

Act No. 24, 1905.

MONEY-LENDERS
AND
INFANTS LOANS.

An Act to regulate the business of money-lenders, and to render penal the inciting infants to borrowing money, and for other purposes. [15th November, 1905.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the passing of this Act, or the enforcement of any agreement or security made or taken after the passing of this Act, in respect of money lent either before or after the passing of this Act, and there is evidence which satisfies the court—

- (1) that the transaction is such that a Court of Equity would grant relief; or
- (2) that the interest charged in respect of the sum actually lent is excessive; or
- (3) that the amounts charged for expenses, fines, bonus, premiums, renewals, or any other charges, are excessive, and that in either of such last two cases the transaction is harsh and unconscionable in its nature,

the court may reopen the transaction, and take or direct to be taken an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account, or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum found to be fairly due in respect of such principal, interest, and charges as, having regard to the risk and all the circumstances, may be found to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may exercise at the instance of the borrower or surety or other person liable the like powers as may be exercised under this section where proceedings are

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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 application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.

(3) On any application relating to the admission or amount of a proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any bona-fide assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7) For the purposes of this section all such orders may be made and directions given by the court as it may deem necessary or proper for the effectual carrying out of the provisions therein contained.

2. (1) A money-lender, as defined by this Act,—

(a) shall register himself as a money-lender in accordance with regulations under this Act at an office provided for the purpose by the Registrar General under his own or usual trade name, 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) shall 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) shall 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) shall 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.

(2) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment,

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imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both: Provided that if the offender be a body corporate or a company, that body corporate or company shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3) A prosecution under subsection (1) (a) of this section shall not be instituted except with the consent of the Attorney-General.

Regulations as to registration.

3. (1) The Registrar General, subject to the approval of the Governor, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

(2) The registration 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.

Penalties for false statements and representations.

4. If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation or company carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently 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, he shall be guilty of misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Persons sending infants circulars inviting to borrow money guilty of a misdemeanour.

5. (1) If anyone, 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 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, he shall be guilty of a misdemeanour, and shall be liable, if convicted on indictment, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both imprisonment and fine, and if convicted on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding twenty pounds, or to both imprisonment and fine.

(2) If any such document as above in this section mentioned sent to an infant purports to issue from any address named therein, or indicates

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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 such place for the purpose of taking part in, or who takes part in or assists in the carrying on of such business, shall be deemed to have sent or caused to be sent such document as aforesaid, unless he proves that he was not in any way a party to and was wholly ignorant of the sending of such 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.

6. If anyone, except under the authority of any court, solicits soliciting infant to make affidavit in connection with loan. an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan, he shall be liable, if convicted on summary conviction, to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding twenty pounds, or to both imprisonment and fine, and if convicted on indictment, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds.

7. If any infant, who has contracted a loan which is void or Avoiding contract for payment of loan advanced during infancy. 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 such loan, and is not a new advance, such agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

8. The expression "money-lender" in this Act shall include Definition of money-lender. every person or company 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, but shall not include—

- (a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or
- (b) any registered society within the meaning of the Friendly Societies Act of 1873 or 1899, or any society registered or having rules certified under either of those Acts; or
- (c) any body corporate, incorporated or empowered by a special Act of Parliament, to lend money in accordance with such special Act; or

(d)

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(d) any person or company bona fide carrying on the business of banking or insurance, or bona fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purpose whereof money is lent.

Short title.

9. This Act may be cited as the "Money-lenders and Infants Loans Act, 1905."