



ANNO TERTIO

EDWARDI VII REGIS.

A.D. 1903.

No. 820.

An Act to amend the Law with respect to Persons carrying on business as Money-lenders.

[*Assented to, October 30th, 1903.*]

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

1. (1) Where proceedings are taken in any Court by a money-lender for the recovery of any amount lent after the commencement of this Act, or the enforcement of any agreement or security made or taken 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 the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a Court of Equity would give relief, the Court may re-open the transaction and take 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, re-open any account already taken between them, and relieve the person sued for 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 and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, order the creditor to re-pay it, and may set aside either wholly or in part, or revise or alter, any security given or agreement made in respect of money

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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, at the instance of a 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 application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any repayment 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 *boná 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.

Penalties for false statements.

2. 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 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 a misdemeanor, and shall be liable on indictment to imprisonment, with or without hard labor, for a term not exceeding two years, or to a fine not exceeding Five Hundred Pounds, or to both.

Definition.

3. The expression “money-lender” in this Act shall include 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 ; but shall not include—

Exemptions.

- (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 Friendly Society, or Building Society ; 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) Any

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(d) Any person *bonâ fide* carrying on the business of banking, or insurance, or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which, and for the purposes whereof, he lends money.

4. (1) This Act may be cited as the "Money-lenders Act, 1903." Short title.

(2) This Act shall come into operation on the first day of January, one thousand nine hundred and four. Commencement of Act.

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

GEORGE R. LE HUNTE, Governor.