment or before or after the said date, shall be of any force or validity whatever unless the assignment is in writing and is executed by the grantor in the presence of a solicitor instructed and employed independently of the money-lender, or a special magistrate, or a commissioner for taking affidavits in the Supreme Court, and is certified by the solicitor, or special magistrate, or commissioner for taking affidavits, as next hereinafter provided.

(2) The solicitor, or special magistrate, or commissioner for taking affidavits—

(a) shall read over and explain, or cause to be read over and explained in his presence, to the grantor the assignment ; and

(b) shall examine the grantor touching his knowledge of the assignment ; and

(c) if he thinks fit may so examine him separately and apart from any other person ; and

(d) if he is satisfied that the grantor understands the true purport and effect thereof and freely and voluntarily executes the same, shall certify in writing upon the assignment that the assignment has been so read over and explained, and that he has examined the grantor and is satisfied as hereinbefore required, and that the grantor has executed the assignment in his presence.

(3) This section shall not apply to any assignment made only for the purpose of vesting property in the person entitled thereto under or by virtue of the provisions of a will, codicil, or deed, or in a person entitled thereto as part of the estate of a deceased person, or to any assignment made by any person to whom any such property as aforesaid has been actually conveyed, assigned, or transferred.

(4) No assignment (except an assignment by way of security) executed in pursuance of this section shall be impeached upon any ground whatsoever except in the case of fraud or any kind of imposition, and no assignment by way of security executed in pursuance of this section shall be impeached upon any ground

whatsoever, except in the case of fraud or any kind of imposition, or except as provided by this Act.

(5) In this section—

“assignment” means any assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any contract, agreement, or arrangement for assignment, assurance, sale, mortgage, lien, charge, conveyance, transfer, or declaration of trust, and any power of attorney, appointment of agency, licence, or power to receive, or other authority of a like nature :

“deed” means any instrument (other than a will or codicil) whether under seal or not, whereby any property is settled, appointed, given, or declared to be held in trust, or is agreed to be settled, appointed, given or held in trust.

38. Any money-lender or any manager, agent, or clerk of a money-lender, or any person being a director, manager, or any other officer of any company carrying on the business of a money-lender, who by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, shall be guilty of an offence against this Act and liable to imprisonment for a term not exceeding one year, or to a penalty of not more than five hundred pounds, or to both such penalty and imprisonment.

Penalties for false statements and representations.
1617, 1924, s. 8.
Cf. Vic. 4625, 1938, s. 34.
Cf. U.K. 63 & 64 Vict., c. 51, s. 4.

39. (1) All loans made by a money-lender purporting to be loans of money shall be made in current money, bank notes, or cheques on bankers and shall be made in full without any deduction for interest or otherwise, and no land, goods or articles of any kind whatever or things in action shall be given or supplied in or by way of barter or otherwise for or as part of any such loan.

Method of making loan.
Cf. 1617, 1924, s. 16.
Cf. Vic. 4625, 1938, s. 35.

This subsection shall not be construed so as to prevent a money-lender deducting from any loan of money any sum lawfully agreed to be paid in accordance with the provisions of this Act on account of stamp duty or on account of fees payable to the Registrar-General of Deeds or on account of costs or fees payable to any solicitor or licensed land broker for the preparation of any document.

(2) Every contract made or transaction entered into or performed in breach of or with intent to evade or avoid this section in respect of a loan shall to the extent of such breach, evasion, or avoidance be and be deemed to be null and void.

PART IV.

PART IV.

RE-OPENING OF HIRE-PURCHASE TRANSACTIONS.

Re-opening
hire-purchase
transactions.
Cf. 1817, 1924,
s. 5.

40. (1) Where by any instrument, whether made before or after the commencement of this Act, it is expressed that any person agrees to hire any chattel and that such person may buy the chattel or the property in the chattel will or may pass to such person, and proceedings are taken in any court in respect of any matter arising out of the transaction, the court, if satisfied by evidence that—

- (a) the amount charged by any instalments payable pursuant to the instrument (and in especial whether directly or indirectly in respect of interest on the purchase-money outstanding) is excessive ; or
- (b) the amounts charged for expenses, inquiries, fines, bonus, premium, or any other charges are excessive ; or
- (c) the transaction is harsh and unconscionable, or is such that a court of equity would give relief,

may—

- (i.) re-open the transaction and take an account between the parties thereof ; and
- (ii.) notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation, re-open any account in connection with the transaction ; and
- (iii.) relieve the hirer of the chattel from payment of any sum in excess of the sum adjudged by the court to be fairly payable in respect of purchase-money, interest, and charges as the court, having regard to the risk, the value of the chattel, the time of payment, and all the other circumstances, may adjudge to be reasonable ; and
- (iv.) if any such excess has been paid or allowed in account by the hirer of the chattel, order the owner of the chattel to repay it ; and
- (v.) set aside either wholly or in part, or revise or alter, any security or guarantee given or contract made in connection with the transaction ; and
- (vi.) if any security has been parted with, order the owner of the chattel to indemnify the hirer of the chattel.

(2) The court shall have power, notwithstanding any provision or contract to the contrary, to entertain any application by the hirer of the chattel for relief, notwithstanding that the time for payment of any instalment has not arrived.

(3) When it appears to the court that any person other than the owner of the chattel has shared in the profits of or has any beneficial interest, prospectively or otherwise, in the transaction, the court may cite that person as a party to the proceedings and may make such order in respect to the said person as it deems fit.

(4) No proceeding to obtain any relief under this section shall be taken after six months from the time when the transaction in respect of or in connection with which relief is sought was finally closed.

(5) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the court as it deems necessary or proper.

(6) This section shall apply whether or not the owner of the chattel is a money-lender.

(7) In this section "security" includes bill of sale, mortgage, lien, and charge of any real or personal property and any assignment, conveyance, transfer or dealing with any real or personal property and any promissory note, bill of exchange or negotiable instrument.

PART V.

PART V.

MISCELLANEOUS.

41. (1) For the purpose of ascertaining whether the provisions of this Act are being or have been complied with by any money-lender, the Commissioner of Police or any person (being a superintendent or inspector of police) authorized in writing in that behalf by the Commissioner of Police, may enter any premises where the business of the money-lender is being carried on and may demand the production of and inspect any books, accounts, documents, securities, or writings relating to any loan made by the money-lender or relating to his business as a money-lender, and may take notes, copies or extracts thereof or therefrom.

Inspection of documents, etc.
Cf. Vtc. 4625, 1938, s. 36.

(2) Any person who—

- (a) wilfully delays or obstructs the Commissioner of Police or any other person authorized as aforesaid in the exercise of his powers under this section :
- (b) refuses or fails to produce or conceals or attempts to conceal any such books, accounts, documents, securities, or writings :
- (c) being the money-lender or a director, manager, or other officer or employee of the money-lender, refuses or fails to answer any question relating to such

Money-lenders Act, 1940.

books, accounts, documents, securities, or writings, or gives any untruthful answer to any such question,

shall be guilty of an offence against this Act and liable to a penalty of not less than twenty pounds and not more than one hundred pounds.

(3) If—

(a) the Commissioner of Police or any other person authorized as aforesaid divulges any matter or things ascertained by him during the exercise of his powers under this section ; or

(b) the Commissioner of Police or any other person authorized as aforesaid or any person to whom any such matter or thing is in accordance with this section communicated makes use of his knowledge of any such matter or thing,

except for the purpose of carrying out the provisions of this Act or in answer to any question which he is legally compellable to answer in any proceedings (whether civil or criminal) in any court or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, he shall be guilty of an offence against this Act and liable to a penalty of not more than two hundred pounds or to imprisonment for a term of not more than six months or to both such penalty and imprisonment.

Special provisions as to companies.
Cf. Vlc. 4625,
1938, s. 37.

42. (1) Where any notice or application is by or under this Act authorized or required to be given or made by any person in connection with a licence the same may, in the case of a company, be given or made by the company under its common seal or by the person appointed by the company to take out a licence on its behalf.

(2) Where a person who is guilty of an offence against this Act is a company, any person being a managing director, manager or secretary of the company, or any person who is the holder of a licence on behalf of the company, shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such an offence by a person other than a company accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(3) Where a person who is guilty of an offence against this Act is the holder of a licence on behalf of a company, the company and any person being a managing director, manager or secretary of the company shall be deemed to have committed

the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such offence by a company or (as the case requires) by a person other than a company accordingly unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

43. Any person (whether a money-lender or not) who in any newspaper or other printed paper, issued periodically for public circulation, advertises that he is willing to enter into any transaction involving the lending of money shall be liable to a penalty not exceeding five pounds unless his name and address are included in the advertisement.

Advertisement
of loan.

44. All proceedings for offences against this Act shall be disposed of summarily before a court of summary jurisdiction consisting of a special magistrate.

Proceedings
for offences.

45. (1) A certificate purporting to be signed by the Commissioner of Police, and stating that, at the date mentioned therein, the person named therein was licensed as a money-lender shall in all courts and before all persons be *prima facie* evidence that that person was, at the date mentioned, a money-lender within the meaning of this Act.

Evidence of
licence.
Cf. 1617, 1924,
s. 21.

(2) A certificate purporting to be signed by the Commissioner of Police, and stating that, at the date mentioned therein, the person named therein was not licensed as a money-lender shall in all courts and before all persons be *prima facie* evidence of the truth of that statement.

46. The Governor may make regulations for or with respect to—

Regulations.
Cf. 1617, 1924,
s. 18,
Cf. Vic. 4625
1938, s. 40.

- (a) the procedure to be followed in applications for licences and duplicate licences and in taking out licences and in applications for the transfer of licences and for substitutions and additions of new authorized addresses and for indorsements of licences and the notices to be given of intention to make such applications ;
- (b) the books or records to be kept by the Commissioner of Police and by clerks of local courts for the purposes of this Act and the entry therein of particulars with respect to licences and duplicate licences and the transfer of licences and the substitution and additions of new authorized addresses and the indorsement of licences and the suspension

Money-lenders Act, 1940.

and cancellation of licences and the disqualification of licensees, and any other matters or things relating to such books, records, and entries ;

- (c) the inspection of such entries ;
- (d) forms to be used under this Act ;
- (e) prescribing penalties, not exceeding fifty pounds, for any contravention of or failure to comply with the regulations ; and
- (f) generally, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Rules of
court.
1617, 1924,
s. 19.

47. (1) The power to make rules conferred by the Supreme Court Act, 1935-1936, shall include power to make rules for carrying this Act into effect.

(2) The powers conferred by section 28 of the Local Courts Act, 1926-1936, shall include power to frame rules and forms for carrying this Act into effect.

Saving of
jurisdiction.
1617, 1924,
s. 17.
Cf. U.K. 63 &
64 Vict.
c. 51, s. 3.

48. Nothing in this Act shall be construed as derogating from the powers or jurisdiction of any court, and the powers and jurisdiction conferred by this Act shall be deemed to be in addition thereto.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.