



ANNO DECIMO QUINTO

GEORGII V REGIS.

A.D. 1924.

No. 1617.

An Act to amend the Law with respect to Persons carrying on business as Money-lenders, and for other purposes.

[Assented to, November 20th, 1924.]

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

1. This Act may be cited as the " Money-lenders Act, 1924."

Short title.

2. The Money-lenders Act, 1903, is repealed.

Repeal of Act No. 820 of 1903.

3. In this Act, unless the context otherwise indicates—

Interpretation.

" Interest " includes discount, premiums, bonus, commission, deduction, fine, penalty, renewal charge, fees, costs, charges, and expenses, whether preliminary or otherwise, or any money or money's worth or any other consideration whatever, and whether the same is charged, paid, given, or allowed directly or indirectly for or in connection with the loan or transaction itself or any application, valuation, or security therefor : the term does not include any commission paid by the borrower (or, in the case of a hire-purchase transaction the lessee), to any third person, nor any costs or fees paid either by the lender or the borrower (or lessee in the case aforesaid) to any solicitor or valuator, nor any fees paid out of pocket by the lender (or lessor in the case aforesaid) where no solicitor acts for him, provided that the lender (or lessor) does not participate or have any interest in any such commission, costs, or fees :

Q., 7 Geo. V., No. 13, s. 3.

" Loan "

Money-lenders Act.—1924.

“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: the term 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 such loan; and the expressions “lend” and “lender” shall be construed accordingly:

63 & 64 Vict., c. 51,
s. 6.

“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—

No. 1387 of 1919.
No. 1588 of 1923.

(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

(b) any society registered under the Friendly Societies Act, 1919, or the Industrial and Provident Societies Act, 1923; or

(c) any body corporate incorporated or empowered by a special Act of Parliament to lend money in accordance with the special Act; or

(d) any person or body corporate *bona fide* carrying on the business of banking or insurance, or *bona fide* carrying on any business not having for any of its 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

(e) any body corporate for the time being exempted from registration under this Act by proclamation.

Reopening of
transactions of
money-lender.

63 & 64 Vict., c. 51,
s. 1

4. (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 agreement 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—

(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

Money-lenders Act.—1924.

the Court may—

- I. reopen the transaction and take an account between the plaintiff and the defendant; and
- II. notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen 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, 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
- V. set aside either wholly or in part, or revise or alter, any security given or agreement 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) 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 agreement to the contrary, to entertain any such application, notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived.

(3) On any application in any insolvency 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.

(4) 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. W.A., 1912, No. 65, s. 4 (4).

(5) No proceedings to obtain any relief under this section shall be taken after twelve 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 proceeding at any time within two years thereafter.

(6) This

Money-lenders Act.—1924.

(6) This section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender, but shall not apply to any *bona fide* assignee, transferee, or holder for value without notice of any right or interest arising out of a loan by a money-lender.

N.S.W., 1905, No. 24, s. 1 (7).

(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) 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.

Reopening hire-purchase transactions.

Q., 7 Geo. V.; No. 13, s. 5.

5. (1) When by any instrument it is expressed that any person lets any chattels to any other person at a rent to be paid by instalments upon the terms that the property in the chattels shall pass to the other person upon payment of the instalments but not otherwise, 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 the instalments (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. reopen the transaction and take an account between the parties thereto; and
- II. notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account in connection with the transaction; and
- III. relieve the lessee 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 chattels, 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 lessee, order the lessor to repay it; and
- V. set aside either wholly or in part, or revise or alter, any agreement made in connection with the transaction.

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

(3) When

Money-lenders Act.—1924.

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

(4) No proceeding to obtain any relief under this section shall be taken after twelve 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. (1) A money-lender as defined by this Act shall—

- (a) register himself as a money-lender in accordance with this Act, under his own and usual trade name (if any) and in no other name, and with the address, or all the addresses, if more than one, at which he carries on his business of money-lender; and
- (b) carry on the money-lending business in his registered name and in no other name and under no other description, and at his registered address or addresses and at no other address; and
- (c) not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and
- (d) on reasonable request and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor; and
- (e) when selling, assigning, transferring, or assuring any debt, promissory note, bill of exchange, chose in action, or security taken or received by him in his business as a money-lender, give to the purchaser, assignee, or transferee full particulars in writing of the transaction in connection with the same:

Duties of money-lenders, &c.
63 & 64 Vict., c. 51,
ss. 2, 3 (2).
1 & 2 Geo. V., c. 38,
s. 2.

Provided that no person shall be registered as a money-lender under any name including the word "bank", or under any name implying that he carries on banking business.

(2) A money-lender shall be registered as such by the entering of the particulars required by this Act in a Register, which shall be kept by the Commissioner of Police.

(3) The registration of a money-lender shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

(4) No

Money-lenders Act.—1924.

(4) No contract or agreement or transaction entered into by a money-lender with any person or body corporate shall be void or voidable by reason only that the money-lender has, whether in connection with the contract or agreement or transaction or not, been at any time guilty of a contravention of any of the provisions of this section or of section 7 whether convicted thereof or not.

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

Penalties.

63 & 64 Vict., c. 51,
s. 2 (2).

7. (1) If a money-lender—

- (a) fails to register himself as prescribed ; or
- (b) carries on business otherwise than in his registered name or in more than one name, or elsewhere than at his registered address ; or
- (c) fails to comply with any other requirements of this Act ; or
- (d) in the course of carrying on the money-lending business issues or publishes, or causes to be issued or published, any circular, notice, advertisement, letter, account, or statement of any kind containing expressions which might reasonably be held to imply that he carries on banking business,

he shall be liable to a penalty not exceeding One Hundred Pounds, and in the case of a second or subsequent conviction to imprisonment for any period not exceeding three months, or to a penalty not exceeding One Hundred Pounds, or to both : Provided that, if the offender is a body corporate, that body corporate shall be liable on a second or subsequent conviction to a penalty not exceeding Five Hundred Pounds.

(2) A prosecution under this section shall not be instituted except with the consent of the Attorney-General.

**Penalties for false
statements and
representations.**
Ibid., s. 4.

8. 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 body corporate 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 liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding Five Hundred Pounds, or to both penalty and imprisonment.

**Persons sending
infants circulars
inviting to borrow
money.**
N.S.W., 1905,
No. 24, s. 5.

9. (1) Any person who, for the purpose of earning interest, commission, reward, or other profit, sends or causes to be sent to a person who is an infant any circular, notice, advertisement, letter, telegram, or other document which invites, or may reasonably be implied

Money-lenders Act.—1924.

implied to invite, the person receiving it to borrow money, or to enter into any transaction involving the borrowing of money, or to apply to any person or at any place with a view to obtaining information or advice as to borrowing money, shall be liable to imprisonment for a term not exceeding six months, or to a penalty not exceeding One Hundred Pounds, or to both.

(2) If any document as in this section mentioned sent to an infant purports to issue from any address named therein, or indicates any address as the place at which application is to be made as to the subject-matter of the document, and at that place there is carried on any business connected with loans, whether making or procuring loans or otherwise, every person who attends at that place for the purpose of taking part in, or who takes part in or assists in the carrying on of, the said business shall be deemed to have sent or caused to be sent the document, unless he proves that he was not in any way a party to and was wholly ignorant of the sending of the document.

(3) Where in any proceedings under this section it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

10. Any person who, except under the authority of any Court, solicits an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan, shall be liable to imprisonment for a term not exceeding three months, or to a penalty not exceeding Fifty Pounds, or to both.

Soliciting infant to make affidavit in connection with loan.

Ibid., s. 6.

11. If any infant, who has contracted a loan 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 agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect the agreement 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.

Ibid., s. 7.

12. (1) No assignment to a money-lender, whether absolute or by way of security or otherwise howsoever, made after the commencement of this Act by any person (hereinafter 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 commencement of this Act, 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

Execution and attestation of certain assignments. Q., 7 Geo. V., No. 13, s. 11.

Special

Money-lenders Act.—1924.

Special Magistrate, a Commissioner for taking Affidavits in the Supreme Court of South Australia, or solicitor instructed and employed independently of the money-lender, and is certified by the Special Magistrate, or Commissioner for taking Affidavits, or solicitor, as next hereinafter provided.

(2) The Special Magistrate, or Commissioner for taking Affidavits, or solicitor—

- (a) shall read over and explain, or cause to be read over and explained in his presence, to the grantor the said 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 does 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 the property as aforesaid has been actually conveyed, assigned, or transferred.

(4) No assignment (except assignments 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.

Money-lenders Act.—1924.

13. (1) Whenever by the terms of any contract in writing entered into after the commencement of this Act (whether under seal or not) any interest is made payable at a rate or percentage per day, week, or month, or at a rate or percentage for any period less than a year, no interest exceeding the rate or percentage of Twelve Pounds per centum per annum shall be chargeable, payable, recoverable, or enforceable on any part of the principal money unless the contract contains an express statement of the total amount of interest paid or to be paid or of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

Restriction on
recovery of interest.
Ibid., s. 12.

(2) If any sum is paid on account of any interest not chargeable, payable, recoverable, or enforceable by reason of the last preceding subsection, that sum may be recovered back or deducted from any principal or interest payable under the contract, notwithstanding any contract to the contrary.

14. (1) Where money is or has been lent at a rate of interest exceeding Twelve Pounds per centum per annum, every document executed after the commencement of this Act by the borrower or a surety to evidence the contract of loan or suretyship shall be executed in duplicate, and one of the duplicates shall at the time of execution be delivered by the lender to the borrower or surety, or there shall then be delivered to the borrower or surety a memorandum setting out particulars of all the essential parts of the transaction.

In certain cases
duplicates of
contract or
memorandum of
particulars to be
supplied to
borrower.
Ibid., s. 13.

(2) If a lender does not comply with the foregoing provision, the contract, if made for the payment of a higher rate of interest than Twelve Pounds per centum per annum, shall to the extent of the excess be absolutely void: Provided that nothing in this subsection contained shall prejudice or affect the right which any person would otherwise have as assignee or transferee of any contract if he proves that he became the assignee or transferee in good faith and for valuable consideration, and without knowledge or notice of any contravention of this section, but the lender shall indemnify the borrower or surety against the payment of any higher rate of interest than Twelve Pounds per centum per annum in respect of the contract.

(3) Nothing in this section applies to negotiable instruments.

15. (1) For procuring, negotiating, or obtaining any loan after the commencement of this Act, or for guaranteeing or securing the repayment of any loan after the commencement of this Act, it shall not be lawful for any person to charge, recover, or receive more than two and one-half per centum on the amount of the principal sum actually lent.

Limit of charge for
obtaining or
guaranteeing loan.
Ibid., s. 14.

Such percentage shall include all fees, costs, charges, and expenses of any kind whatsoever for or in connection with or preliminary to the procuring, negotiating, or obtaining the loan or the guaranteeing or securing the repayment thereof, but shall not include any costs or fees paid either by the lender or the borrower to any solicitor or valuator, nor any fees paid out of pocket by the lender where no solicitor acts for him, provided that the lender does not participate or have any interest in any such commission, costs, or fees.

Money-lenders Act.—1924.

(2) It shall not be lawful for the lender or his partner, employer, employee, principal, or agent, or any person acting for or in collusion with the lender, to charge, recover, or receive any remuneration or reward whatsoever for or in connection with or preliminary to the procuring, negotiating, or obtaining any loan after the commencement of this Act, or the 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 may, to the extent of the contravention and notwithstanding any contract to the contrary, be recovered by the borrower from such person, or if such person is a partner, employer, employee, principal, or agent of the lender, or is in any way acting for or in collusion with him, then either from such person or from the lender.

How loan to be made.
Ibid., s. 15.

16. (1) All loans 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.

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.

This subsection shall not be construed to prevent a lender deducting from any loan of money all such fees, costs, charges, and expenses of any kind whatsoever as may be lawfully charged pursuant to this Act, except interest.

(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 after the commencement of this Act shall, to the extent of the breach, evasion, or avoidance, be absolutely void.

Non-application of section.

(3) This section does not apply to deductions for the current rate of discount on bills of exchange or promissory notes discounted, and having when discounted an unexpiry currency of not more than twelve months.

Saving of jurisdiction.
63 & 64 Vict.,
c. 51, s. 1 (6).

17. 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.

Regulations as to registration.
Cf. 63 & 64 Vict.,
c. 51, s. 3.

18. The Governor may from time to time make regulations respecting—

- (a) the registration of money-lenders, including the prescribing of the conditions for registration ;
- (b) the grounds on which they may be removed from the Register, whether individuals, firms, societies, or companies ;
- (c) the form of the Register and the particulars to be entered therein ;

(d) the

Money-lenders Act.—1924.

(d) the fees to be paid on registration and renewal of registration, not exceeding One Pound for each registration or renewal; and

(e) the inspection of the Register and the fees payable therefor.

19. (1) The power to make rules conferred by the Supreme Court Act, 1878, shall include power to make rules for carrying this Act into effect. Rules of Court.

(2) The powers conferred by section 28 of the Local Courts Act, 1886, shall include power to frame rules and forms for carrying this Act into effect.

20. The Governor may by proclamation exempt any body corporate from registration under this Act, and may revoke any proclamation made as aforesaid. Powers of Governor.

21. (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 registered 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 registration.

(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 registered as a money-lender shall, in all Courts and before all persons be *prima facie* evidence of the truth of that statement.

22. All proceedings for offences under this Act shall be disposed of summarily. Summary proceedings.

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

TOM BRIDGES, Governor.