*SMALL LOAN SERIES*

# SMALL LOAN LEGISLATION

## A History of the Regulation of the Business of Lending Small Sums

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## FOREWORD

THIS survey of small loan legislation is part of a general survey of small loans prepared for the Russell Sage Foundation under the direction of Dr. Louis N. Robinson. It is issued as one of the Small Loan Series of the Department of Remedial Loans. Of this series The Regulation of Pawnbroking, by R. Cornelius Raby, and Ten Thousand Small Loans, by Dr. Louis N. Robinson and Maude E. Stearns, have already been published.

Chapter VIII of this volume on The Constitutionality of Small Loan Legislation, by Frank R. Hubachek, was printed in 1931 as a pamphlet under the same title.

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# PART I

# SMALL LOAN LAWS

# CHAPTER I

## THE BASIS OF SMALL LOAN LEGISLATION

### THE NEED FOR LEGISLATION

THE Mosaic law forbade usury. Following the Biblical dictates, the Christian Church succeeded in legally prohibiting interest in England throughout the Middle Ages. In 1545 a statute of Henry VIII authorized a maximum charge of 10 per cent per annum, declaring that "the statutes prohibiting interest altogether had so little force that little or no punishment ensued to the offenders."[1] This statute, changed from time to time as to the rate allowed, remained the law of England until all usury laws were repealed there in 1854. It was the model for the laws in our states, 42 of which provide maximum interest rates.

Legislative enactment cannot change economic law. If money is a commodity, the rate of interest is regulated, at least in part, by the law of demand and supply. Just as the medieval prohibitive usury laws could not be enforced, so do the modern restrictive usury laws meet administrative difficulties. The difficulties are greatest in the field of consumers' loans, loans for consumptive purposes. The borrowers are often ignorant and always in immediate need. They are therefore likely to be willing to accept whatever terms the lenders may ask.

It is to be expected that the interest demanded on consumers' loans should be higher than on large loans for purposes of production for the following reasons:

1. The risk is relatively greater. The security is generally of a character not usually acceptable to a commercial bank. The duration of the loan is longer than that ordinarily allowed by commercial banks.

2. The operating expense is high. The amount of each loan is relatively small and must be collected in periodic instalments. The

[1] 37 Henry VIII, ch. 9.

borrower is not known to the money-lender as the borrower is known to the bank; his reliability must be investigated.

3. The profit anticipated is of a different sort. The commercial bank lends the money deposited by its clients, on which it pays no interest or only low interest.[1] The small loan agency can lend only its cash capital. The conventional rate charged by the bank need net only a broker's profit; the rate charged by the money-lender must net a tradesman's profit.

If the ordinary usury law is successful, it prohibits the small loan business: capital will not flow into an enterprise without adequate return. If, on the other hand, the law is not successfully enforced, the money-lender operates at a rate which is high because of the added risk and the social stigma that attach to an illegal undertaking. A money-lender operating at such high rates has come to be known as a "loan shark."

## THE THEORY

There are various theories concerning methods of preventing evils in the money-lending business: (1) to prohibit by legislation a higher rate of interest than the normal contract rate; (2) to encourage the lending of small sums of money by non-commercial, semi-philanthropic corporations; (3) to allow commercially profitable maximum rates; and (4) because even such rates may be exceeded in practice, to subject the small loan business to official governmental supervision.

For convenience we shall call these theories (1) the prohibitive, (2) the semi-philanthropic, (3) the unregulated commercial, and (4) the regulated and supervised commercial.[2]

The prohibitive theory is self-explanatory. It is expressed in the ordinary usury laws which restrict interest on small loans to the rates permitted on all other loans. It is expressed, as well, in laws which restrict particular types of small loans to a rate which is economically inadequate. Thus a New Jersey act in 1884 prohibited by criminal penalty the assignment of wages to secure loans

[1] This neglects, of course, the possibility of credit expansion.

[2] There is also a fifth or co-operative theory which is evidenced in the credit union. Though this will be discussed incidentally in passing, the subject of credit union legislation has been covered in A Credit Union Primer, by Arthur H. Ham and Leonard G. Robinson, revised by Rolf Nugent. Russell Sage Foundation, New York, 1930.

on which interest was charged above the legal rate of 6 per cent.[1] And in 1891 a Missouri law provided that pledges and chattel mortgages were to be invalid if given to secure a loan bearing interest above the legal rate of 8 per cent.[2]

A legal study such as this is not the appropriate place to discuss the soundness of the prohibitive theory as an economic policy.[3] But legislation does in time adjust itself to economic necessity. To this degree the merit of the theory may be estimated from the consideration of the laws which have sought to enact it into practice.

The semi-philanthropic theory is expressed in laws which allow a rate of interest, higher than the general contract rate, to be charged on small loans which are made by institutions that are not organized primarily for profit. The rate usually consists of interest plus a specific charge for investigation and drawing of papers. The non-commercial character of the lending institution is guaranteed by a statutory limitation on the amount of dividends payable on its capital stock. The Worcester (Massachusetts) Collateral Loan Association and the Workingmen's Loan Association of Providence were the first institutions chartered for the purpose of making small loans the rates and charges of which were definitely limited.[4] The Provident Loan Society of New York was the first institution of this type whose dividends were limited.[5] In 1895 New York abandoned the old method of legislative incorporation of each such lending institution and extended the privilege to any persons who could furnish the requisite bond for observance of the law.[6]

Important as the service has been which these remedial loan societies have rendered, their facilities are not adequate to the need and cannot be used by the poorer type of borrower. It must be remembered that these societies were organized as, and for the most part remain, semi-philanthropic in purpose. Though their capital has grown, it has not kept pace with the needs of the borrowers. To attract more capital and allow a return more commensurate with the risk involved, New York raised the maximum

[1] Acts 1884, ch. 166.

[2] Laws 1891, p. 170.

[3] For such discussion see Usury and Usury Laws, by F. W. Ryan. Houghton Mifflin Co., Boston and New York, 1924.

[4] See p. 23.

[5] See p. 24.

[6] Laws 1895, ch. 326.

of permitted dividend payments from 10 per cent of the capital to 12 per cent and then to 15 per cent per annum.[1]

The unregulated commercial theory aims to allow the lender to charge a rate of interest higher than the usual contract or banking rate, a rate high enough to induce the investment of sufficient capital to supply the demand for small loans. The laws generally provide penalties for charging higher rates. Of this type of legislation was the Wisconsin act of 1895 which allowed an aggregate charge of 24 per cent per annum on loans secured by chattel mortgage, as opposed to the state contract rate of 10 per cent per annum, and subjected to fine anyone charging more than the rate allowed.[2] The Missouri law of 1897 similarly allowed 1 per cent a month on chattel mortgages on specified kinds of property, such as household goods, and provided that such mortgages should be invalid when a higher rate was charged. The legal rate on other loans in Missouri was then 8 per cent per annum.[3]

Legislators have not always recognized, however, how high a rate is necessary to make the small loan business commercially possible. Some states have passed statutes intended to permit the business on a commercial basis only to find that the authorized rate would not yield a fair profit to the legitimate lender. The effect of such inadequate rate is the same as follows the prohibitive theory: the legitimate lender is driven out and the field left open for the unscrupulous "loan shark" and his extortionate rates. Only after years of experimentation in various states was a proper rate discovered. Even where the authorized rate is adequate for profit, a mere statutory provision for penalty may not be sufficient deterrent for unscrupulous lenders.

The semi-philanthropic theory has recognized that the small loan business is a matter of public interest. The unregulated commercial theory has recognized the need of an adequate rate to supply the demand for capital. The regulated and supervised commercial theory attempts to assimilate to the public interest this adequate flow of capital. It seeks to confine the privilege of charging a special higher rate of interest to persons who are licensed by the state. It seeks to regulate the conduct of the business so as to eliminate abuses, to compel the observance of the law not only by

[1] See pp. 28, 62 f. [2] See p. 21. [3] See p. 19.

providing adequate penalties for disobedience but by giving power of supervision and control to a responsible state official. The principal example of this type of legislation is the Uniform Small Loan Law.

In the earliest small loan legislation there were already the seeds of this regulation and supervision. The requirement that the lender give to the pledgor or mortgagor a memorandum of the details of the loan was common to the Ohio Collateral Loan Law of 1885,[1] the Massachusetts act incorporating the Workingmen's Loan Association of Boston in 1888,[2] and the Maryland Act of 1894.[3] The statutes authorizing semi-philanthropic loan corporations in Cleveland[4] and in Worcester[5] each required that there be two directors representing the public. The New York law of 1895 providing for semi-philanthropic lending institutions went much further:[6] though it did not require a license, it did require incorporation as a condition precedent to engaging in business, a bond for the faithful observance of the law, and an annual report giving such information as a state official might demand. And the Massachusetts act of 1898[7] required not only a recital of the terms of the loan in the instrument itself, a receipt with details of payments, a bond, and the filing of the names and addresses of lenders, but also a license to engage in business and gave to municipal authorities the power to make regulations and, in part, to fix the rate of interest.

## THE METHOD

The early laws regulating small loans seldom recognized the inclusiveness of the problem. They were enacted to meet some particular expression of the evil. The successful prohibition of one form of high interest loan merely drove the money-lenders to use a different form, a form not covered by the statute. This difficulty arose from the lack of understanding of the methods by which small loans are evidenced and secured.

The loan is always evidenced by a note, a promise by the borrower to repay the money lent, with interest. In the case of small loans the note is seldom unsecured. The security may be the endorsement of one or two reputable sureties who promise to pay in

[1] See p. 23. [2] See p. 23. [3] See p. 20. [4] See p. 23.
[5] See p. 23. [6] See p. 24. [7] See pp. 19, 21 f.

default of the principal debtor. Such is the method used by the so-called industrial banking companies—and often by banks. Or the security may be a pledge of personal property. A borrower from a pawnbroker deposits with him some tangible article of value, the proceeds of which may be used to repay the loan if the borrower fails to meet his obligation.

Frequently, however, the borrower of small sums has no tangible property of value with which he can part. His capital consists of wearing apparel, household furnishings, and professional or trade equipment. These are in daily use. He therefore executes a chattel mortgage, which gives the lender a property interest in these articles but does not necessitate possession. In default of the payment of the loan the lender may bring action to foreclose the mortgage, that is, to obtain possession of the chattels or, by sale, to attempt to realize a sum sufficient to repay the loan. The difficulty with a chattel mortgage as a form of security is that the property, being in use during the period of the loan, deteriorates in value. Purchasers cannot readily be found for second-hand articles of this nature. The semi-philanthropic remedial loan societies generally make their loans on the security of pledge or chattel mortgages.

A common form of subsidiary security for loans made by commercial lenders is the wage assignment.[1] In both a pledge and a chattel mortgage the loan is secured by a property right in capital goods; in a wage assignment the loan is secured only by a potentiality. The security for the loan is a right to acquire the wages already due and owing to the borrower from his employer or, sometimes, the wages already earned but not due until "pay-day," a few days away. A wage assignment is thus a transfer of a whole or fixed part of a salary or wage, earned or to be earned, under an existing contract of employment, and payable at or before a fixed time.

Because many small loans are made on the security of wage assignments, some states have sought, and still seek, to correct the abuses by regulating wage assignments only. Though the wage-assignment laws are a part of the general problem of small loan legislation, they also demand consideration apart from the general question. They will be discussed fully in Part II of this study.

[1] Usually taken in conjunction with a chattel mortgage.

The best way to reach an understanding of the theories for the regulation of small loans is to study the legislation of the various states. We shall, in the main, study the legislation chronologically, dividing it into time periods. Because a strict time classification would be confusing to the reader, the laws of each period will be grouped roughly under the four theories as we have discussed them: the prohibitive, the semi-philanthropic, the unregulated commercial, and the regulated and supervised commercial.

The piecemeal character of the legislation and its frequent failure in the earlier periods will help to picture the experimental nature of the laws and the process whereby the experiments were coordinated into a satisfactory approach to the solution of the problem of regulating small loans.

# CHAPTER II

## EARLY ATTEMPTS AT SMALL LOAN LEGISLATION, 1884–1898

### DIAGNOSING THE AILMENT

THE problem of small loans was at first thought to be a part of the general problem of usury. The need of a different rate of interest was not quickly discovered. Indeed, if one may judge from the absence of distinctive small loan laws in certain states—Vermont, Kansas, Oklahoma, New Mexico, Washington, Idaho, the Dakotas, and Nevada—the need is not yet universally recognized.

In an attempt to free the working people from the toils of unscrupulous money-lenders, some states passed laws limiting the rate of interest on all loans. Thus Connecticut, in consequence of a campaign in Hartford against "loan sharks," fixed a maximum rate of interest on general contract loans.[1] Such laws were, of course, inadequate because if they provided proper regulation for large producers' loans, they created a legal bar to the commercially profitable conduct of the small loan business.

Other states, noting that small loans were secured chiefly by chattel mortgages and wage assignments, prohibited or regulated the use of one or another of these kinds of security. The lenders would then use the other form of security. If necessary, they would make loans without security, deceiving the borrowers into the belief that they had given legal security though they had not, or relying on the garnishment laws which afforded a method of rapid and effective collection.

New Jersey was the first state to try to regulate small loans by regulating loans on one type of security. In 1884 it prohibited the assignment of wages given to secure loans, except at the legal rate of interest, and provided punishment by fine not to exceed $500.[2]

[1] Public Acts 1907, ch. 238. See State *v.* Griffith, 83 Conn. 1 (1910), affirmed 218 U. S. 563; State *v.* Hurlburt, 82 Conn. 232 (1909).

[2] Acts 1884, ch. 166.

The only penalty for usury in New Jersey at that time was loss of interest. In order to escape the criminal punishment after the new enactment, a money-lender had only to take a chattel mortgage instead of a wage assignment.

Seven years later Missouri passed a more specific act which regulated not wage assignments but chattel mortgages.[1] It provided that if a pledge or mortgage of personal property were given to secure a loan, the interest on which was usurious, such pledge or mortgage was invalid and illegal. In 1895 the courts of Missouri held that under this statute of 1891 usurious chattel mortgages were valid if in the hands of a bona fide holder.[2] To cure this defect Missouri in 1897[3] enacted a law which allowed on loans not exceeding $500 and secured by certain kinds of personal property a higher rate of interest than the usual contract rate of 8 per cent per annum. This law provided that one who took any chattel mortgage upon household or kitchen furniture, sewing machines, wearing apparel, musical instruments, watches or jewelry, securing a loan of not more than $500, might charge interest of 1 per cent a month, but if the instrument evidencing the debt expressed on its face any amount in excess of the actual amount of the loan and the holder thereof assigned it without revealing to the transferee the true amount lent, he was liable to the transferee for double the amount named in the instrument and was guilty of a misdemeanor punishable by a fine of $500 or imprisonment for six months or both. If a lender should charge more than 1 per cent a month on such a loan, or if the instrument evidencing the loan should express on its face a greater amount due than that actually lent, such instrument and the security given thereunder were void and unenforceable.

Massachusetts was the first state to pass an inclusive act on the subject of small loans. In 1888[4] it restricted the interest on all loans under $1,000 to 18 per cent per annum, plus a maximum fee of $10 for actual expenses, with a minimum, however, of six months' interest. In this enactment Massachusetts, as it had no usury law, sought to modify its policy of free contract in order to

[1] Laws 1891, p. 170.

[2] Johnson *v.* Simmons, 61 Mo. App. 395 (1895); Smith *v.* Mohr, 64 Mo. App. 39 (1895).

[3] Laws 1897, p. 202.

[4] Acts and Resolves 1888, ch. 388.

protect the small borrower from the legally unrestricted rate. This state had yet to discover that $1,000 was a limit considerably higher than was necessary.[1]

Maryland and Wisconsin did not profit by this Massachusetts innovation of inclusive regulation. In 1894 Maryland passed a law[2] which applied only to loans secured by chattel mortgages. It limited the interest and charges on such secured loans to 6 per cent per annum, and required that every security affected by the act should state plainly the period of time for which the loan was made and the entire amount of interest agreed to be paid—not, of course, to exceed 6 per cent. Violation of the act rendered the contract or security null and void. The act contained, besides, a peculiar type of provision which shows how limited was the concept of the problem of small loans in 1894. It provided that no corporation should act as agent in making or procuring any loan on the security of chattels, that no corporation should make any such loan except in its own name and for its own benefit. Such restriction upon the business of corporations would serve only to establish the small loan business in the hands of individuals and partnerships. The Maryland Court of Appeals failed, too, to recognize that the evil aimed at was far broader than the act hoped to regulate:

> The Legislature was striking at an evil which had grown to be very oppressive to persons whose necessities put them in the power of usurers. . . . Certain corporations assuming to act as agents for others loaned money on chattel security at excessive rates of interest; and certain individuals did the same things in the name of corporate bodies which had merely a fictitious existence. There was naturally great complaint because of the extortions and impositions practiced on the helpless sufferers. And there was a general belief that there was much fraud and imposition cloaked and concealed under the pretence of agency. The remedy adopted by the Legislature was to prohibit the disguises assumed by real corporations, and to punish as a crime the false assumption of a corporate name by individuals. And also to make their usurious contracts void. If we look carefully through the Act we will see that its prohibitions are levelled against conduct which in the ordinary course of things is not practiced by

[1] The limit of $1,000 was provided also in the charter of the Workingmen's Loan Association of Providence: Rhode Island Acts and Resolves 1895, p. 214.

[2] Laws 1894, ch. 629.

lenders of money on real or leasehold property, and which could not be practiced by them without inconvenience and detriment to themselves.[1]

Wisconsin in 1895 passed a more stringent law regulating loans on security of chattels.[2] This act made it unlawful, under penalty of fine of from $5.00 to $50, to charge or receive more than the legal contract rate of interest, 10 per cent, plus an additional amount equal to 14 per cent per annum of the amount actually lent, on the loan of any money "secured by chattel mortgages, bill of sale, receipt or other evidence of debt, upon chattel goods or property." Though affecting chattel-secured loans only, it legalized an interest rate of 24 per cent per annum on loans of any size whatsoever.

It was Massachusetts which in 1898 again took a step far in advance of her sister states.[3] Not only did the new regulation apply to small loans regardless of whether the security was a chattel mortgage or a wage assignment; it established the first supervised regulation of the small loan business.

No person, corporation or co-partnership engaged in the business of making loans shall make any loan secured by mortgage or pledge of household furniture or other personal property exempt from attachment, or by assignment of wages for personal service, for less than two hundred dollars and at a rate of interest greater than 12 per cent., without first having obtained a license for carrying on such business in the city or town in which such business is transacted.

The license was to be granted by the municipal authorities, who were to establish "such rules and regulations with reference to the business carried on by the parties so licensed and the rate of interest to be charged by them as shall seem to said board to be necessary and proper," and who after hearing could revoke the license for cause. The licensee was required to file a bond in a penal sum to be fixed by the licensing authorities, "for the faithful performance . . . of the duties and obligations pertaining to the business so licensed, and the prompt payment of any final judgment recovered against the licensee." He was also required to register his name, private and business address and, if a corporation, the names and addresses of the clerk or secretary and of the officer or agent

[1] Commercial Association *v.* Mackenzie, 85 Md. 132, 140 (1897).

[2] Laws 1895, ch. 327.

[3] Acts and Resolves, 1898, ch. 577.

having charge of the proposed business; and was to appoint an attorney on whom lawful process might be served.

In addition to interest the following fees were allowed: $2.00 where the loan was less than $25, $3.00 where between $25 and $50, $5.00 where between $50 and $100, and $10 where the loan exceeded $100. Should the licensee's rate exceed the authorized interest and charges, any excess could be recovered, with twice the legal costs, in an action brought within two years of the excess payment.

This act also contained the following significant provisions:

> No mortgage or pledge of personal property or assignment of wages to which the provisions of this act apply shall be valid unless it states, with substantial accuracy, the actual amount of the loan, the time for which the loan is made, the rate of interest to be paid, and the expense of making and securing the loan.
>
> Whenever any payment is made on account of any loan to which the provisions of this act apply the person receiving the payment or his principal shall, when the payment is taken, give the person paying, a receipt setting forth the amount then paid and the amount previously paid, and identifying the loan, note, mortgage or assignment to which it is to be applied.
>
> Any person or persons not being duly licensed as provided in this act who . . . shall engage in . . . the business of making loans to which the provisions of this act apply, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the house of correction not more than sixty days, or by both.[1]

## PRESCRIBING A REMEDY

Legislative restriction is not the only method of meeting the small loan problem; economic competition, if effective, is a more satisfactory solution. The low-rate lender, if his facilities are adequate and his terms inclusive, can drive out the high-rate lender.[2] It was this constructive idea that led to the establishment of the remedial loan societies. These semi-philanthropic organizations began as small, local experiments. They were organized in the spirit of social welfare by citizens prominent in their communities. They encouraged public participation in the under-

[1] Licensed pawnbrokers were excepted from the provisions of the act.

[2] See pp. 14, 55.

taking and, in so doing, expanded the idea that the small loan business was a matter of public concern.

In 1885 Ohio passed a law, applicable only to counties containing a city of the second grade of the first class and marked in the session laws as applying to Cleveland,[1] which authorized the formation of corporations "to make loans upon pledges of goods and chattels of every kind; also, on mortgages on goods and chattels." It allowed such corporations to charge 7 per cent per annum in addition to the 8 per cent legal contract rate of the state. In 1886 the 7 per cent rate was raised to 10 per cent.[2] An interesting provision was that which required seven directors to be appointed for any such corporation, one of them by the governor of the state and one by the mayor of the city in which the corporation was located. The society was to report to the governor of the state "full and accurate statistics of its business, and of its financial condition" annually and at such other times as might be requested by the governor.

Massachusetts in 1888 incorporated the Workingmen's Loan Association in Boston[3] "for the purpose of loaning money upon pledge or mortgage of goods and chattels or of safe securities of every kind or upon mortgage of real estate." The details of each pledge had to be given to the pledgor, and the association was subject to examination by the commissioners of savings banks. Subsequent to the formation of this association its incorporators took voluntary action to limit its dividends to 6 per cent.

Eight years later the benefits of this type of society were extended to another Massachusetts city by the incorporation of the Worcester Collateral Loan Association.[4] Its express purpose was identical with that of the Boston association. Interest was limited to 1½ per cent a month; a card containing the details of the transaction was to be given to the borrower; and no charge was allowed for preliminary examination when the loan was not made. As in the Ohio act of 1885, the public was to participate in the Worcester association through the appointment of one director by the governor of the commonwealth and another by the mayor of the city.

[1] Laws 1885, vol. 82, p. 132.
[2] Acts 1886, vol. 83, p. 144.
[3] Acts and Resolves 1888, ch. 108.
[4] Acts and Resolves 1896, ch. 298.

In 1895 Rhode Island[1] incorporated the Workingmen's Loan Association for the purpose of lending money upon pledge or mortgage of goods, chattels, and securities of every kind. The act of incorporation provided that the institution should be located in Providence, and that "no loan of more than one thousand dollars shall be made to any one person. The rate of interest upon any loan made by said corporation shall not exceed one per cent a month."

It was New York, however, that carried furthest the early development of the remedial loan idea. In 1894 the Provident Loan Society of New York was incorporated[2] "for the purpose of aiding such persons as said society shall deem in need of pecuniary assistance, by loans of money at interest, upon the pledge or mortgage of personal property." The following provision of the charter indicates the society's philanthropic intent: "No member or trustee of the society shall receive any compensation for his services, or any profit other than lawful interest on money loaned to it."

The next year New York authorized the formation of similar societies in other cities. The new law[3] did away with the necessity of a special legislative act for the incorporation of each new society. It authorized the formation of corporations in counties of more than 300,000 people and less than 600,000 "for the purpose of aiding such persons as shall be deemed in need of pecuniary assistance." At the same session the act was made applicable to all counties of over 300,000 inhabitants,[4] and a year later was extended to all counties containing a city of over 25,000, except the counties of Westchester and Monroe.[5]

Such a corporation could make loans up to $200—no person could owe it at one time more than $200 as principal—and on such loans could charge 3 per cent a month for the first two months and thereafter 2 per cent a month, plus a fee of $3.00 for the first examination of the property and for drawing and filing the necessary papers. The corporation was authorized to "take as security for the payment of any such loan either a pledge or a mortgage of

[1] Acts and Resolves, January Session, 1895, p. 214.

[2] Laws 1894, ch. 295.

[3] Laws 1895, ch. 326.

[4] Laws 1895, ch. 706.

[5] Laws 1896, ch. 206.

any personal property without the actual delivery to it of the property pledged or mortgaged." No other person or corporation, in any such county, except corporations organized under said act, could charge or receive any interest, discount, or consideration greater than 6 per cent per annum upon the loan, use, or forbearance of money, goods, or things in action less than $200, or upon the loan, use, or sale of personal credit in any wise, "where there is taken for such loan, use or sale of personal credit any security upon any household furniture, apparatus or appliances, sewing machine, plate or silverware in actual use, tools or implements of trade, wearing apparel or jewelry." Any violation of the above was a misdemeanor, the debt in connection with which the offense was committed was discharged, and the security was made void.

The state supervised such corporations by requiring them to file with the superintendent of the banking department a bond in an amount equal to one-tenth of their capital stock, and not less than $5,000, with sufficient sureties, approved by him, for the faithful observance of all provisions of the law regulating business corporations in New York and of the provisions of this act. Every such corporation had to make an annual report to the superintendent of the banking department, "giving such information as he shall require." In case of violation of the act the bond could be sued upon, and for information concerning violation the informer was to be paid a reward of $250.

The non-commercial character of the corporations was guaranteed by the statutory limit set on payment of dividends. In any year no such corporation could declare more than a 10 per cent dividend on its capital stock, and after it had accumulated a surplus of 50 per cent of its capital, the superintendent of the banking department could reduce "the rates of interest, discount and charges which such corporation may lawfully charge and receive upon loans, to such sums as will, in his judgment, produce a net return of 10 per cent on its capital stock."

In 1896 the Hebrew Free Loan Society was established in the city of New York. This was a purely charitable organization, making loans of small amount without any interest or charge whatever.

## SUMMARY OF EARLY ATTEMPTS

Between 1884 and 1898 the need of regulation of small loans was recognized in nine states by legislation and was elsewhere the subject of discussion. Remedial loan societies had a rapid and successful development. The regulation of commercial enterprise was still in an elementary stage: different rates were being tried and different sized loans were being subjected to regulation. The problem was not always seen as a whole, but in one state at least chattel loans and wage loans were subject to the same treatment. The seeds of development were already planted.

# CHAPTER III

# THE GROPING OR EXPERIMENTAL PERIOD, 1898–1910

## DEVELOPMENT OF EARLIER THEORIES FOR THE REGULATION OF SMALL LOANS

UNTIL the twentieth century was well started the several states did not think to pool their legislative experience in regulating small loans. There was little knowledge in one state of how another state was meeting the common problem. The laws of the period, in consequence, defy a clean-cut classification. They represented every known expedient in small loan legislation. Many of the laws had later to be discarded; others had to be modified to achieve their purpose. But the theories, outlined in Chapter I, that had first been tested in the earlier period were further tried out during the "groping" era and formed the basis on which there was to be built later an adequate system of legal control.

### Prohibitive Theory

Three states passed laws in 1907 which, had they been successful, would have made the small loan business, or a part of it, commercially impossible and criminally punishable. Utah forbade a contract for interest greater than 12 per cent per annum; the legal rate of interest was 8 per cent.[1] North Carolina made it a misdemeanor to charge more than 6 per cent per annum upon a chattel mortgage of household or kitchen furniture.[2] And Connecticut made it a misdemeanor to charge more than 15 per cent on any loan.[3] Though at first Connecticut made vigorous efforts to enforce this law and prosecute unscrupulous money-lenders,[4] twelve years later she admitted the failure of a general usury law to

[1] Laws 1907, ch. 46. On loans less than $100 the parties might agree to $1.00 interest for the first month only.

[2] Public Laws 1907, ch. 110.

[3] Public Acts 1907, ch. 238.

[4] State *v.* Hurlburt, 82 Conn. 232 (1909); State *v.* Griffith, 83 Conn. 1 (1910).

regulate necessitous small loans. And Utah likewise confessed to failure when, in 1917, she too enacted a uniform small loan law.[1]

## Semi-Philanthropic Theory

The remedial loan legislation of the earliest period had been important merely because it established non-commercial societies and so provided a partial solution of the small loan problem. That movement to establish new societies continued. But there was in the early twentieth century an effort not only to establish but to regulate and supervise these societies. This idea of regulation and supervision was later to be adopted in legislation concerning commercial as well as semi-philanthropic loan enterprises.

In 1902, for instance, the New York law as to semi-philanthropic loan corporations was amended.[2] The provisions for size of loan, kind of security, limitation of dividends, and penalty for violation remained the same. The interest rate was changed to allow such corporations to charge 2 per cent a month, plus a fee of $1.00 on loans of $50 or less and of $2.00 on other loans, providing that no fee was to be charged on renewals of loans more than once in each period of twelve months. The real innovation introduced by the amendment was the provision for extended supervision. The corporations were made subject to examination, annually or more frequently, by the superintendent of banks, who was to have free access to all corporate records. The corporations were, in fact, expressly subjected to the "supervision of the superintendent of banks," who was given power to stop violations of law and of charters and any oppressive and evasive practices. If a corporation did not cease such practices, it was to be dissolved.

In 1904 New Jersey enacted a law modeled after this amended New York law.[3] It authorized interest at the rate of 2 per cent a month for the first two months, and thereafter at 1½ per cent a month, but permitted no supplementary fees or charges. It made specific provisions for regulation and supervision. The New York law provided that any person other than such corporations making loans at more than the legal rate of interest was guilty of a mis-

[1] The Alabama act of 1901 was prohibitive in effect. See p. 33.

[2] Laws 1902, ch. 78. For original act see p. 24.

[3] Acts 1904, ch. 96.

demeanor.[1] Failure to enact a similar provision left loss of interest the only penalty for usury in New Jersey. Unlicensed lenders could therefore charge exorbitant rates without fear of punishment. Though the New Jersey law was beneficial as an enabling act for semi-philanthropic institutions and as an additional experiment in supervision, it made no attempt to check the operations of high-rate lenders.

In 1905 California, then a state without a usury law, passed two laws on the subject of small loans. The one permitted the incorporation of semi-philanthropic societies, under the general incorporation laws,[2] "to loan money at interest upon the pledge or mortgage of goods or chattels, or of safe securities." It provided that such corporations had to have a capital stock of at least $50,-000, of which one-half was paid in before the business was undertaken; to procure from the bank commissioners a license in prescribed form; and to execute a bond equal to one-twentieth of its capital stock. Such corporations could then make loans on pledges and chattel mortgages, not to exceed $300 to any one person, at a rate of 1½ per cent a month, plus a fee of $5.00 if the loan was actually made, but could exact no fee on renewals oftener than once a year. They had to file semi-annual reports containing such information as was requested by the bank commissioners, who were to have access to all corporate records. The law limited the dividends on the stock of such corporations to 6 per cent a year and gave to the bank commissioners the power to reduce the interest rates of a corporation which had accumulated a 50 per cent surplus and maintained its dividends, so that the rates should produce a net return of 6 per cent. This statute prohibited, under penalty of fine and imprisonment, anyone other than such corporations from charging more than 1½ per cent a month on a loan of less than $300 or upon the loan, use, or sale of personal credit where there was taken for such loan "any security upon any upholstery, furniture or household goods, oil paintings, pictures or works of art, pianos, organs, musical instruments, or sewing machines, plate or silverware, iron or steel safes, professional libraries, or office furniture or fixtures, instruments of surveyors, physicians or

[1] People ex rel. Beebe *v.* Warden, 176 N. Y. 577 (1903).

[2] Statutes 1905, ch. 550.

dentists, printing presses or printing material, wearing apparel, diamonds, watches or jewelry." The corporations and their officers were also prohibited from charging in excess of the rates allowed by the act, on penalty of dissolution, fine, and jail sentence.

This act took effect on March 21, 1905. On the preceding day the legislature had passed another act, which became effective on May 19.[1] This other act provided that no person or corporation should charge more than 1½ per cent a month interest and a fee of $5.00 on loans not exceeding $300 when the security was a chattel mortgage upon household and professional requisites such as those enumerated in the semi-philanthropic act. Violations were punishable by fine and, for a second offense, by imprisonment as well, and by forfeiture of interest.

The act of March 20 made the act of March 21 unnecessary. Without special regulation and without limitation of dividends any person or corporation could charge the same interest on small loans as the specially regulated, semi-philanthropic corporations could charge.

Both these California statutes were declared unconstitutional in Ex parte Sohncke,[2] the semi-philanthropic act because the penal provisions were not equal in operation, the other act because it regulated loans on chattel security on only certain types of property and not on all personal property subject to mortgage. The court suggested, by way of dictum, that there was no substantial reason why those who lend sums greater than $300 should be distinguished from those who lend less.[3] This dictum, as we shall see, had an unfortunate effect on later legislation in California.

## Unregulated Commercial Theory

The semi-philanthropic acts showed a growing recognition of the need of public regulation of small loans, an increasing tendency to prescribe specific rules in the public interest and to insure their enforcement by means of official supervision. This tendency in one type of act was but an evidence of the tendency in the whole field of small loan legislation. Before 1900 Massachusetts had been the only state to attempt to prescribe comprehensive regulations for commercial money-lenders. But throughout the first decade of

[1] Statutes 1905, ch. 354. [2] 148 Cal. 262 (1905). [3] See p. 32.

the twentieth century these laws regulating commercial loans increased in number and in inclusiveness. Over this period of ten years there was a progressive development of the comprehensiveness of regulation.

When Maine enacted its legislation concerning small loans in 1899,[1] it made no attempt at regulation. The law provided that "all loans hereafter contracted for less than two hundred dollars that are secured by mortgage or pledge of property" were to be dischargeable by payment of the principal with interest at 3 per cent a month for the first three months and thereafter at the rate of 15 per cent per annum, plus "a sum not exceeding three dollars for the actual expenses of making the loan." No renewal was to bear interest at a rate higher than 15 per cent per annum. Mortgages of household furniture were not to be valid unless they stated with substantial accuracy the amount of the loan, the time for which it was made, the rate of interest, and the expense of making and securing it. The act excepted licensed pawnbrokers from its provisions. The only penalties provided by the act for excess charges were the loss of all interest over 6 per cent and, if a lender did not discharge the mortgage or lien on the terms set forth, liability to a civil suit for any damages suffered by the debtor or owner of the property.

Such penalty was not an adequate deterrent to high-rate lenders. To make the regulations more effective the states therefore adopted the expedient of punishing violations criminally. Maryland, for example, in 1900[2] legalized the following fees on chattel mortgages, in addition to a legal interest; $5.00 on loans not exceeding $50, $6.00 on loans between $50 and $100, 5 per cent additional on the excess over $100 on loans between $100 and $1,000, 2½ per cent additional on the excess over $1,000. Interest was not to be deducted in advance. No charge for extensions or renewals was to be made, and loans were not to be split up. Any violation of the act, including the making of any greater charges than those prescribed, not only caused forfeiture to the borrower of the entire amount of the loan but constituted a misdemeanor. In 1902[3] Maryland extended the application of this act to any lien on personal property,

[1] Acts and Resolves 1899, ch. 67.
[2] Laws 1900, ch. 404.
[3] Laws 1902, ch. 208.

no matter how created. It legalized interest in advance, with the provision that it should be repaid at the rate of 6 per cent per annum if the loan were paid before maturity.

Wyoming similarly made it a misdemeanor to charge more than 25 per cent per annum on loans of $200.[1] Rhode Island[2] made it a crime punishable by fine of $500 or imprisonment not exceeding six months to charge more than 30 per cent per annum on loans exceeding $50, or more than 5 per cent a month for the first three months and thereafter 30 per cent per annum on loans not exceeding $50. Contracts in violation of the act were declared void, except where held by a bona fide purchaser, and payments thereunder were to be recoverable by the borrower. Receipts had to be given for all payments.

Florida retained the provision for criminal punishment and added further regulations. Its act of 1909[3] made it a misdemeanor to charge more than 25 per cent per annum on any loan on penalty of forfeiture of both principal and interest, and required that mortgages on personal property securing loans of less than $100 should state "separately and distinctly, the several amounts secured as principal, interest and fees" on penalty of forfeiture of all interest and fees, and required as well that receipts be given for all payments on any secured loans on penalty of forfeiture of interest.

California in the same year enacted legislation with much the same provisions.[4] It allowed a charge of 5 per cent a month on all loans secured by personal property or by assignments of wages, salaries, earnings, income, or commissions, and declared contracts which named any higher rate to be invalid. The lender was required to give the borrower a memorandum of the transaction, including the amount of interest and charges, and a copy of the important sections of the law. Violation of the act was made punishable by fine. It is probable that this statute was broadly framed so as not to be open to the objections which had been held to make the California statutes of 1905 unconstitutional. The Supreme Court of California declared this new act constitutional.[5]

Though it applied to only four counties including and surround-

[1] Session Laws 1909, ch. 135.
[2] Public Laws 1909–1910, ch. 434.
[3] Acts and Resolutions 1909, no. 91.
[4] Statutes 1909, ch. 634.
[5] In matter of Stephan, 170 Cal. 48 (1915).

ing Birmingham, the Alabama act of 1901[1] extended the idea of public regulation. It allowed a yearly interest of 12 per cent and no fees on loans secured by personal property. The instrument had to contain details of the transaction, had to be recorded within five days, and a copy had to be given to the borrower. The act declared void any contract in violation of its provisions and made it a misdemeanor to take any property claimed as security thereunder except by legal process. It required a corporation doing business under its authority to file a list of its officers or directors, a partnership using "company" or "co." in its firm name to file the names of the partners, and non-residents of the county to appoint an agent for the service of process. A non-resident corporation had to provide bond for $2,000. Though this act was sustained by the court in several cases,[2] its low rate of interest caused its constant violation and led to its repeal in 1927.

## Regulated and Supervised Commercial Theory

The acts prescribing penalty and requiring the lender to give receipt or memorandum provided, of course, no adequate regulation of the small loan business. The semi-philanthropic acts had devised methods of far greater control. The adaptation to the commercial small loan business of the technique of regulation of noncommercial institutions gave great impetus to the idea of regulation and supervision.

Laws authorizing a commercially profitable rate on small loans began to adopt the theory of the semi-philanthropic society. When Ohio, for instance, authorized the formation of collateral loan societies in 1904,[3] it made no inclusive provision for their regulation.[4] It legalized a rate for such companies of 8 per cent per annum on loans secured by pledges and chattel mortgages, plus an additional charge of 10 per cent for expenses. This was intended to be a

[1] Acts 1900–1901, no. 1188.

[2] In re Home Discount Company, 147 Fed. 538 (1906); Ex parte Alabama Brokerage Company, 208 Ala. 242, 18 Ala. App. 495 (1922); Southern Finance Company *v.* Casey, 19 Ala. App. 671 (1924); Bullard Investment Co. *v.* Ford, 18 Ala. App. 167 (1921).

[3] Acts 1904, vol. 97, p. 134.

[4] It required receipts to be given for pledged property but made no regulations as to chattel mortgages.

commercially profitable charge. But the philanthropic background of the law is shown by the provision:

> When the company has disposable funds, it shall loan on all goods and chattels offered, embraced within its rules and regulations, in the order in which they are offered; with the exception that the company shall always discriminate in favor of small loans to the indigent.

Other states did not stop when they had assimilated to commercial lending the theory of the non-commercial associations. They took over the system of regulation. Four states—Delaware, Michigan, Pennsylvania, and Virginia—passed laws which required registration and licensing of commercial companies in a way similar to that in which registration and licensing were required for remedial loan associations.

The Delaware act of 1904,[1] applying only to one county, required registration with the clerk of the peace, the filing of a bond for $1,000 conditioned for "the due observance of the provisions of this act," and the recording of the names and addresses of the lenders. Five per cent per annum in addition to the legal 6 per cent per annum was allowed on all loans under $100, but all other charges were forbidden. The lender was required to give to the borrower an instrument evidencing the loan. On loans of less than $100 any charge in excess of 11 per cent by a registrant, or of 6 per cent by a non-registrant, was made a misdemeanor. Officers of a guilty corporation were made punishable as principals. The act excepted banks and trust companies from its provisions.

Under the act of 1906[2] Virginia required, in addition to a bond, not only registration but a license to engage in the business of lending on household or kitchen furniture, household goods, wearing apparel, sewing machines, musical instruments, or wages or salaries. To secure a license the applicant had to state the proposed location of the business, and the names and addresses of the participants therein, whether individuals, members of co-partnerships, or officers of money-lending corporations, and, when secured, had to expose the license publicly on the business premises. Fees were allowed as follows: 50 cents on loans of $5.00 or less, 75 cents on loans between $5.00 and $10, $1.00 on loans between $10 and $20,

[1] Laws 1904, ch. 149.

[2] Acts 1906, ch. 156.

$1.50 on loans between $20 and $35, $2.00 on loans over $35. One-half the fees only were allowed if the loan was made within four months after the expiration of the original loan and so constituted a renewal. The payment of any excess over and above the legal interest rate plus the charges authorized was to be credited to the principal and, in the discretion of the licensing authorities, might cause revocation of the license. The act prohibited a non-licensee from engaging in the business or from enforcing his loans or the security taken thereon, but merchants and others taking wage assignments in payment of merchandise sold were excepted from the act unless they charged interest on the transaction or unless they sold at a higher price than they would charge to people who were not wage-earners.

Michigan made its act of 1907[1] applicable only to cities containing more than 20,000 inhabitants. It allowed a charge of 2 per cent a month on wage and salary assignment loans and on all loans secured by personal chattels, plus a fee of $1.00 on loans not exceeding $50 and of $2.00 on loans exceeding $50, the fee being allowed, however, on renewals only after the expiration of a year and then only once in each year. No instrument was to be valid unless it stated the details of the transaction, including the amount of the loan, the date when payable, the rate of interest, and the fee charged. No person was permitted to engage in the business of money-lending and charge more than 7 per cent per annum without obtaining a license from the municipal authorities. To procure the license the names and addresses of the lenders, or those of the officers of a corporate lender, had to be filed, together with a bond for $1,000. The lender had to give receipts for all payments, stating the amount paid, the amount previously paid, and the amount due, and identifying the loan and note, mortgage, or assignment on which the payment was to be applied. The act made any violation a misdemeanor, subjected the entire amount lent to forfeiture to the borrower, and made the mortgage securing the loan null and void.

By its act of 1909[2] Pennsylvania required a license to be procured from the clerk of the court of quarter sessions to engage in the business of making loans in sums of $200 or less "upon which any other charge is made than the legal rate of interest, and for which

[1] Public Acts 1907, no. 337.

[2] Laws 1909, no. 290.

no security other than a note or contract, with or without endorser, is taken." Licensees were allowed to charge a brokerage fee of 10 per cent of the amount lent in addition to the legal rate of interest, but no fee or charge was to be allowed on renewals. Assignments of future wages to secure such loan had to be accepted by the borrower's employer and, if the borrower was a married man, had to be consented to in writing by his wife. The act exempted from its provisions banks and loan companies specially chartered under the supervision of the banking department. Whereas engaging in the small loan business without a license was declared a misdemeanor, for excessive charges by a licensee apparently the only penalty was revocation of the license. In 1909 the act was declared unconstitutional, the court saying, "the main defect of the act . . . is that it classifies men and not transactions. . . ."[1]

Though these acts subjected commercial lenders to licensing and bonding by the state, they did not provide for official supervision in the way that some states had already provided for the supervision of non-commercial lenders. There were five states in this period, however, that subjected the small loan business in general to official supervision. Georgia in 1904,[2] Tennessee in 1905,[3] and Mississippi in 1906,[4] Massachusetts in 1908, and New Jersey in 1910 drew together the various types of regulation which had theretofore been applicable only to one or another type of loans.

The Georgia and Mississippi acts applied to the business of making loans "on household or kitchen furniture, or household goods, or wearing apparel, or sewing machines, or musical instruments, or wages, or salaries," and to the business of "buying wages, or salaries." The Tennessee act applied to the business of making loans on "personal property or wages or salaries," and to "the business of buying wages or salaries." All three required a license to engage in the business, to procure which the applicant had to file a bond and a statement giving the location where the business was to be conducted and the names and addresses, both business and residential, of the owner or owners of the business, if individuals, or of the officers, if a corporation. If the business was

[1] Application of Jefferson Credit Company, 18 Pa. Dist. R. 634 (1909).

[2] Acts and Resolutions 1904, no. 617.

[3] Acts 1905, ch. 109.

[4] Code 1906, ch. 90.

to be conducted in a town or city, the license was to be issued by the municipal authorities, and if elsewhere, in Georgia by the ordinary of the county, in Tennessee by the clerk of the county court, and in Mississippi by the sheriff of the county. In Georgia and Mississippi the bond was $500 and in Tennessee $1,500. In all three states it was conditioned "for the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment which may be recovered against said licensee on account of damages or other claim arising directly or collaterally from any loans of money or sale of wages or salary." If any person engaged in the business without a license, he forfeited all interest on loans and, in Tennessee, was guilty of a misdemeanor.

The acts authorized the following fees in addition to legal interest: 50 cents where the loan was $5.00 or less, 70 cents where the loan was between $5.00 and $10, $1.00 where the loan was between $10 and $20, $1.50 where the loan was between $20 and $35, $2.00 where the loan was between $35 and $60, 6 per cent where the loan exceeded $60. No fee was allowed on any renewal of a loan which might occur within thirty days of the original loan or of any renewal, and half fees were allowed on any renewals made after four months from the date of the original loan. Any excess charge was to be credited on the principal.

The details of each transaction and of all payments had to be entered in a book, which was open to inspection by the licensing authority and to the grand jury and, in Tennessee, to any officer of the law. Penalty of forfeiture of license was provided for refusal to open books to proper authorities. But the only punishment which any of the three states inflicted on a licensee who made excessive charges was forfeiture of the license and, of course, suit on the bond. Recognizing the need of criminal penalties Georgia in 1908 provided that making loans at a rate greater than 5 per cent a month, or purchases of wages or salary at a discount greater than 5 per cent a month, constituted a misdemeanor.[1]

The Georgia act of 1904 expressly provided that sales or assignments of wages or salary were to be governed in all respects by the

[1] Acts and Resolutions 1908, no. 517. The penalty proved difficult of enforcement because of lack of adequate provision for supervision.

provisions of the act, and "the rate of discount on any sale or assignment of salary or wages shall not be greater than the rates or fees prescribed" in the act. It made all assignments or pledges of unearned wages or salary void. Banks and licensed pawnbrokers were excepted from the provisions.

The Tennessee act not only excepted banks, pawnbrokers, and merchants furnishing goods and supplies, but was peculiar in that it excepted mortgages or liens "on buggies, wagons, live stock, agricultural products, or farming implements" and it was only to apply to counties "of fifty thousand population or more." On account of these exceptions and this limitation, the Tennessee act was declared unconstitutional.[1] The court held the classification bad, because there was no difference between some of the articles specifically excepted from the provisions of the act and others left within it; for example, the court found no difference between the excepted buggy and the included automobile. To this extent the case agrees with Ex parte Sohncke.[2] But the court also declared the act void on the ground that it applied only to certain counties, on which Spicer *v.* King is in conflict with the United States Supreme Court,[3] with the Delaware Supreme Court,[4] and with a number of cases sustaining the Alabama act of 1901.[5]

The New Jersey law of 1910,[6] applicable to pledges, chattel mortgages, and wage assignments, seems to have been modeled very much after the Mississippi act already described, but it did not require a bond to be filed, it fixed the return at a flat rate of 12 per cent per annum, and it made violations of the act, whether by licensees or non-licensees, misdemeanors. The act exempted banks, pawnbrokers, provident loan associations, and "loans made by manufacturers or merchants to their customers and secured by chattel mortgages." It required licensees to keep full details of each transaction, which were open to inspection by the police.[7] First held void on account of a defect in title,[8] after amendment of the

[1] Spicer *v.* King, 136 Tenn. 408 (1916). [2] 148 Cal. 262 (1905). See p. 30.

[3] Mutual Loan Co. *v.* Martell, 222 U. S. 225 (1911).

[4] State *v.* Wickenhoefer, 6 Penn. (Del.) 120 (1906).

[5] See p. 33. [6] Acts 1910, ch. 269.

[7] The act also contained many regulations of assignments of wages and salaries, which will be considered in Chapter X.

[8] Bolles *v.* Newark, 81 N. J. L. 184 (1911).

title by the legislature the act was eventually sustained by the Supreme Court of New Jersey.[1]

These four states, then, subjected commercial organizations to some sort of supervision: they were to be licensed, in three cases bonded, and were to keep detailed records of each transaction, which were to be open to inspection by authorized officials. For violations in three of these states the bonds were subject to execution, in two of the states criminal conviction was possible, and in one state the license might be revoked.

Massachusetts, however, went a step farther; she gave the designated officials a discretionary power. In 1908[2] Massachusetts extended its law of 1898, which had been applicable to loans of less than $200 only if secured by certain personal property, to unsecured loans of the same size. To allow a charge of more than 12 per cent per annum, a license had to be secured from municipal authorities. These municipal authorities were to establish regulations respecting the business and to fix the rate of interest to be charged, though fees of from $2.00 to $5.00 additional to interest were expressly allowed by the act. Anyone engaging in the business without a license was guilty of a misdemeanor, but apparently the only penalty inflicted on a licensee for making excessive charges was revocation of the license, which was also revocable for violation of regulations established by municipal authorities. Banks and specially chartered companies under supervision of the bank commissioner were exempt from the provisions of the act. Assignments of future wages to be valid had to be accepted by the employer, recorded with the municipal clerk and, if made by a married man, consented to by his wife. The act, it is obvious, gave to municipal authorities considerable supervisory power. Properly exercised, the power might afford adequate protection of the public interest in small loans.

## WAGE-ASSIGNMENT LEGISLATION

Though the idea that wage assignments were but a part of the small loan problem had not yet become general in this period, there was at least a realization that wage assignments should be regu-

[1] Dunn *v.* Hoboken, 85 N. J. L. 79 (1913).

[2] Acts and Resolves 1908, ch. 605.

lated by law.[1] Though the legislation on wage assignments was distinct, its development was on a line almost parallel to the development of other small loan legislation. That is, the laws attempted one of three expedients: (1) to prohibit wage assignments; or (2) to make them commercially profitable by allowing a reasonable rate of interest; or (3) to make them profitable and to regulate and supervise them. It is convenient to study these lines of development in anticipation of the time when wage assignments were to be treated in law as a part of the general problem of small loans.

Prohibition of loans on security other than wage assignments was generally attempted by the indirect method of forbidding them except at a return which was commercially impossible. In the case of wage assignments, however, the prohibition was often direct. Thus, though the New Jersey law of 1884 prohibited the assignment of wages, under penalty of fine, except at the legal rate of interest,[2] Indiana[3] and Georgia[4] categorically made the assignment of future wages invalid. Both these acts were sustained by the courts.[5]

In 1905 and 1906 three states enacted prohibitive laws on the subject of wage assignments. Minnesota forbade the assignment of all future wages or salary unless earned within sixty days of the assignment.[6] The Illinois act extended this period.[7] It directly prohibited the assignment of wages or salary not earned within six months of the date of the assignment and indirectly prohibited the business of making loans on such assignments by providing that such assignments should be void if tainted with usury. The assignments had to be recorded with a justice of the peace and served within three days on the employer; the spouse of the assignor had to consent thereto; and so-called "sales" of wages were expressly made subject to the act. This act was held unconstitutional in Massie *v.* Cessna,[8] on the ground that it regulated salaries as well as

[1] In one reported wage-assignment case a loan or "purchase" of $10 was repayable at $1.25 a week for twelve weeks. The annual interest rate was therefore over 600 per cent. State *v.* Hurlburt, 82 Conn. 232 (1909).

[2] See p. 18. [3] Laws 1899, ch. 124. [4] Laws 1904, ch. 617, sec. 17.

[5] International Text-Book Co. *v.* Weissinger, 160 Ind. 349 (1903); Central of Ga. Ry. Co. *v.* Dover, 1 Ga. App. 240 (1906).

[6] General Laws 1905, ch. 309. [7] Laws 1905, p. 79. [8] 239 Ill. 352 (1909).

wages—and therefore unnecessarily regulated persons receiving very large compensation who needed no protection—and also on the ground that making this particular transaction void for usury, when no other transaction was so voided, was unreasonable. The court, however, intimated that it would sustain an act relating only to wages and small salaries, which it did in People *v.* Stokes,[1] when it sustained the Uniform Small Loan Law enacted by Illinois in 1917.[2] In 1906 Maryland enacted a law similar to the Illinois law.[3] This act was sustained in Maryland in Wight *v.* Baltimore and Ohio Ry. Co.,[4] the court saying of the Illinois decision in Massie *v.* Cessna: "That distinction between salaries and wages, however, is in our opinion too refined and delicate to justify us in recognizing it, and it does not appear to have been followed elsewhere."[5]

Indiana by its act of 1909[6] allowed the assignment not only of earned wages but of those to be earned within thirty days of the assignment, provided the interest on the loan or discount on a so-called sale (which was expressly made subject to the act) did not exceed 8 per cent a year, the wife of the assignor consented thereto, and notice of the assignment was given the employer within ten days. Violation of the act was punished by fine or imprisonment or both, and by forfeiture of both principal and interest. This strict limitation of the interest rate was obviously intended as an indirect prohibition of the business of making loans on wage assignments. But in fact the business of lending on the security of earned wages did continue. The act was sustained by the Supreme Court of Indiana.[7]

The idea of legal regulation of wage assignments, as opposed to prohibition, emerged slowly. As early as 1904 New York provided that copies of assignments given to secure advances of money should, within three days, be served upon the employer. Connecticut in 1905 required the details of a wage assignment to be expressed

[1] 281 Ill. 159 (1917).

[2] Laws 1917, p. 553.

[3] Laws 1906, ch. 399.

[4] 146 Md. 66 (1924).

[5] Citing Cleveland, C., C., & St. L. Ry. Co. *v.* Marshall, 182 Ind. 280; Fay *v.* Bankers Surety Co., 125 Minn. 217.

[6] Laws 1909, ch. 34.

[7] Cleveland, C., C., & St. L. Ry. Co. *v.* Marshall, 182 Ind. 280 (1914).

on the face of the instrument.[1] In 1906 Louisiana required the consent of the employer to assignments of future salaries or wages,[2] and Minnesota similarly required service of notice on the employer within three days as well as the consent of the employer to the assignment of all future wages or salaries.[3]

Massachusetts, at the same time,[4] went considerably farther in its regulations. It required assignments of wages to be on a prescribed form. It provided that they were to be valid for two years only, and then only if the details of the transaction were expressed in the instrument, a copy of which was to be given the assignor and another copy of which, with an account, was to be given the employer, on penalty of invalidity. Rhode Island in 1908 limited the validity of assignments of future earnings to one year, with the additional conditions for validity that they must be for a debt contracted simultaneously therewith or prior thereto, must be signed by the assignor in person and not by attorney, and must contain the details of the transaction.[5]

In 1908[6] Massachusetts added the requirement found in the unconstitutional Illinois law.[7] Not only did the employer have to assent to the assignment of wages, but the wife of the assignor as well had to consent to an assignment of future wages. This requirement was adopted by the unconstitutional Pennsylvania law of 1909,[8] by the Wyoming small loan law of the same year,[9] and by the personal property loan act of New Jersey in 1910. New Jersey[10] made an exception to the necessity of the wife's consent if a married man had for the preceding five months been living separate and apart from his wife. All four of these laws required a public record to be made of such wage assignments.

The most inclusive regulation of wage assignments during this period was the Colorado act of 1909.[11] It provided that anyone purchasing or lending on assignments of wages or salary had to procure a license from the municipal authorities, if in an incorporated city or town, otherwise from the county commissioners,

[1] Public Acts 1905, ch. 78.
[2] Acts 1906, no. 5.
[3] Laws 1905, ch. 309.
[4] Acts and Resolves 1906, ch. 390.
[5] Public Laws 1908, ch. 1551.
[6] Acts and Resolves 1908, ch. 605.
[7] See p. 40.
[8] Laws 1909, no. 290.
[9] Session Laws 1909, ch. 120.
[10] Laws 1910, ch. 269.
[11] Laws 1909, ch. 217.

and file a bond for the observance of the law in such sum as the licensing authorities might fix. Licensees could charge 2 per cent a month on such loans or purchases, but no wages to be earned more than thirty days after the assignment could be assigned. Notice of the assignment and a copy thereof had to be served on the employer within ten days of its execution and had to be recorded within five days. Violations of the act were made a misdemeanor and the transactions made null and void.

There was a constantly growing realization throughout the early twentieth century that small loans secured by assignment of wages were not a distinct problem. In 1898 Massachusetts had recognized this when it placed wage assignments to secure loans in the same category with certain chattel mortgages.[1] This idea was followed by Tennessee in 1905,[2] by Mississippi in 1906,[3] by California in 1909,[4] and, so far as earned wages were concerned, by Georgia in 1904.[5] The Delaware act of 1904, covering all loans of $100 or less,[6] included wage assignments as a part of the regulation of small loans in general; and the same was true, of course, of the usury laws of Connecticut in 1907,[7] and the loan laws of Georgia in 1904,[8] and of Florida[9] and Utah[10] in 1909. By express enactment in 1905 Wisconsin had made its law of 1895, which legalized the rate of 24 per cent on small loans, applicable to loans on wage assignments.[11]

By 1910 therefore the course of future regulation of wage assignments was clear: they were to be assimilated to the other types of small loan legislation.

## IMPORTANT EXPERIMENTS OF THE GROPING ERA

Chaotic as the legislation of this period must seem, its very diversity proved ultimately to be fortunate. The diversity is merely evidence of trial and error. Gradually the successes were separated from the failures. From an analysis of these experiments students of the subject were finally able to compound the requisites of proper small loan legislation.

[1] See pp. 21 f.
[2] See pp. 36–38.
[3] See pp. 36 f.
[4] See p. 32.
[5] See pp. 36 ff.
[6] See p. 34.
[7] See p. 27.
[8] See p. 37.
[9] See p. 32.
[10] Laws 1909, ch. 81.
[11] Laws 1905, ch. 27.

## Proper Scope of Small Loan Legislation

One of the greatest legislative difficulties of the period was the lack of certainty as to just what was the particular evil to be cured. Maine, New York, and Ohio legislated only as to pledges and chattel mortgages. California, after its legislation confined to pledges and chattel mortgages had been declared unconstitutional, legislated as to all loans secured by personal property, including wage assignments. This last classification was adopted by Alabama, Michigan, and Tennessee. Maryland, having attempted first to regulate only chattel mortgages, extended regulation to all liens on personal property, and by a separate act endeavored to regulate wage assignments. New Jersey, having practically prohibited wage assignments in 1884, sought in 1904 to regulate pledges and chattel mortgages, and in 1910 placed pledges, chattel mortgages, and wage assignments all under the same regulations.

Georgia, Mississippi, and Virginia passed legislation to regulate only loans on wage assignments and on certain specified chattels, which were mainly household goods. Colorado, Illinois, and Indiana passed only wage-assignment laws. That such classification was inadequate is shown by the fact that Georgia, after its regulation of wage assignments and loans on household goods and like articles had been in force for four years, passed an act making penal a charge of over 5 per cent a month on any loan, which policy was followed by Florida in making penal all loans at over 25 per cent per annum, by Connecticut all loans at over 15 per cent per annum, and by Utah all loans at over 12 per cent per annum (except for a minimum return of $1.00). The inadequacy of laws such as those of Florida and Georgia seems to be proved by the continuance, at "loan-shark" rates, of unregulated loans on the security of earned wages.

That laws attempting to regulate secured loans, whether they were secured by personal property, by wage assignment, or by both, would not cure the evil, seems to be shown by the fact that Massachusetts, which had already tried to regulate certain secured small loans, in 1908 passed a law to regulate unsecured small loans, as did Pennsylvania the following year. These were followed by the laws aimed at regulation of all loans, passed by the states of Connecticut, Florida, Georgia, and Utah. Of these last-mentioned laws, those of Connecticut and Florida are open to the objection that in trying to fix a rate for all loans they fixed a rate too low for small loans and too high for other loans, that of Utah fixed a rate too low for small loans, and that of Georgia too high for either large or small loans.

Delaware, Rhode Island, and Wyoming, however, tried to classify loans, to make special provisions for all loans below a certain amount, and the two separate acts of Massachusetts practically produced the same result. This has since been found to be the correct principle, that small loan legislation should apply to all loans below a certain amount, irrespective of how they are secured or whether they are secured at all. The amount that constituted a small loan, as distinguished from other loans, was during this period still uncertain. Rhode Island fixed it at $50, Delaware, Florida, and Utah at $100, Maine, Massachusetts, New Jersey, New York, Pennsylvania, and Wyoming at $200. Only California, in its two laws of 1905, fixed the point of division at $300.[1]

Even in this period the idea seems to have been generally accepted that, in order to avoid a conflict of regulations, institutions of a special type already regulated by laws particularly adapted to their special business should be left to such special regulations and not made subject to the small loan laws. Accordingly, Georgia, Maine, Mississippi, New Jersey, New York, and Tennessee exempted pawnbrokers from small loan legislation, and Alabama (on loans over $75), Delaware, Georgia, Massachusetts, Mississippi, New Jersey, Pennsylvania, and Tennessee exempted banks, while Massachusetts exempted building and loan associations and such loan associations as were already under the supervision of the banking commissioner.

## Proper Charges to Be Allowed on Loans

Of equal importance with the determination of the proper scope of a small loan law is the determination of the proper maximum charge of the lender. If the return allowed is too low, the law will be evaded; if too high, it will impose burdens on the section of

[1] Three hundred dollars is the amount now generally accepted as the proper division point between small loans and other loans; see p. 79. Since 1910 the cost-of-living index has, of course, varied widely.

society least able to bear them.[1] The charge may be a flat interest rate or a rate composed of interest and certain additional fees.

The charges calculated exclusively as an interest rate varied in the different acts of this period all the way from 5 per cent a month —60 per cent a year—in California,[2] Georgia, and Rhode Island, down to 6 per cent a year in North Carolina on chattel mortgages, and in Maryland and Illinois on wage assignments. Florida and Wyoming made it penal to charge more than 25 per cent a year; Wisconsin allowed 24 per cent; Connecticut, 15 per cent; Alabama (in four counties) and New Jersey (to non-philanthropic institutions), 12 per cent; and Delaware (in one county), 11 per cent a year. On wage assignments Colorado allowed 2 per cent a month; Indiana, 8 per cent a year; Illinois and Maryland, only 6 per cent a year. North Carolina went so far in its restriction of rate as to make interest over 6 per cent a year on chattel mortgages a penal offense. Ohio and Pennsylvania, although they split the charges into two categories, attained the same result as if they had prescribed a flat interest rate. Ohio allowed its legal rate of 8 per cent plus a brokerage fee of 10 per cent a year on the amount of the loan, and Pennsylvania allowed its legal rate of interest plus a brokerage fee of 10 per cent of the amount of the loan.

Even though the charge was made on the basis of an interest rate, the rate might vary during the period of the loan. New Jersey, for instance, allowed semi-philanthropic organizations to charge 2 per cent a month for the first three months of the loan and thereafter only 1½ per cent a month; Maine similarly allowed 3 per cent a month for the first three months and thereafter 15 per cent a year.

A greater number of states, however, provided for a classification of loans on the basis of an interest rate plus certain fees. New York and Michigan allowed interest at the rate of 2 per cent a month plus a fee of $1.00 on loans of $50 or less and of $2.00 on other loans. Georgia, Maryland, Mississippi, Tennessee, and Virginia allowed specific fees in addition to interest, which might have been so manipulated as to yield a lender a return in excess of

[1] This is true only until competitive forces have established proper rates for different classes of security and risk.

[2] Under its acts of 1909.

120 per cent per annum. A realization of this possibility was probably the cause of the later Georgia enactment which made penal any interest in excess of 5 per cent a month. California, likewise, which by its acts of 1905 had allowed 1½ per cent a month plus a fee of $5.00, instituted a flat maximum charge of 5 per cent a month in 1909.

Massachusetts was the only state which did not prescribe by statute the maximum charges on small loans. The state law allowed certain fees to the lender and left the rate of interest to be fixed by the municipal authorities.

This brief summary of the returns allowed the lender shows not only a wide variation in the charges authorized but also a wide variation in their nature. Alabama, California (law of 1909), Connecticut, Delaware, Florida, Rhode Island, Wisconsin, and Wyoming allowed the return to be charged only as a flat rate of interest. Ohio and Pennsylvania attained the same result by an interest charge plus a percentage fee. Other states allowed the return to be made in the nature of a rate of interest plus a fixed fee or allowed a higher rate of interest to be charged during the first months of the loan.

The danger of permitting a charge fixed by interest only is that lenders are likely to exact the interest in advance. Such practice naturally increases the charge over that contemplated by the legislature. To prevent such abuses Maryland in 1900 and California in 1905 prohibited the collection of any interest in advance. Such provision is now generally included in all statutes permitting only a flat-rate charge.

One disadvantage of the system of interest plus a fee is the difficulty of reckoning the actual charge. To reduce the possibility of the borrower's being deceived about the cost of the loan, several states, including Alabama, California, and Delaware, required that the lender give to the borrower a complete memorandum of the transaction.

Where the lender is allowed a greater return during the first months of the loan, the temptation arises for him to make short-time loans and to compel the borrower, who could seldom fully repay such short-time loan on maturity, to make a new loan or a renewal on which the lender could again collect a fee or a higher rate of interest during the first months. California (in 1905), Michigan, and New York attempted to correct these practices by providing that the fee could be charged only once a year, Maryland and Pennsylvania by prohibiting all fees on renewals, and Maine by exempting the renewals from the initial higher rate.

### Regulation of the Business

*Confining the Business to Bonded Licensees.* The great contribution of this period was the idea of confining the business of making small loans to licensees bonded to observe the law and subject to supervision and regulation. Without such restriction regulation and supervision were impossible. A necessary corollary of this idea was permission that such licensees might make charges sufficient to allow the business to be done at a profit. Such charges were necessarily higher than the regular contract rate of interest. To make the license a privilege, the law had to eliminate the competition of non-licensees and penalize a non-licensee charging more than the regular contract rate of interest. This theory, that the right to make a special charge is a special privilege and can be exercised only by a licensee or registrant who files a bond for observance of the law and submits to regulation and supervision, was adopted prior to 1910 by California in its semi-philanthropic act of 1905, Delaware, Georgia, Massachusetts, Michigan, Mississippi, New Jersey, New York,[1] and Tennessee.

The means adopted by most states to make the monopoly effective, however, were seldom adequate. The penalties which they enacted were not sufficiently inclusive. One of the inadequacies was a failure to provide a penalty for a single act of making a loan above the contract rate without a license. Colorado, Massachusetts, Michigan, Pennsylvania, and Tennessee, for instance, made it a misdemeanor to engage in the loan business without the license as required. In Georgia and Mississippi an unlicensed lender engaging in business was to forfeit all interest on his loans. Under such laws the burden was upon the prosecutor to show that the defendant had not only made the loan without a license but was engaged in the business of making such loans. New York alone of all the states provided that a non-licensee making a loan at a rate

[1] In New York special incorporation was the equivalent of a license.

greater than 6 per cent per annum was guilty of a misdemeanor even if he were not making such loans as a general practice.

The other inadequacy found in most laws was the lenience of the penalty. A non-licensee engaging in the small loan business was guilty of a misdemeanor in Colorado, Delaware, Massachusetts, and Pennsylvania. In Georgia, Mississippi, and New Jersey a non-licensee engaged in making loans above the contract rate was to forfeit all interest; in Tennessee he was to forfeit interest and be guilty of a misdemeanor as well. Only Michigan and New York provided that the non-licensee was to forfeit not only the interest but the principal of his loan as well, and combined this forfeiture with a criminal penalty.

Practice shows that to prevent a non-licensee from making loans above the contract rate neither forfeiture nor criminal penalty alone suffices. And to make the law effective, the state should have to prove against the non-licensee only a single instance of a high-interest loan. New York was the one state in 1910 which provided a penalty comprehensive enough to eliminate the unlicensed lender from competition with the licensee.

*Supervision by Public Officials.* The recognition of the necessity for supervision was also developing. New York and New Jersey made their semi-philanthropic corporations subject to report and examination and gave their supervisory officials power to stop not only unlawful practices but even those which were harsh and evasive. The unconstitutional California law of 1905 also provided for examination and report. Georgia, Mississippi, and Tennessee required all the details of each and every transaction to be entered and kept in records open to the examination of the municipal officials, of the grand jury and, in New Jersey and Tennessee, of the police. Massachusetts, too, evidently contemplated that the authorities of the municipality wherein each business was located would exercise supervisory power and granted sufficient authority therefor.

*Specific Regulations.* Actual experience was also teaching legislatures that certain other specific requirements were necessary to protect the borrower against fraud, unfair methods, and his own weakness.

The particularity with which many of the acts required the filing of the names and addresses of individual licensees and those of the officials of corporate licensees seems to show that at least some of the lenders were concealing their identity and probably evading service of process in actions arising from conduct of their business. The Alabama law, which did not require a license, is corroborative of this assumption, for it compelled corporations in the business to file a list of their officers, co-partnerships using a company name to file the names of their members, and non-residents of a county, doing this business therein, to appoint an agent, resident in the county, on whom process could be served.

The bond required as a condition of licensing in California, in its philanthropic act of 1905, Delaware, Georgia, Massachusetts, Michigan, Mississippi, New Jersey, New York, Tennessee, and Virginia not only materially helped in providing means of redress for a borrower injured by an illegal act of the licensed lender, but constituted as well a threat to a lender tempted to evade the law.

Many times the borrower did not understand the nature of the transaction into which he entered. To meet this situation, Alabama and Michigan required the details of the loan to be expressed in the instrument, and Alabama and Delaware required a copy to be given to the borrower. Maine required details of the loan to be expressed in mortgages of household goods and Florida in mortgages of personal property to secure loans of less than $100. In Massachusetts the details of a wage assignment were to be expressed in the instrument, as were also the details of a loan under its earlier act of 1898. Michigan followed the Massachusetts law of 1898 requiring detailed receipts to be given for each payment made on the loan. In its law of 1909 California made an important step forward in providing that the borrower be given not only a complete memorandum of the transaction but also a copy of the most important sections of the law governing the transaction; the borrower, of course, was often ignorant of his legal rights.

*Compelling Licensees to Observe the Law.* Most of the early money-lenders were unscrupulous; the borrowers were ignorant and economically weak. Without stringent methods to compel observance of the law, the licensing of the small loan business would merely have placed the official stamp on harsh and unconscionable practices. In Georgia, Massachusetts, Mississippi, and

Tennessee, therefore, the laws provided that a violation by the licensee was cause for the forfeiture or revocation of the license and for an action on the bond. In such action, however, probably only interest which had been paid in excess of the rates legally allowed to licensees could be recovered. Under the New Jersey act of 1904 the offending licensee probably lost all interest.

The California act of 1905 provided that the offending licensee was not only subject to forfeiture of his license and to loss of all interest but to a fine as well; the Delaware law made him liable to either fine or imprisonment; and the New Jersey act of 1910 was intended to make such action criminal. Michigan and New York made criminal all charges by licensees in excess of the rate legally allowed, and made null and void the transactions in which they were provided.

## SUMMARY OF THE RESULTS OBTAINED FROM LEGISLATION, 1898–1910

From this review of the legislation of this period of experimentation one can observe the following results:

1. Though there was still great uncertainty as to the proper scope of the small loan law, the theory that such a law should apply to all loans under a certain amount, unless otherwise specially regulated by statute, was being tried out in Delaware, Rhode Island, and Wyoming.

2. Different states had fixed the maximum size of loans to be covered by the law at figures varying from $50 to $300, and the experience under these different laws was tending to show the size of the loans which needed such legislative regulation.

3. It was generally realized that the small loans required a charge larger than the usual bank or contract rate. What this rate should be, however, was still an unsettled matter. The majority of the states which had legislated in this field had granted a charge in excess of 2 per cent a month. To prevent increase in rates, states which allowed fees in addition to interest were attempting to prevent their multiplication, and states with a flat rate were beginning to prohibit the unauthorized increase of rate by the deduction of interest in advance.

4. Official supervision of the business had been extended from

the philanthropic institutions to the commercial lenders, and the idea was growing that a business which enjoyed special privileges should submit to official supervision and inspection and to regulation. The requirements of license and bond were becoming more and more common, and in exchange for these requirements the state was giving to the licensees the exclusive privilege of transacting the small loan business.

5. It was not yet generally realized that this monopoly could be created only by making it a misdemeanor for a non-licensee to charge in excess of the usual contract rate of a state and by declaring the principal and interest of such loans forfeited. New York had already provided for such penalties, as had Michigan in a more limited degree.

6. The necessity had been perceived for providing that a borrower should be given a detailed memorandum of the transaction when the loan is made and a copy of the section of the law relating to charges, and should receive receipts for all payments. Some legislation prescribed severe penalties for licensees who betrayed the confidence vested in them by attempting to make charges in excess of those allowed by law.

7. A few states had realized that all assignments of wages, whether in the form of loans secured by such assignments or in the form of purchases, should be treated as loans and made subject to the small loan acts.

The states from 1898 to 1910 had, therefore, not yet profited largely from one another's experience, and no scientific study of the subject had been made. But incongruous as the various laws were, they did contain the elements of most of the sound ideas later to come into successful practice. Some of such ideas were in one law and some in another; no single law contained enough of them to constitute any satisfactory legislation on the subject. By selecting one idea from one law and another from another, however, by expanding here and limiting there, and by weaving the results into a whole, an adequate law could be framed.

# CHAPTER IV

## THE CO-ORDINATING PERIOD, 1910–1916

### SERIOUSNESS OF THE SITUATION

BEFORE 1910 small loan legislation had been unsystematic. Without regard to the experience of other states, a state faced with the need of legislative regulation would enact a law intended to meet its individual and immediate problems. Such haphazard legislation was often deficient in one of two ways: either it confined the money-lenders to a rate too low to allow them to remain legally in business, or it was aimed at only one phase of the small loan problem and suppressed only one type of evil practice. Either of these expedients led to evasions and to failure of the legislation.[1]

Social ills were thus often increased rather than cured. Money-lending at high rates being outlawed, the lender would charge even higher rates to compensate for the stigma attached to his business. The stigma itself sufficed to keep out of the field reputable people who might have reduced rates by competition. Restrictive legislation was often preceded by newspaper publicity of a sensational sort which aroused public consciousness and increased the money-lender's risk of prosecution. To discount that risk he raised his rates. Even if a needy borrower were not too timid or too ignorant to complain, even if he fully understood the exact nature of the transaction—which was, of course, rare—he had two reasons for not bringing legal action. He might anticipate a future need of emergency relief. More important, because of the nuisance associated with the collection of wage assignments and garnishment orders, many employers adopted the rule of discharging borrowers from their employ. Public prosecutors, except at times of great public indignation, would seldom take the initiative in enforcing the criminal provisions of the new laws. And though some of the legislation provided means of official supervision, outside New

[1] See pp. 14 f.

York State there was no one specific state officer charged with enforcement.

The rates charged by the loan sharks were exorbitant: 120 per cent a year,[1] 260 per cent,[2] 360 per cent,[3] 650 per cent,[4] or even 1,300 per cent a year.[5] A wage-earner securing a loan at such excessive rates could, of course, not easily extricate himself from debt. Often he dared not appeal to his employer. He could but pay his periodic assessment to the loan shark; he was, in effect, a peon. As a United States judge expressed it, these practices had "brought on conditions which were yearly reducing hundreds of laborers and other small wage-earners to a condition of serfdom in all but name."[6] The best procurable evidence showed that in the American cities of over 25,000 inhabitants about one family in five was a victim of loan sharks.[7]

The social importance of the situation caused the Russell Sage Foundation to have a study of conditions made in 1908. This study, The Salary Loan Business in New York City by Clarence W. Wassam, was followed in the next year by another, The Chattel Loan Business by Arthur H. Ham.

Mr. Ham's study showed that there was one bright spot in the otherwise dark picture. The semi-philanthropic societies, organized by public-spirited citizens and limited in their dividends, had not only maintained their existence but had developed. They were themselves a means of combating the unscrupulous commercial lenders. In 1909 there were 15 such societies located in 14 of the largest American cities. Twelve of them were doing in whole or in part a chattel-mortgage business at an average charge of about 30 per cent per annum. Since these societies were competing with loan sharks and were composed of prominent citizens who knew their methods and were able to secure the influence necessary for new legislation, they were in a peculiarly auspicious social position.

[1] Brandt *v.* Hall, 40 Ind. App. 651 (1907).

[2] Tennessee Finance Co. *v.* Thompson, 278 Fed. 597 (1922).

[3] Cotton *v.* Cooper, 160 S. W. (Texas) 597 (1913).

[4] State *v.* Hurlburt, 82 Conn. 232 (1909).

[5] Willson *v.* Fisher, 75 Misc. (N. Y.) 383 (1912).

[6] In re Home Discount Co., 147 Fed. 538, 546 (1906).

[7] Ham, Arthur H., The Campaign Against the Loan Shark. Russell Sage Foundation, New York, 1912.

At the suggestion of the Russell Sage Foundation these 15 societies met in 1909 and formed the National Federation of Remedial Loan Associations. The Foundation continued to foster the societies by establishing a Division of Remedial Loans and appointing Mr. Ham as its director.

## THE PROGRAM FOR IMPROVING CONDITIONS

The remedial loan associations were lending money on pledges and chattel mortgages at a rate which was from one-quarter to one-tenth of that charged by the loan sharks. To combat the commercial lenders on their own grounds, therefore, the Russell Sage Foundation sought to have such a semi-philanthropic society founded in every sizable American city. As a result there were in 1915, 38 remedial loan societies.

The problem was not yet solved. It had been anticipated that the competition of these societies would render it impossible for other lenders to make loans except at substantially as low a rate as that charged by the societies. This anticipation overlooked two difficulties. It was not possible to secure, on a semi-philanthropic basis of limited dividends, enough money to supply all the demands of small borrowers. A commercial enterprise would take greater risks in placing its loans and might make more active efforts to find the needy borrowers.

Though the remedial loan societies did not provide a solution of the situation, they provided a laboratory in which to test the ideas drawn from their own experience and from the legislation of various states. The results of this experimentation Mr. Ham outlined before the second meeting of the Federation of Remedial Loan Associations in 1910. He said:

> Drastic measures forbidding a higher interest charge than 6 per cent per annum under severe penalties will have little effect upon the business unless they are rigidly enforced, or until other agencies are supplied to meet the economic need of borrowers who are ignorant of their legal rights and who now aid the lenders in evading the law. The enforcement of a law which stands between a man who has money to lend and a man who is willing to pay the price asked will always be a difficult matter. It is quite clear that it would be unwise to prohibit the business entirely. The best and most effective type of legislation therefore seems to be that which allows a

reasonable interest charge, not exceeding two per cent per month, provides for efficient supervision. . . . This type of legislation attracts capital to a legitimate enterprise, which furnishes sufficient profit to enable it to compete with other enterprises for such capital as is required to meet the demands of the borrowing public.[1]

This statement includes two of the chief principles necessary to satisfactory legislation in this field: a charge large enough to attract sufficient capital to supply the demand, and efficient supervision.

The next year at the Academy of Political Science Mr. Ham defined his idea of efficient or adequate supervision. After repeating the necessity of a sufficiently high interest rate to obtain the necessary capital, he said:

The interests of the borrower should be safeguarded by provisions requiring license or incorporation under the supervision of a state department or bureau whose duty it should be to make frequent examinations of the business of the licensees with the idea of detecting illegal practices and unjust methods. To this department should be given certain discretionary powers in the matter of regulations for the conduct of the business.[2]

At the same time Mr. Ham expressed the fundamental principle that violations of the law by overcharging or unfair practices should be severely punished.

In 1912 Mr. Ham said before the National Federation of Remedial Loan Associations, "That we are preparing the way through study and the dissemination of information for satisfactory legislation in the future, is shown by the fact that an increasing number of bills that were introduced, though failed of passage, contained many of the provisions which we have advocated as essential to adequate legislation."[3] The results of this study he gave before the same Federation in 1913 when he said:

For many reasons entire uniformity of small loan legislation has been impossible of obtainment, but upon all state legislatures considering this subject has been urged the adoption of the following provisions which seem to be fundamental.

[1] Proceedings of the National Federation of Remedial Loan Associations, 1910, p. 13.

[2] Proceedings of the Academy of Political Science, vol. 2, no. 2, Jan., 1912, p. 11.

[3] Proceedings of the National Federation of Remedial Loan Associations, 1912, p. 17.

1. License for all money-lenders engaged in the business or charging more than the banking rate of interest, inclusive of fee and charges of all kinds.

2. Bond to insure observance of law.

3. Adequate interest rate (two or three per cent per month) reckoned on unpaid balances. Fees prohibited or, if allowed, safe-guarded against undue repetition.

4. Supervisory officer created to enforce the law.

5. Adequate penalties for violations, including revocation of license, fine and imprisonment and recovery of excess payments by the borrower.

6. Notice to employer and consent of wife to an assignment of wages.

7. Adequate records kept by licensees, and inspected by supervisory officer.

8. Copy of the law and memorandum of the loan given to each borrower.[1]

At this same meeting of the Federation, its committee on legislation reported and practically adopted this program, except that it thought that a copy of the section of the law regulating the charge was sufficient to give the borrower instead of a copy of the entire law, and that the supervising officer should have power to refuse or revoke a license "when in his judgment the character of the applicant is not such as to indicate that the law will be observed."

The trend toward the flat-rate system and toward the abolition of the fee system is clearly seen in the committee's report: "The rate of interest should be 2 per cent per month with an additional fee of about $1.00 to partially cover the cost of examining the security, or a flat rate of 3 per cent per month without additional fees of any character. The flat rate without fees is preferable. . . . It is so difficult to safeguard the fee against undue repetition that the Committee believes that whenever possible a flat rate of interest of about 3 per cent per month should be allowed."[2]

## TRANSLATING THE PROGRAM INTO LEGISLATION—INFLUENCE OF THE RUSSELL SAGE FOUNDATION

The ideas expressed in the program fostered by the Russell Sage Foundation had been born of social experience. These ideas in turn gave birth to social experience. The Foundation not only

[1] Proceedings of the National Federation of Remedial Loan Associations, 1913, p. 8.

[2] *Ibid.*, p. 84.

enunciated a policy of reform but sought its enactment into legislation.

The first legislative effort of the Russell Sage Foundation, in 1910, was to secure amendments to the New York Law of 1902. The law of 1902 had given to corporations, whose dividends and earnings were limited to 10 per cent of their capital, the privilege, on loans of $200 or less, of charging 2 per cent a month plus a fee of $1.00 on loans not exceeding $50 and of $2.00 on other loans, and had made it a misdemeanor for such corporations to charge more than 2 per cent a month plus the fee, or for any other person to charge more than 6 per cent per annum. This law had not applied to two counties, Westchester and Monroe. The amendments[1] made the law applicable throughout the entire state; authorized the superintendent of banks, who already had supervisory power, to refuse to issue either an original license or any annual renewal thereof if he were not satisfied that the business had been or would be honestly transacted by the applicant in accordance with the law; gave him power to suspend or revoke a license for good cause; abolished all discount and interest in advance; and made the lenders provide the borrower with a copy of the section of the law regulating the charges for loans.

The Massachusetts law of 1911 was a more comprehensive enactment of the program fostered by the Russell Sage Foundation. It was preceded by the report of a legislative committee which had recommended a reasonable rate of interest on small loans, combined with a centralized control in a state supervisor. As the committee expressed the situation,

> After hearing much evidence and many suggestions, your committee came to the conclusion that there were two classes of borrowers; the borrowers through necessity and the borrowers through improvidence, and had impressed upon it that money hunger, either the hunger of necessity or the hunger of wilful extravagance, could not be satisfied by pure loan laws any more than food hunger could be gratified by pure food laws which amounted to prohibition; that pure loan laws will be beneficial when they are practical; but that the operation of loan agencies under existing conditions approaching justice will do more to minimize the evils incident to the loan business than a great many laws based on suppression.

[1] Laws 1910, ch. 127.

The Massachusetts law of 1911,[1] framed by this committee, established the office of state supervisor of loan agencies and required a license to be obtained from him by all persons engaged in the business of making loans of $300 or less at a charge greater than 12 per cent per annum. The supervisor was to make an investigation of the business of each licensee at least once a year and oftener if he deemed it necessary, for which purpose he was to have free access to the vaults, books, and papers of such licensee, and full power to examine anybody with reference to such business. Annual reports were required from each licensee, giving such information as the supervisor might demand. To obtain a license the applicant had to give bond and file a statement containing his intended place of business, his name, private address, and if a corporation, the name, private and business address of its clerk or secretary and, unless excused by the supervisor, an appointment of an agent for the service of process. The license containing the name and place of business of the licensee was to be kept posted conspicuously at the place of business. The supervisor was to establish the rate of interest to be charged, not to exceed 3 per cent a month, and regulations as to the conduct of the business. Instruments taken by licensees had to state with substantial accuracy the full details of the loan, and receipts had to be given identifying the transaction on which the payment was made. Engaging in the business without a license was punishable as a misdemeanor by fine or imprisonment or both. But a licensee who violated the law was punishable only by revocation of his license and by a fine, though power was given to courts of equity to declare the transaction void.[2] A borrower could recover the excess of interest paid and twice the legal costs. In 1912 a supplementary statute declared void any transactions covered by the act and made by an unlicensed lender engaged in the business.[3]

The law of 1911 required that $10 of each payment of wages should be exempt from liability under wage assignments given to

[1] Acts and Resolves 1911, ch. 727.

[2] Though the Massachusetts law provides that a loan on which excessive interest is charged may be "declared void in equity," the loan is not simply voidable but void *ab initio* and may not be collected by a holder in due course: Cuneo *v.* Bornstein, 168 N. E. (Mass.) 810 (1929).

[3] Acts and Resolves 1912, ch. 675.

secure loans under the act, that such assignments must be accepted by the employer, consented to by the wife of a married man, and filed and recorded with the municipal clerk.

This law, when passed, marked a great advance: it covered the entire field; it made an honest effort to provide a return sufficient to attract capital; it provided for adequate supervision; it gave a monopoly of the business to licensees by punishing criminally all non-licensees engaging in the business; and it provided for publicity both of the identity of the lender and of the transaction. Although the law as first enacted did not distinctly provide that transactions by non-licensees should be void, this defect was remedied the next year. From the present point of view, this law was lacking only in not sufficiently penalizing a licensee who disobeyed it.

The influence of the Russell Sage Foundation showed itself in four of the acts of 1913, that of Colorado, of Oregon, of Congress for the District of Columbia, and of New York. The Colorado act[1] required a license to be procured from the state bank commissioner in order to engage in the business of making loans on security of any kind at a charge in excess of 12 per cent. The lender's charge was to be a flat rate of 2 per cent a month, not to be deducted when the loan was made, and other charges were forbidden except on the foreclosure of the security. The lender was to give the borrower a detailed statement of the transaction and a receipt for all payments. The borrower might recover treble the amount of an overcharge if he brought action within one year from the time of its payment.

Every licensee had to be a bona fide resident of Colorado or a corporation having a bona fide resident agent for the service of process. Applications for licenses had to contain the full names and addresses of the applicants if natural persons, and of the officers and directors if corporations, and in all cases the proposed place of business and such other information as the state bank commissioner might require. Notice of the application was to be published and was subject to protest by anyone. When such protests were filed or when complaints were made against licensees, public hearings had to be held. The applicant had to file a bond to

[1] Laws 1913, ch. 108.

observe the law. The application might be rejected or the license might be revoked for any failure of the licensee to observe the law or for any good cause shown within the meaning and purpose of the act. If the license were revoked, it could not be reissued within a year and not at all if the revocation were for an overcharge by the licensee. Both license and bond had to be renewed annually. The licensee was to keep a register containing the full details of each transaction, which was to be open to the inspection of the bank commissioner and his subordinates, and was to make an annual report of his financial condition and of "such other information as may be called for." The license was to be conspicuously displayed in the place of business.

Banks and banking institutions, building and loan associations, and title guarantee and trust companies were excepted from the act. The bank commissioner was "authorized and empowered to make all rules and regulations necessary in his judgment for the conduct of such business and the enforcement of this Act in addition hereto and not inconsistent herewith." Any violation of the act was a misdemeanor.[1]

The Oregon act[2] applied to all loans on which more than 10 per cent per annum was charged. The charge was fixed at a flat 3 per cent a month, except that on loans of less than $300 recording fees and foreclosure charges were allowed in addition. An amendment to the act allowed a minimum charge of $1.00.[3] Instead of a detailed memorandum of the transaction the borrower was to receive a duplicate of all papers and documents used in the transaction, but a detailed memorandum was substituted by amendment in 1915. The limit of the indebtedness of any one borrower to any one licensee was fixed at $300. If the revocation of the license were based on a violation of the act for which the licensee had been criminally convicted, he could never again be licensed. The remainder of the act was substantially the same as the Colorado act except that real estate brokers were added to the persons excepted from the act, the provision for the recovery of treble the excess charges paid was omitted, and the principal of a usurious loan by a licensee was forfeited to the school fund and the interest thereon

[1] This Colorado law proved unworkable because of the inadequate rate allowed.
[2] General Laws 1913, ch. 278. [3] General Laws 1915, ch. 219.

made uncollectible. In 1931 a new small loan law was passed which included many provisions of the fifth draft of the Uniform Small Loan Law.[1] The provisions of the 1931 Oregon act are discussed in Chapter VI.

The congressional act for the District of Columbia[2] applied to all secured loans where more than 6 per cent per annum was to be charged. If a licensee contracted for any charge over that allowed by the act, all interest and one-quarter of the principal were to be forfeited. The limit of indebtedness was placed at $200. Penalties for failure to keep a loan contract were forbidden. Though in other respects the law was substantially the same as the Oregon law of 1913, the charge in the District of Columbia act was fixed at 1 per cent a month.[3]

Prior to the passage of the New York law of 1913[4] only corporations specially incorporated therefor, whose dividends and earnings were limited to 10 per cent per annum, could charge more than 6 per cent per annum on loans of $200 or less. The 1913 law, which applied both to corporations and to individuals, established the office of supervisor of small loans and required a license to be procured from him to engage in the business of lending sums of $200 or less on chattel mortgages, on assignments of wages or salaries earned or to be earned, on promissory notes or confessions of judgment. The provisions regarding the application for a license were the same as in the Colorado law of 1913, with one exception. On the filing of the required bond conditioned for the observance of the law, the supervisor had no power to refuse the license and, if he did refuse, the act expressly provided for court review. If the applicant were a non-resident or a foreign corporation, a resident agent for the service of process had to be appointed. The transaction of business was restricted to the place named in the license, and a license was required for each place of business.

The maximum charge was fixed at 3 per cent a month on loans of

[1] General Laws 1931, ch. 385.

[2] Approved 4 Feb. 1913, 37 Stat. at Large 657, ch. 76.

[3] Since loans could not be made at 1 per cent a month, certain lenders withdrew from Washington after the passage of this act; those that remained charged generally a minimum of 10 per cent a month; and, because of this law, Virginia lenders regularly ran free conveyances for borrowers from Washington across the state line, where loans were made at the Virginia rates. The law has not been changed.

[4] Laws 1913, ch. 579.

\$50 or less, at 2½ per cent a month on loans between \$50 and \$100, and at 2 per cent a month on loans of from \$100 to \$200 plus, however, an additional fee of \$1.00 on loans of \$25 or less, \$1.50 on loans between \$25 and \$100, and \$2.50 on loans between \$100 and \$200. It was provided that if no loan were made the lender could keep one-half the fee, which provision seems inconsistent with the provision that neither interest nor charges were to be paid in advance. The amount of any loan under the act was limited to \$200, and no borrower could have more than one loan outstanding with any licensee. The borrower was to receive a duplicate copy of every instrument used in his transaction. If he received such duplicate, an assignment of wages did not need to be filed with the employer. On wage assignments, however, if the loan secured by such assignment were not paid according to its terms, only 10 per cent of each monthly payment could be taken by the assignee. Any violation of the act was a misdemeanor punishable by fine only, and the loan made in connection with the violation was void. On a second conviction of a licensee his license was to be revoked and not reissued within one year, and the loan made in connection with such violation was to be void. The supervisor was given power to investigate complaints and take testimony in relation thereto. All loans to which the act applied, if made by a non-licensee, were to be null and void and principal and interest forfeited. False statements by borrowers were made misdemeanors. The act was not to apply to licensed pawnbrokers, to personal loan associations incorporated under the New York act of 1902 as amended in 1910, to banks, to merchants and manufacturers on transactions with their customers which were secured by chattel mortgages or conditional bills of sale.

This act was criticized as creating a supervisor without adequate power of supervision, as allowing too high rates to licensees, and as not imposing sufficiently severe penalties for overcharges by licensees.[1] In consequence of these deficiencies a bill prepared by Mr. Ham was introduced in the New York Legislature in 1914. The banking department of the state also submitted a general revision of the state banking laws, including as Article IX thereof a small loan law, the provisions of which were based on the old

[1] Bulletin of the National Federation of Remedial Loan Associations, 1913, p. 12.

New York legislation and on Mr. Ham's program. Both acts were passed, the first as Chapter 518 of the New York Laws of 1914 and the banking department act as Article IX of Chapter 369. In view of the fact that the provisions of these acts were generously used as a pattern for the subsequent small loan acts of other states, a detailed examination of the features of both acts is warranted.

Article IX of Chapter 369 provided for the authorization by the superintendent of banks both of personal loan corporations and of individuals, as personal loan brokers, to do a small loan business. But the authorization could be refused if the superintendent was not satisfied that the character and general fitness of the applicant was such as to command the confidence of the community and to warrant the conclusion that the business would be honestly transacted in accordance with the intent and purpose of the act, and unless the public advantage and convenience would be promoted by allowing such proposed corporation or personal loan broker to engage or continue in the business.

The capital stock of such corporations was to be not less than $10,000 in cities of the first and second classes, and $5,000 elsewhere, all of which had to be paid in. A bond equal in amount to one-tenth of the capital stock had to be filed. Such licensees were empowered first, to make any loans at all at 6 per cent per annum, second, to act as pawnbroker, and third, to make small loans upon any of the following securities: mortgages on personal property without actual delivery of the property; notes of the borrower endorsed or guaranteed by another; and wage assignments.

The limit of the indebtedness of any one borrower to any one licensee acting as a pawnbroker or secured lender was fixed at $200. Interest in advance was neither to be charged nor collected; interest was to be computed on unpaid balances. On small loans a charge could be made of 2 per cent a month plus a fee of $2.00 on all loans exceeding $50 and of $1.00 on other loans, but no fee was allowed on any renewal within three months. If no loan were made, no fee was to be collected, and no other charge was to be allowed by reason of the institution of legal proceedings except legal costs. The borrower was to be given by the lender a full and detailed statement of the transaction, which should have printed on the back thereof a copy of the section of the law regulating the charge. Receipts were to be given on each payment, and on full repayment every paper in the transaction was to be marked "paid" or "canceled." No lender was to take any confession of judgment or power of attorney or any instrument that on its face did not show the details of the transaction or that had any blanks. Assignments of future wages or salaries were to be valid only for one year; only 10 per cent of any payment of wages or salary was collectible thereunder; and the consent of the wife was required thereto. No business was to be transacted except at the place named in the license, nor was such business to be conducted in connection with any other business or in the same room or one connecting therewith.

Corporations were limited to dividends and earnings of 12 per cent per annum on their capital stock, and individuals were limited as to withdrawals and earnings to the same percentage of their invested capital. Both the corporations and the individuals had to make an annual report to the superintendent of banks in the form and containing the matters prescribed by the superintendent and special reports when called for, and licensees were to be examined at least annually by the superintendent or one of his subordinates. Licensees were to keep such books and records as the superintendent should direct, which were to be preserved for six years from the last entry thereon unless the superintendent otherwise directed. Any person other than a licensee making any loan of less than $200 at more than 6 per cent per annum was to be guilty of a misdemeanor (licensed pawnbrokers excepted); the debt was to be discharged and the security voided. The publishing of false advertisements as to rates, terms, or conditions, or of advertisements which were false or calculated to mislead, was forbidden. The certificate of authorization could be revoked by the superintendent of banks if the act was violated or if the business was being conducted in an unauthorized or unsafe manner or was in an unsound or unsafe condition.

Chapter 518 of the Laws of New York of 1914 was in substance very largely the same as Article IX of the banking law. It provided for a supervisor of loans, the fourth deputy superintendent of banks, who was to be the supervising officer and who was given power to prescribe rules and regulations for the conduct of the business. Any non-resident applicant for a certificate of authorization had to appoint an agent for the service of process. Only one-fifth of the capital stock had to be paid in, but the amount paid in had to be equal to the minimum specified in the banking act. The minimum of the bond was fixed at $3,000. The supervisor might order the licensee to discontinue unauthorized or unsafe practices, and might revoke the certificate of authorization if satisfied that the act was being violated or that the licensee was conducting his business in an unauthorized or unsafe manner. The certificate of authorization was to be posted at all times in a prominent place in the office of the licensee. On wage assignments the consent of the spouse was required, unless the couple should have been living separate and apart for five months. The violation of the act by an agent was made prima facie evidence of assent by the principal, and if the application for the loan was made in New York, the loan was to be considered a New York loan. In other respects the act was substantially the same as Article IX, except that it declared that licensees who made loans not authorized by the act were guilty of a misdemeanor, and that it discharged the debt and voided the security.

Chapter 588 of the Laws of 1915 consolidated these two laws. It made the superintendent of banks the supervising officer. Where Chapter 518 differed from the banking department act it followed the former. But it made certain changes. It limited the collection of the renewal fee to once a year, and it prohibited the charge of any fee on a new or additional loan by a licensee to the same borrower within three months of the making of the first loan. The non-resident applicant for a certificate of authorization had to appoint the superintendent of banks his agent for the service of process. On wage assignments the consent of the spouse was made necessary unless the couple had been legally separated, and the validity of such assignments was no longer confined to one year. This act also added a provision that if a power of attorney for the making of a loan was given in New York, the loan was to be deemed made in that state.

In 1920[1] the limit of the amount of the loans governed by the

[1] Laws 1920, ch. 703.

act was raised to $300; the amount of dividends, withdrawals, and earnings allowed was increased to 15 per cent on the invested capital; and the fees were made $1.00 for a loan of $50 or less, $2.00 for a loan between $50 and $150, and $3.00 for a loan between $150 and $300. In 1928, Section 16 of the fourth draft of the Uniform Act, relating to purchases of wages, was added.[1] This law was repealed in 1932 when a slightly abridged fifth draft of the Uniform Act was adopted.[2]

The unusual feature of the New York law was the application of the idea of limited dividends to legislation regulating purely commercial enterprises. It shows how largely the whole field of small loans was dominated by the theory of the semi-philanthropic acts. The disadvantage of such limitation of dividends is the penalty that it places upon efficient management. The limitation has, in fact, been unpopular. The rates permitted, though commercially profitable, were not quite profitable enough to attract sufficient capital.

It is in the New Jersey law of 1914[3] that we see the best enactment of this period. That law required a license to engage in the business of making loans of $300 or less, regardless of rate charged, and if the application for a loan was made in New Jersey, the loan itself was to be treated as a New Jersey loan, even though the money were paid to the borrower elsewhere. The banking commissioner was given power to reject an application for license "if he is satisfied that the character and general fitness of the applicant or applicants is not such as to command the confidence of the community and to warrant the conclusion that the business will be honestly transacted in accordance with the intent and purpose of this act." Corporations had to appoint a resident agent for the service of process. The license, which was to be annual, could be revoked for any violation of the act or of any rule or regulation made thereunder, and, if revoked, was not to be reissued within one year and not at all if the licensee should have been convicted of a violation of the act. An adequate bond had to be filed.

The license was to have the names of the licensees (if a corporation, the names of its directors) and the place of business. No business was to be transacted elsewhere, and a license was required

[1] Laws 1928, ch. 365. [2] See p. 106. [3] Acts 1914, ch. 49.

for each place of business. The license was to be kept posted conspicuously in the place of business. The commissioner of banking was to inspect licensees at least once a year and oftener if he deemed it necessary, for which purpose he was given power to examine any person under oath relative to the business of the licensee. The act required licensees to furnish annual reports as to their financial condition and such other matters as the commissioner might call for.

The charge was limited to 3 per cent a month, not payable in advance and computable on unpaid balances only. The act required the lender to give the borrower a detailed statement of the transaction, on the back of which was to be printed a copy of the section of the act regulating the charge, and a receipt for each payment. A limit of $300 was placed on the amount of indebtedness of any one borrower to any one licensee. The act provided that any violation of its provisions was to be a misdemeanor, that the transaction was to be null and void, and that all sums paid or returned on account of such loan were to be recoverable. No assignment of wages to secure a loan or advance of $300 or less was to be valid against the employer unless accepted by him in writing, and the wife's consent was required to all such assignments made by a married man unless the couple had been living separate and apart for five months before the making thereof. Licensed pawnbrokers, provident loan associations, banks, insurance companies, and building and loan associations were excepted from the act. The commissioner was authorized and empowered to make rules and regulations necessary in his judgment for the conduct of such business and the enforcement of the act. In 1929 the law was amended to reduce the rate of interest to 1½ per cent a month.[1]

The Ohio law of 1915[2] required a license from the superintendent of banks[3] to engage in the business of making loans on plain, endorsed, or guaranteed notes or on the security of personal property or of purchasing or lending on wage assignments, or furnishing guarantee or security in connection with such loans.

The license and the bond which was made a prerequisite thereto

[1] Acts 1929, ch. 293. Repealed, 1932. See p. 106. [2] Acts 1915, p. 281.

[3] The duties were transferred to the commissioner of securities by Acts 1917, p. 506.

were annual. The application for the license was to state the names and addresses of the applicants, and if a corporation those of its manager and directors, and the place of business. The applicant had to appoint an agent for the service of process. The license, which had to be kept posted conspicuously, was revocable for any violation of the act, and if revoked was not to be reissued for a year. Business was not to be transacted in any other name, and a separate license was required for each place of business. The act provided that the superintendent of banks was to make an examination of the business of the licensee annually and oftener if he deemed it advisable, for which purpose he was given free access to the vaults, books, and papers of the licensee, and empowered to examine persons under oath.

The charge was fixed at 3 per cent a month, with an additional fee of $1.00 on loans not exceeding $50 where the loan was for a period of not less than four months. The interest was not to be paid in advance, was to be computed on unpaid monthly balances without compounding, and was to constitute the sole charge except court costs on the foreclosure of the security or the entry of judgment. If no loan was made, no fee was to be charged. A copy of the section of the law concerning charges had to be furnished the borrower, together with a full statement of the details of the loan, and receipts had to be given for each payment. The law fixed no maximum on the amount of a loan.

Wage assignments, the act provided, had to be signed in person by the borrower and by the spouse and were valid only for debts contracted simultaneously therewith, and then only if they contained no blanks and gave the details of the loan on their face. The assignee could collect only 50 per cent of each payment of wages and, to have priority against other creditors, had to file his assignment, and refile it annually, in the office of the county recorder.

The act made any violation a misdemeanor, and made null and void any instrument taken in connection with the transaction on which a conviction was secured. It made any excess charge recoverable in an action at law. Conviction of a violation of the act necessarily caused revocation of the license.

This law was amended in 1929[1] in three respects. A court hear-

[1] Acts 1929, p. 43.

ing was provided on revocation of license. Loans over $300 could bear only 8 per cent a year interest on the amount in excess of $300. And wage assignments and salary purchases of less than $300 were expressly brought within the act and considered as loans.

Pennsylvania, by its law of 1915,[1] substantially enacted the New Jersey law of 1914, with the important exceptions that the charge was made 3 per cent a month on loans not exceeding $100 and 2 per cent a month on loans between $100 and $300 in amount, and, if the loan was made for a period of four months or more, an added fee of $1.00 on loans of less than $50 and of $2.00 on loans between $50 and $300. The act forbade renewal fees on renewals made within four months of the original loan and forbade the taking of powers of attorney by licensees. The civil forfeiture which the act provided for excess charges applied only to the charge in excess of 6 per cent per annum. Except for amendment as to rate and some minor changes, this act is still the law of Pennsylvania.

The Nebraska law of 1915,[2] which remains in force, required an annual license from the secretary of state to engage in the business of making secured loans or of purchasing salaries or wage-earnings. An applicant for a license had to file the usual bond and appoint the county clerk of the county in which his business was located as his agent for the service of process. The provisions regarding the issuance and revocation of the license were the same as in the Colorado act of 1913. Licenses, books, and papers were to be inspected annually. A record had to be kept of the details of each transaction; a memorandum thereof had to be given to the borrower; and receipts had to be given for each payment. The act required that no chattel mortgage or wage assignment should contain blanks, that no power of attorney be given, and that no instrument be signed by an attorney. In case of any violation of the act the principal and interest of the loan were to be forfeited and the lender was to be guilty of a misdemeanor. The charge was fixed at 10 per cent per annum, plus a brokerage fee of one-tenth of the amount of the loan and, on loans under $50, an added examination fee of 50 cents; if the loan was for less than six months the fees were to be prorated. No renewal fees were allowed within six

[1] Laws 1915, no. 432.

[2] Laws 1915, ch. 204.

months. Neither the brokerage fee nor the interest was payable in advance, and interest was to be computed on unpaid balances. There was no provision, however, that the brokerage fee as well as the interest was to be "chargeable only on unpaid balances." The charges could therefore be easily manipulated.[1]

The Massachusetts law of 1911 had fixed the charge at 3 per cent a month but had given to the supervisor power to make rules and regulations. In the exercise of such power the supervisor, believing it necessary, had allowed the licensees to make certain other small charges for expenses in addition to the flat 3 per cent a month. In 1916 Massachusetts passed an act which made this 3 per cent a month the maximum that could be charged on loans of $300 or less.[2]

## LEGISLATION NOT DIRECTLY INFLUENCED BY THE RUSSELL SAGE FOUNDATION

The ideas of regulation and supervision were rapidly permeating the small loan legislation of this period. Even where the Russell Sage Foundation took no direct part in fostering new laws, the states themselves made efforts to express in their legislation the program of social control. Though the regulation was not always effective and most of these haphazard enactments have since given way to the Uniform Small Loan Law, they are nevertheless interesting as expressions of a widespread attitude.

The Ohio law of 1911[3] had required, for engaging in the business of making loans on chattels or personal property, a license and bond which stated the names of the lenders. It had also required that the licensee give the borrower a memorandum of the details of the loan, and that the loan be void if excess charges had been made. This law had not provided for supervision, however, and had allowed a charge of only 8 per cent interest per annum plus a fee of 10 per cent of the amount borrowed. It was replaced by the law of 1915.[4]

[1] On a loan of $120 for six months repayable in equal monthly instalments the lender would receive $3.00 for interest and $12 for a fee. That is, he would receive $15 on a loan of $120 for an average period of three months, or 50 per cent per annum. The contemplated rate, on loans over $50, was obviously 30 per cent per annum.

[2] General Acts 1916, ch. 224.

[3] Laws 1911, p. 469.

[4] See p. 68.

The law which Michigan enacted in 1911[1] applied only to cities and to secured loans bearing a higher rate of interest than 7 per cent per annum. The charge was fixed at 2 per cent a month if the loan did not exceed $100, and 1½ per cent on other loans, plus a fee of $1.00 on loans of $50 or less and of $2.00 on other loans. The act forbade a renewal fee to be charged within a year of the making of the original loan, and forbade interest to be collected in advance or to be computed on any but unpaid balances. The instrument was to contain the details of the loan, and the borrower was to receive a memorandum thereof, on the back of which was to be printed the rate section of the act. Full receipts were to be given. The municipal authorities had discretionary power to grant or refuse the license, to obtain which the usual bond had to be filed. Any violation of the law constituted a misdemeanor and caused forfeiture of all interest and, in the discretion of the court, of the principal or any part thereof as well.

The act of 1911 was replaced in Michigan by the act of 1915,[2] which applied to all loans of $300 or less made in cities of 15,000 population or over. This otherwise differed from the 1911 act only in regulating wage assignments by prohibiting blanks therein and requiring the consent of the spouse thereto, and in changing the rate of interest to 3 per cent a month where the loan was less than $100, to 2 per cent a month where more. Fees remained the same, except that fees could be charged every four months and were to be reduced by one-half if the loan was for less than four months. Excess charges made the loan void, and any violation or engaging in the business without a license constituted a misdemeanor. The present Michigan law is the Uniform Law.

The Maryland law of 1912[3] required a license but no bond. It made no provision for any supervision. It allowed the lenders exorbitant fees on chattel loans of $500 or less. It contained, in fact, few good features. It was replaced by the Uniform Law in 1918.

The law enacted by Indiana in 1913[4] required a license and a bond to engage in the business of lending moneys in sums under $250 at a rate of interest greater than 8 per cent per annum on

[1] Public Acts 1911, no. 105.
[2] Public Acts 1915, no. 228.
[3] Laws 1912, ch. 836.
[4] Laws 1913, ch. 167.

security of any kind except real estate. The names and addresses of the licensees had to be filed. The instruments taken by such licensees had to state the details of the transaction, and detailed receipts had to be given by them for each payment. The charge allowed was 2 per cent a month plus a fee of $3.00, and on renewals 2 per cent a month plus a fee of 3 per cent of the balance of the loan. A loan was void as to all sums in excess of that actually lent. Violations of any provision of the act or engaging in business without a license constituted misdemeanors. The act did not provide for supervision. It was replaced in 1917 by the Uniform Law.

The Minnesota law of 1913[1] allowed the organization of corporations, in cities of a population of 50,000 or more, to lend sums of $200 or less on endorsed notes, wage assignments, and chattel mortgages at 1 per cent a month; on chattel mortgages fees of from $1.75 to $5.75, dependent on the amount of the loan, were allowed in addition. These corporations were restricted first to an annual dividend of 6 per cent and later[2] of 8 per cent. As so amended the law is still in force. It provides regulation, of course, only for semi-philanthropic companies.

The Missouri law of 1913[3] regulated the chattel mortgage business in cities of a population over 30,000. It required, in addition to a bond, that an annual license be obtained from the mayor on a statement of the names and addresses of the lenders and of their agent in charge. The lender was to state in the mortgage the details of each transaction and was to give the borrower receipts for payments. The city was empowered to provide for the licensing, supervision, regulation, and control of concerns engaged in the business. The charge was fixed at 2 per cent a month, plus a fee of $1.50 allowed on the original loan and on yearly renewals. No loan greater than $300 was to be made by a licensee under the authority of this law, nor could any one person owe a licensee more than $300 for principal at any one time. A non-licensee engaging in the business or a licensee making an excess charge was guilty of a misdemeanor, and any amount of the loan unpaid was to be forfeited to the borrower. Few licensees qualified under this law, which was replaced in 1927 by the Uniform Law.

[1] General Laws 1913, ch. 439.
[2] Session Laws 1915, ch. 117.
[3] Laws 1913, p. 545.

Pennsylvania by its act of 1913[1] provided for the issuance of a license by the court of quarter sessions to all persons lending any sum of money whatsoever at over 8 per cent. Notice of the application for a license had to be published, and on a remonstrance the matter was heard as a regular court proceeding. The act provided that the borrower be given a card containing the details of the loan and a copy of the charge section of the law, as well as a detailed receipt for each payment. The charge was 6 per cent per annum and a brokerage fee of 10 per cent of the amount lent, plus an examination fee of $1.00 on all loans not exceeding $50. Assignments of wages had to be served on the employer within three days. Violations of the act and making loans without a license were misdemeanors and subjected the license to revocation at the discretion of the court. The law did not provide for any supervision. It was declared unconstitutional in Commonwealth *v.* Young[2] and was replaced by the more satisfactory law of 1915, which in turn was amended in 1919 so as to be substantially the Uniform Law.

Wisconsin in 1913[3] cut down the rate on loans secured by chattel mortgages and wage assignments from 24 per cent per annum to 14 per cent per annum, but in 1915[4] raised the rate on such loans, when they did not exceed $100, to 17 per cent per annum. In 1927 Wisconsin adopted the Uniform Law.

The Nebraska act of 1915, discussed above, was passed after two years' experience under Chapter 250 of the Laws of 1913, which differed from the 1915 act principally in being confined to loans of $250 or less on mortgages of certain specified chattels (household goods, wearing apparel, and the like), pledges, and wage assignments, and in the charge being limited to 12 per cent per annum plus a fee of $1.00.

Louisiana, by an act of 1914,[5] declared it unlawful to make loans at a rate of interest greater than 8 per cent per annum or at a rate of discount greater than 20 per cent per annum, but the law was very soon declared unconstitutional for a defect in its title.[6] In 1928 the Uniform Law was enacted in Louisiana.

[1] Laws 1913, no. 285.

[2] 248 Pa. St. 458 (1915).

[3] Session Laws 1913, ch. 115.

[4] Session Laws 1915, ch. 450.

[5] Acts 1914, no. 204.

[6] State *v.* Jackson, 137 La. 741 (1915).

In 1914 Mississippi[1] adopted the novel course of securing revenue from illegal loans, for it imposed a privilege tax on all persons doing a money-lending business and making a greater charge than 20 per cent per annum. The Supreme Court of that state held that such privilege tax did not make the business legal:

> We are of the opinion . . . that section 1, chapter 112, Laws 1914, does not violate any provision of the State or Federal Constitutions . . . because the tax is imposed upon a business made unlawful by another statute.[2]

Iowa, by a law of 1915,[3] allowed interest at the rate of 2 per cent a month, plus a fee of $5.00 when the loan was not less than $50 and of $1.00 plus 10 per cent of its amount when the loan was for less than $40. Neither license nor bond was required, and the act contained no regulations whatsoever. It has been replaced by the Uniform Law.

By a law of 1915[4] Texas required an annual bond of one who made loans on assignments of wages, chattel mortgages, or bills of sale upon household or kitchen goods. The lender had to record the full details of each transaction in a register which had to be kept open to inspection, and he had to give the borrower a memorandum of all payments. Also, he had to appoint the county clerk as his agent for the service of process, and any judgment recovered in the future could be collected from the bond. So-called wage purchases were brought under the act, and the wife's consent was required to all documents. The act was declared unconstitutional because of the provisions as to service of process and as to the bond.[5]

### WAGE-ASSIGNMENT LEGISLATION, 1910–1916

In states where wage assignments, given to secure small loans or advances of small sums of money, were not regulated by the small loan laws, the legislation as to wage assignments flowed in the same channels as in the preceding period, 1898–1910, and with practically the same variations.

The prohibitive theory was becoming less popular. One example of the theory in this period was the Missouri law of 1911[6] which

[1] Laws 1914, ch. 112. The statute was amended, Laws 1926, ch. 118.

[2] State *v.* Rombach, 112 Miss. 737, 746 (1916).

[3] Acts 1915, ch. 341.

[4] General Laws 1915, ch. 28.

[5] Juhan *v.* State, 86 Tex. Cr. 63 (1919).

[6] Laws 1911, p. 143.

made all assignment of unearned wages and salaries null and void. The other example was the Alabama law of 1911[1] which prohibited the assignment of all unearned wages, except those earned within thirty days of the assignment when given for groceries, clothing, medicine, insurance, medical attendance, and house rent, and those of a laborer assigning his interest in a crop for the current year of the assignment.

The semi-philanthropic theory was well illustrated by the Illinois act of 1913,[2] an act similar to the remedial loan society laws of the previous periods except that it related solely to wage assignments. It authorized the formation of corporations to make loans of not more than $250 on wage assignments at 3 per cent a month. The lender had to keep an account of all transactions and give the borrower not only copies of every paper signed by him and a statement of the transaction, but detailed receipts as well. Any violation of the act caused a forfeiture of the right of the lender to do business, and any excess charge constituted a misdemeanor. Full reports had to be made annually to the state showing, with other information, the names of the stockholders and their stock holdings. The semi-philanthropic character of the enterprise was evidenced by the limitation of dividends to 6 per cent a year and by the fact that the governor was to appoint one director of any such corporation and the mayor of the city in which it was located to appoint another.

The same forces which led to an increasing regulation of the business of making small loans in general led to the regulation of the business of making small loans on wage assignments only. Though Nebraska[3] made no regulation other than requiring the consent of the spouse to any assignment of wages, several of the states went much farther in their control of wage assignments. For any assignment of wages or salary to be earned in the state, Pennsylvania required not only the consent of the wife but a written acceptance by the employer.[4] Arkansas, by its law of 1911,[5] required the consent of the wife, acceptance by the employer, and recording as conditions of the validity of any assignment of wages to be earned in the future to secure a loan of less than $200.

[1] General Laws 1911, no. 226, p. 370.
[2] Laws 1913, p. 199.
[3] Laws 1915, ch. 171.
[4] Laws 1913, no. 268.
[5] Public Acts 1911, no. 34.

In the same year New York[1] required the filing of the names of all persons engaged in the wage-assignment business or, if corporations, the names of all officers, directors, managers, and trustees. The return on such assignments was limited to 18 per cent per annum, and violations of the act were made misdemeanors. Within three days after the assignment the employer had to be served with notice thereof. As to this notice the act made the unique requirement that it run from the time at which the employe received the loan or discount. The purpose of this requirement was to forbid the device used by some lenders of taking not an assignment itself but a power of attorney to make such an assignment and so to take the actual assignment later.[2] Kentucky provided in 1912[3] that no assignment of wages "to be earned or paid in the future where . . . the consideration for said assignment, sale, pledge, mortgage or other transfer, is a sum of money less than $200 shall be valid" unless it stated on its face all the details of the transaction; and required that a copy of the assignment be given to the employer within three days, unless he otherwise assented thereto, and that another copy be given the assignor, on which payments had to be noted. Such assignments were to be valid only when they concerned earned wages or wages to be earned within ninety days.

The tendency toward regulation of wage assignments culminated in the statutes of Montana and Louisiana. The Montana act of 1911[4] required a license and bond to engage in the business of taking wage assignments. So-called purchases of wages were expressly brought within the act and were considered a loan of the sum advanced. The act made all assignments of unearned wages invalid, required the wife's consent, and limited the charge to 12 per cent per annum. Violation of the act constituted a misdemeanor and made the instrument void as against creditors of the assignor or transferor. Louisiana, by its act of 1916,[5] required a license to engage in the wage-assignment business and limited the charge to 18 per cent per annum. Complete and detailed records had to be

[1] Laws 1911, ch. 626.

[2] Thompson *v.* Gimbel Brothers, 207 N. Y. 659 (1912); Thompson *v.* Erie Ry. Co., 207 N. Y. 171 (1912).

[3] Acts 1912, ch. 126. [4] Laws 1911, ch. 56. [5] Acts 1916, no. 102.

kept by each licensee. All wage assignments had to be accepted by the employer and consented to by the wife unless the couple had been living separate and apart for five months. Any violation of the act was a misdemeanor, on conviction of which the license was to be formally revoked, and all loans made in contravention of the act were void.

## PROGRESS MADE DURING THIS ERA

### Proper Classification

The years from 1910 to 1916 showed a marked tendency on the part of the states, after having tried various other classifications, to make their small loan laws applicable to all loans below a certain amount bearing interest or charges in excess of the usual contract or banking rate, irrespective of the character of the loans. The legislation generally excepted from the operation of small loan laws such special institutions as were deemed to be already properly regulated by law, such as banks, licensed pawnbrokers, and building and loan associations.

Massachusetts and New Jersey, which in the preceding period had tried other classifications, now made their laws applicable to all loans of $300 or less, and Indiana made her law applicable to all loans of $250 or less. Pennsylvania in 1913 passed a law applicable to all loans bearing a greater return than 6 per cent per annum, but when this law was declared unconstitutional[1] the 1915 law was made applicable to all loans of $300 or less. The Pennsylvania Supreme Court sustained the 1915 law.[2] This distinction was apparently drawn by the Supreme Court of Illinois, which sustained an act applicable to loans of $300 or less[3] after it had declared unconstitutional an earlier act which did not limit the amount.[4]

Michigan, having in 1911 enacted a law applicable only to secured loans, in 1915 made its small loan legislation applicable to all loans of $300 or less in cities of 15,000 or over. New York, too, had a seemingly inclusive act: though the permissive features of its law were confined in 1910 to chattel mortgages for $200 or less

[1] Comm. *v.* Young, 248 Pa. St. 458 (1915).
[2] Comm. *v.* Puder, 261 Pa. St. 129 (1918).
[3] People *v.* Stokes, 281 Ill. 159 (1917).
[4] Massie *v.* Cessna, 239 Ill. 352 (1909).

and in 1914 were extended only to include wage assignments and endorsed and guaranteed notes, the penal provisions of its law were held to forbid any loan of $200 or less being made at a greater return than 6 per cent.[1]

Other states likewise showed a tendency to enlarge their classification. Missouri attempted to regulate all chattel mortgages and other liens of $300 or less. Nebraska, which in 1913 regulated only wage assignments and loans on certain specified chattels, in 1915 regulated all secured loans. Ohio, whose 1913 law applied to wage assignments and all loans on personal property, in 1915 included loans secured by plain, endorsed, or guaranteed notes. The Oregon laws applied to all loans bearing a return greater than 10 per cent per annum. Colorado's law of 1913 applied to the business of making secured loans having a return greater than 12 per cent per annum, and that of the District of Columbia regulated all such loans bearing a return greater than 6 per cent per annum.[2] The Iowa law applied to all loans bearing a return greater than 24 per cent per annum.

This course of legislation, together with the great influence naturally exerted by the uniform action of four such leading states as Massachusetts, New Jersey, New York, and Pennsylvania, had practically established by 1916 that all loans below a certain amount were properly to be classified as subjects for small loan legislation. Massachusetts, Michigan, Missouri, New Jersey, Oregon, and Pennsylvania set this amount at $300. Indiana set it at $250. The Nebraska law of 1913, which set the limit of $250, was superseded in 1915 by a loan brokerage law setting no limit on amount. New York and the District of Columbia set the limit at $200, Wisconsin at $100, and Maryland at $500. The weight of opinion, therefore, was in favor of $300 as a limit, and from 1916 onward this amount was generally to be accepted as the proper dividing line.

New York exempted licensed pawnbrokers from its small loan legislation; Colorado exempted banks, building and loan associations, title and guarantee companies; and Oregon and the District

[1] People *v.* Warden, 176 N. Y. 577 (1903); People *v.* Schultz, 149 App. Div. 844 (1912); People *v.* Young, 207 N. Y. 522 (1913).

[2] The District of Columbia law was held constitutional: Reagan *v.* District of Columbia, 41 App. D. C. 409 (1914).

of Columbia added real estate brokers, eliminating the title and guarantee companies. New Jersey and Pennsylvania exempted licensed pawnbrokers, banks, and building and loan associations, and New Jersey included in such exemption insurance companies as well and remedial loan corporations organized under its permissive act of 1904.

## Progress in Determining the Proper Charges to Be Allowed on Loans

Massachusetts and New Jersey allowed the lender 3 per cent a month, prohibited all other charges and all interest in advance, and required the computing of interest only on unpaid balances. Oregon allowed 3 per cent a month and prohibited deduction of the interest from the loan. Ohio, by its law of 1915, allowed 3 per cent a month plus a fee of $1.00 on loans of $50 or less if the loan was for four months or longer. Previously, in its 1913 law, Ohio had tried 8 per cent per annum plus a fee of 10 per cent of the amount of the loan. California, which by its law of 1909 had allowed a flat 5 per cent a month, in 1911 reduced the charge to a flat 2 per cent a month. Wisconsin tried 14 per cent a year and later raised the rate to 17 per cent a year. Colorado authorized a flat 2 per cent a month, and the District of Columbia a flat 1 per cent a month.

Not all the states adopted a flat-rate interest charge. They authorized certain fees in addition to the interest. The experience of New York, Pennsylvania, and Michigan in assessing charges was expressive of the characteristic of uncertainty that marked this period. In 1910 the New York law authorized a rate of 2 per cent a month plus a fee of $1.00 on loans of $50 or less and $2.00 on other loans. In 1913 this was changed to 3 per cent a month on loans of $50 or less, 2½ per cent on loans between $50 and $100, and 2 per cent a month on loans between $100 and $200, plus the following fees: $1.00 on loans of $25 or less, $1.50 on loans between $25 and $100, and $2.50 on loans between $100 and $200. In 1914, however, New York returned to its old rate of 2 per cent a month, plus fees of $1.00 on loans of $50 or less and of $2.00 on loans in excess of $50. Pennsylvania, which in 1913 allowed 6 per cent per annum plus 10 per cent of the amount of the loan as a fee, in 1915 fixed the charges at 3 per cent a month for all loans of $100 or less and at 2 per cent for all loans between $100 and $300. In all cases fees were allowed in the same amounts as those under the New York act of 1914, except that no fees were allowed on loans of less than $15. Both states prohibited the taking of interest in advance and provided that it was to be computed on unpaid balances only. New York until 1915 allowed the fee on renewals every three months and after 1915 only once a year, and Pennsylvania allowed it once every four months. The purpose of this limitation was, of course, to protect the borrower from the exaction of new fees upon the renewal of short-time loans. Michigan in 1911 allowed 2 per cent a month on loans not exceeding $100 and 1½ per cent on loans exceeding $100. This it changed in 1915 to 3 per cent a month on loans not exceeding $100 and 2 per cent a month on loans of over $100. Both laws permitted the same schedule of fees as allowed in Pennsylvania and provided the same regulations against taking interest in advance and computing it on any but unpaid balances.

Indiana allowed 2 per cent a month, plus a fee of $3.00 on the original loan and of 3 per cent of the balance on renewals. Iowa allowed 2 per cent a month, plus a fee of $5.00 on loans of $50 or more and of $1.00 plus 10 per cent of the amount of the loan if it did not exceed $50. Missouri allowed 2 per cent a month plus a fee of $1.50. Nebraska, which in 1913 permitted a charge of 12 per cent per annum plus a fee of $1.00, in 1915 raised the rate to 10 per cent per annum plus a brokerage fee of 10 per cent of the amount of the loan and an examination fee of 50 cents if the loan was for six months; otherwise the fees were to be prorated on that basis. Minnesota allowed 1 per cent a month plus fees, Maryland 6 per cent per annum plus fees, and both states failed to guard these charges against manipulation.

The weight of opinion in this period seems to have been that the charge should be 3 per cent a month or higher, but whether it should be a flat-rate charge or a combined interest and fee charge was still unsettled. The fee system, we have noted, allowed a leeway for juggling loans which the lenders were quick to utilize to the detriment of the borrowers. Massachusetts and New Jersey, the two states whose legislation on the subject had been most influential, decided in favor of the flat rate, and their example, combined with the influence of the Russell Sage Foundation, subsequently turned the scale against the fee system.

### Progress in the Regulation of the Business

*Confining the Business to Bonded Licensees.* It seems axiomatic that no small loan law can be effective if any considerable portion of the business is allowed to be done outside the law. All the lenders must be forced to come within the law. This can only be done by inflicting severe penalties on non-licensees who make small loans at a rate of interest greater than the legal contract rate of the state. New York still led in the attempts to confine the business to licensees by making any small loan of a non-licensee at more than 6 per cent per annum both a misdemeanor and a nullity. On small loans made in Oregon by a non-licensee at more than 10 per cent per annum the lender forfeited all unpaid interest to the debtor and the principal to the school fund. In Montana if a non-licensee took even a single wage assignment for a consideration, he committed a misdemeanor and rendered the assignment null and void.

Engaging in the small loan business without a license constituted a misdemeanor in Colorado, District of Columbia, Indiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, Ohio, and Oregon. Massachusetts, Nebraska, New Jersey, and Ohio (but only on conviction) prescribed forfeiture of all principal and interest in the case of illegal loans made by a non-licensee engaged in the business regulated by their respective acts, and Missouri prescribed forfeiture of all principal and interest unpaid on such loans. In other states such loans, as well as usurious loans made by a non-licensee not engaged in the business, were subject to the penalties inflicted by the general usury laws of the state.

A sharp line of distinction can, therefore, be drawn between the states which penalize single transactions and the states which penalize only the business. The states which adopt the latter theory have to face not only the difficulty of providing extra proof, which will weaken the effect of the law, but also the difficulty of solving the question of what is "engaging in the business." This difficulty compelled Massachusetts to pass a separate statute declaring that two transactions constituted prima facie evidence of being "engaged in the business,"[1] and made Missouri declare that a single transaction was prima facie evidence of being "engaged in the business."

*Supervision by a Public Official.* Previous to 1910 New York had already accepted the necessity of state supervision as a fundamental basis for small loan legislation. The powers that it had given to the supervising officer were broad. He could reject applications for licenses if he was not satisfied with the character of the applicants, could revoke licenses for unlawful or unauthorized acts of the licensee, and could and should make an examination of the business and affairs of the licensees at least annually and oftener if he deemed it necessary. Licensees were required to make annual reports of such matters as the supervising officer might call for or prescribe. These requirements were enacted into law not only by New York but later by Colorado, District of Columbia, Massachusetts, Nebraska, New Jersey, Ohio, Oregon, and Pennsylvania. Most of these laws also gave the supervising officer power to establish rules and regulations for the conduct of the business (Colorado, District of Columbia, Massachusetts, New Jersey, New York, Oregon, and Pennsylvania), and some of them provided how the licensee should keep his books (as in Colorado, the District of Columbia, and Oregon) or that the licensee should keep such books as the supervising officer should prescribe (as in New York). On examinations the supervising officer was given full access to all papers and records of the licensee and complete power to examine under oath all persons in relation to any act or transaction of the licensee.

The laws of all these eight states put the control of the small loan business in the hands of a state official. Only two states in this period, Michigan and Missouri, gave the power of regulation and supervision to local municipal authorities. Massachusetts had previously done so, but her law of 1911 transferred the control to a state officer. Michigan was later to follow Massachusetts' lead. This authorization of a state official in the majority of states and, in two cases at least, the change from local to state supervision are indications of the recognized advantages of uniform regulation and centralized control.

[1] Acts and Resolves 1913, ch. 347.

*Specific Regulations.* The legislation of the period shows an almost universal acceptance of requirements to prevent concealment of the identity of the lender, to make licensees financially responsible to civil judgments, and to provide some means by which the borrower could obtain accurate knowledge of the details of his transaction.

New Jersey required the application for a license to be in the form prescribed by the banking commissioner. Colorado, District of Columbia, Indiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Oregon, and Pennsylvania prescribed that applicants were to file their names and addresses, and most of these states also required the license to be kept conspicuously displayed at each loan office. In many states a non-resident lender had to appoint a local agent on whom process could be served. If a borrower were illegally dealt with, these requirements assured that he would know whom to prosecute and whom to sue. In civil proceedings the bond, required by all the above-named states except Maryland, gave assurance that a claim of the borrower could be collected.

In the laws of this period the practice became almost universal of requiring the lender to give the borrower a detailed statement of the transaction and detailed receipts for each payment. Michigan, New Jersey, New York, Ohio, and Pennsylvania also required that a copy of the section of the law relating to the charge or return on the loan be given to the borrower. Massachusetts, Michigan, Missouri, New Jersey, New York, and Pennsylvania required the details of the loan to be expressed in the instruments given under the act. New York and New Jersey forbade false or misleading statements. New York and Nebraska prohibited any blanks in the instrument, and Ohio did likewise as to wage assignments. The execution of papers, except personally, was prohibited by New York and Nebraska, and wage assignments had to be executed in person in Colorado, Kentucky, Maryland, Ohio, and Rhode Island. New York prohibited the acceptance of any confession of judgment. The reason for these requirements is shown in the report of Raymond Fosdick, then commissioner of accounts, to Mayor Gaynor of New York in 1911:

A city employee in negotiating a loan with the average loan agent is generally called upon to sign a number of papers. These include undated notes, endorsed by another employee, two or three blank assignment forms, a power of attorney to fill in the blank spaces in the assignments, a confession of judgment for the amount of the loan, and sometimes a general power of attorney to sign for and collect all wages. In most of the cases which we have examined, it appears that the borrowers do not appreciate the nature of the papers which it is necessary for them to sign.

Because wage assignments were open to special abuses, they were made subject to special regulation. The borrower was protected against his own improvidence by the requirement that the assignee might collect only a specified part of each payment of earnings. New Jersey, New York, and Pennsylvania exempted 90 per cent from collection, Ohio 50 per cent, Massachusetts exempted $10 a week as earned. A similarly cautious protection was the requirement that assignments of unearned wages must be signed in certain cases by the spouse of the borrower. New Jersey, New York, Ohio, and Pennsylvania sought to prevent the borrower from having to make a wage assignment to secure a loan previously contracted or not yet contracted when the assignment was made.

In general it had come to be accepted without wide dissent that small loan laws should contain such specific requirements for the conduct of the business as experience had shown to be necessary or advisable to protect the borrower from fraud and, as far as possible, from his own improvidence and ignorance.

*Compelling Licensees to Observe the Law.* The necessities of having adequate penalties for a licensee who disobeyed the law, particularly one who made an overcharge, seems to have become universally accepted. Colorado, District of Columbia, Indiana, Maryland, Missouri, Nebraska, New York, Ohio, Oregon, and Pennsylvania made any violation of the act, including overcharges, a misdemeanor, and Massachusetts punished such conduct by fine. In case of overcharge Maryland, Michigan, Missouri, Nebraska, New Jersey, and New York prescribed forfeiture either of the principal and interest or of such portion as had not been paid by the borrower; New Jersey, Ohio, and Pennsylvania allowed any excess paid by the borrower to be recovered. Oregon forfeited the principal to the school fund of the state and unpaid interest to the debtor. Ohio provided for such forfeiture only after a conviction had been secured on the offense. Massachusetts gave a court of equity power to declare such transactions null and void. Michigan prescribed forfeiture of all interest to the borrower and gave the court discretion as to forfeiture of the principal or any part thereof, and in any event the excess of the charge, with twice the ordinary legal costs, could be recovered. Colorado provided for the recovery of treble the interest charges, and the District of Columbia provided for the forfeiture of all interest and one-quarter of the principal. Indiana and Pennsylvania alone expressly provided that the loan should be void only as to the excess over the legal charges.

Practically all the later laws of the period providing for a license and supervision prescribed that the license could be revoked for any violation of the act or any violation of a regulation thereunder and that if it were revoked for a violation of the act it should not be re-issued—not, at least, within a year. Missouri provided for the revocation of the license only after a second conviction for violation of the act.

### SUMMARY OF THE PROGRESS OF LEGISLATION, 1910–1916

From this review of the legislation of this period certain characteristics stand out which permit of generalization.

The decisions of the supreme courts of Illinois and Pennsylvania holding unconstitutional the laws which had been intended to be small loan laws but which had placed no limit on the amount of loan, combined with the subsequent decision of the Pennsylvania court in holding constitutional a law limited to loans of $300, and the legislative action of Massachusetts, Michigan, New Jersey, and Pennsylvania had practically established that loans under $300 constituted a proper classification of small loan legislation.

The acts of this period showed a decided trend toward allowing the lender to charge at least 3 per cent a month, but whether such charge was to be a flat interest rate or was to be a combination of interest rate and fees was still unsettled. States allowing fees were attempting to limit their repetition, and states generally were prohibiting the taking of interest in advance and the reckoning of interest other than on unpaid balances.

By the end of the period the necessity for official supervision of the business had been generally perceived, and such supervision was coming to be generally required. This supervisory power was being given not to municipal authorities but to a state official.

There was an almost universal requirement of license and bond as conditions to engaging in the small loan business. Most states in this period prescribed criminal penalties for non-licensees engaged in the business; five prescribed forfeiture of principal; four, the forfeiture of all interest on their loans; and one, the forfeiture of unpaid interest. Only New York prescribed such penalties for any small loan made by any non-licensee at a rate of interest in excess of the usual contract rate. Most states prescribed penalty only if the lender was engaged in the small loan business. Massachusetts and Missouri, however, had enacted statutes defining what prima facie constituted "engaging in the business."

The requirements had become general that the license must be conspicuously displayed and that the lender must give the borrower a detailed memorandum of the transaction and receipts for all payments, and more states were requiring that the details of the transaction were to be expressed in the instrument, that the agreement had to be signed personally by the borrower, and that the lender had to give the borrower a copy of that portion of the law which related to charges. The extent to which it was now believed that any regulations which experience had shown to be necessary or even advisable should be enacted into law, was illustrated by the action of New Jersey and New York in making criminal false advertisements or statements issued by small loan companies.

There seemed to be no longer any question that a licensee who disobeyed the law should be declared guilty of a misdemeanor and should as well forfeit the principal and interest of the illegal loan.

A few more of the states had realized that all wage assignments, irrespective of form, should be treated as loans.

## GENERAL CHARACTER OF THE LEGISLATION

In a period of three decades the theory of the legislative control of small loans had undergone radical change. The idea of prohibiting the making of loans at any but the contract rate of interest had completely disappeared. After 1910 not a single act sought to prohibit the small loan business in general.[1] The investigations of the Russell Sage Foundation and the experience of the semi-philanthropic societies had shown the lending of small sums to be a social necessity. And as a logical consequence the death of the theory of prohibition gave added vitality to the theory of regulation and supervision of commercial lenders. This development is made clear by a series of principles which, by 1916, had thoroughly established themselves.

1. The business was recognized as a public necessity.
2. To obtain sufficient capital to supply this necessity the law had to allow the business to be conducted on a commercial basis, and to authorize a return which would attract into the field enough capital to supply the needs of borrowers.
3. This return had necessarily to be above the usual legal contract rate and the conventional banking rate of the state.
4. In consideration of this higher return on loans, the business had to submit to public supervision and regulation.
5. Such supervision and regulation were necessary to prevent the lenders from abusing their privileges and to protect the section of the public most needing protection.
6. The law had to contain certain regulations for the conduct of the business, which experience had shown to be necessary.
7. The law had to govern all loans below a certain amount, except such as were otherwise specially regulated by law.
8. The penalties of the law had to be such that the law would be effective.

By 1916 the small loan problem had become largely the question of making the best application of these generally accepted principles.

[1] There was some legislation against the assignment of unearned wages.

# CHAPTER V

## THE UNIFORM SMALL LOAN LAW

### BEGINNINGS

BY THE year 1916 a new spirit had begun to permeate the small loan business. In the states of Indiana, Iowa, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and Rhode Island, reputable loan brokers and companies licensed under the small loan laws had formed associations. These state associations in turn formed the American Association of Small Loan Brokers[1] for the declared purpose of "uplifting and dignifying the small loan business and assisting state associations in securing legislation, fixing terms fair to the borrower and rates that will yield a fair return to the lender."

In furtherance of these avowed purposes a committee of the Association called upon the Russell Sage Foundation. Mr. Ham had already drafted the small loan laws enacted in Pennsylvania and New Jersey, and after conferences with the committee agreed upon a general redraft to be known as the Uniform Small Loan Law.

The act required all lenders charging more than the banking rate of interest to submit to license and frequent examination by the state banking department. It set up numerous safeguards for the protection of borrowers and provided adequate penalties for violation, with power of enforcement in the hands of the supervising authority. It authorized licensed lenders to charge an interest rate, on loans of less than $300, of 3½ per cent a month, to be computed on unpaid balances, without fees or other charges.

The Uniform Law, in other words, established a classification of small loans by limiting its application to loans of $300 or less. Through its requirement of licensing and its penalties imposed on non-licensees who lent money at more than the contract rate, it

[1] Later to be known as American Industrial Lenders' Association and now the American Association of Personal Finance Companies.

gave a monopoly of the small loan business to the licensed lenders. It sought through regulation and supervision to protect the borrower against his own improvidence and against any possible fraud of the lender. And it provided penalties aimed to enforce the regulations that it imposed. This first draft incorporated into one act the provisions which had been found most satisfactory over an extended period of experimentation in various states.

## FIRST DRAFT OF THE UNIFORM SMALL LOAN LAW

An Act to license and regulate the business of making loans in sums of three hundred dollars ($300) or less, secured or unsecured, at a greater rate of interest than . . . (legal contract rate) . . . per centum per annum, prescribing the rate of interest and charge therefor, and penalties for the violation thereof, and regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan.

**License-Bond** Section 1. . . . (Be it enacted, etc., or other appropriate enacting clause) . . .; No person, co-partnership or corporation shall make any loan of money, credit, goods, or things in action in the amount or to the value of three hundred dollars ($300), or less, whether secured or unsecured, and charge, contract for or receive a greater rate of interest than . . . (legal contract rate) . . . per centum per annum therefor, without first obtaining a license from the . . . (state officer in charge of bank examination). . . . Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant and if the applicant is a co-partnership, or corporation, of every member, or officer thereof; also the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant, at the time of making such application, shall pay to the . . . (officer) . . . the sum of one hundred dollars ($100) as an annual license fee and in full payment of all expenses of examination under and administration of this act. The applicant shall also, at the same time, file with the . . . (officer) . . . a bond in which the applicant shall be the obligor, in the sum of one thousand dollars ($1,000) with one or more sureties to be approved by said . . . (officer) . . . which bond shall run to the people of the state of . . . for the use of that state and of any person or persons who may have a cause for action against the obligor of said bond under the provisions of this act, and shall be conditioned that said obligor will conform to and abide by each and every provision of this act and will pay to the state and to any such person or persons, any and all moneys that may become due or owing to the state and to such person or persons, from said obligor under and by virtue of the provisions of this act.

(1-a) Upon the filing of such application and the approval of said bond and the payment of said fee, the . . . (officer) . . . shall issue a license to the applicant to make loans in accordance with the provisions of this act for a period which shall expire the first day of . . . next following the date of the issuance; provided, that if the license is issued for a period of less than six months the license fee shall be fifty dollars ($50). Such license shall not be assigned.

**Additional bond** (1-b) If in the opinion of the . . . (officer) . . . the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than one thousand dollars ($1,000) satisfactory to the . . . (officer) . . . shall be filed and upon failure of the obligor to file such additional bond, the license shall be revoked by the . . . (officer) . . .

**Revoking license** (1-c) The . . . (officer) . . . may, in his discretion, upon notice to the licensee and an opportunity to be heard, revoke such license if satisfied that the licensee has violated any provision of this act; and in case the licensee shall be convicted a second time of a violation of section two of this act the . . . (officer) . . . shall revoke such license; provided, that the second offense shall have occurred after a prior conviction. The issuance of another license after a revocation shall be at the discretion of the . . . (officer).

**Posting** (1-d) The license shall be kept conspicuously posted in the place of business of the licensee.

**Place of loans** (1-e) No person, co-partnership, or corporation so licensed shall make any loan or transact any business provided for by this act, under any other name, or at any other place of business than that named in the license. Not more than one office or place of business shall be maintained under the same license, but the . . . (officer) . . . may issue more than one license to the same person upon the payment of an additional license fee and the filing of an additional bond for each license.

**Removal** (1-f) In case of the removal of a licensee, he shall at once give written notice thereof to the . . . (officer) . . . who shall attach to the license his consent in writing to the removal.

**Examinations** (1-g) The . . . (officer) . . . for the purpose of discovering violations of this act, may either personally or by any person designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, co-partnership, and corporation by whom or which any such loan shall be made, whether such person, co-partnership, or corporation shall act, or claim to act, as principal, agent or broker, or under, or without the authority of this act; and for that purpose he shall have free access to the books, papers, records and vaults of all such persons, co-partnerships and corporations; he shall also have authority to examine, under oath, all persons whomsoever whose testimony he may require, relative to such loans or business.

**Books and records**

(1-h) The licensee shall keep such books and records as in the opinion of the . . . (officer) . . . will enable . . . (officer) . . . to determine whether the provisions of this act are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least one year after the making of any loan recorded therein.

**False advertising**

(1-i) No licensee or other person or corporation shall print, publish or distribute, or cause to be printed, published or distributed, in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action, in amounts of three hundred dollars ($300) or less, which is false or calculated to deceive.

**Interest and charges**

Section 2. Every person, co-partnership and corporation licensed hereunder may loan any sum of money, goods or things in action not exceeding in amount or value the sum of three hundred dollars ($300) and may charge, contract for and receive thereon interest at a rate not to exceed three and one-half (3½) per cent per month.

**No advance interest**

(2-a) Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing, or recording in any public office, any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter.

**When loan is void**

(2-b) If interest, or charges in excess of those permitted by this act shall be charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest or charges whatsoever.

(2-c) No person shall owe any licensee at any time more than three hundred dollars ($300) for principal.

**Restrictions on methods of making and paying loans**

Section 3. Every licensee shall:

(3-a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee and the rate of interest charged. Upon such statement there shall be printed in English a copy of section two (2) of this act.

(3-b) Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made.

(3-c) Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "paid" or "cancelled," and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

(3-d) No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

**Salary and wage assignments**

Section 4. No assignment of any salary or wages, earned or to be earned, given to secure a loan, shall be valid unless in writing signed in person by the borrower, nor, if the borrower is married, unless it shall be signed in person by both husband and wife; nor shall such assignment be valid unless given to secure a debt contracted simultaneously with its execution.

(4-a) Under any such assignment or order for the payment of future salary or wages given as security for a loan made under this act, a sum of at least ten (10) per centum of the borrower's salary or wages, but not exceeding such sum as may be levied upon an execution, shall be collectible therefrom at the time of each payment of salary or wages, from the time that a copy thereof, verified by the oath of the licensee, or his agent, together with a verified statement of the amount unpaid upon such loan, has been served upon the employer.

**Penalties**

Section 5. No person, co-partnership or corporation, except as authorized by this act, shall, directly or indirectly, charge, contract for, or receive any interest or consideration greater than . . . (the legal contract rate) . . . per centum per annum upon the loan, use or forbearance of money, goods or things in action or upon the loan, use or sale of credit, of the amount or value of three hundred dollars ($300) or less.

(5-a) The foregoing prohibition shall apply to any person who, as security for any such loan, use or forbearance of money, goods or things in action or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by this act.

(5-b) Any person, and the several officers of any corporation, who shall violate the foregoing prohibitions shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment of not more than six (6) months, or by both such fine and imprisonment in the discretion of the court.

(5-c) No loan for which a greater rate of interest or charge than is allowed by this act has been contracted for or received, wherever made, shall be enforced in this state and any person in anywise participating therein in this state shall be subject to the provisions of this act.

**Exemptions**

Section 6. This act shall not apply to any person, co-partnership or corporation doing business under any law of this state or of the United States relating to banks, trust companies, building and loan associations, or pawnbrokers.

Section 7. Chapter . . . of the laws of 19 . . . and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Section 8. (Clause here in usual form for each state providing when act shall become effective.)

## CHANGES IN THE UNIFORM LAW

The first draft of the Uniform Law was made in 1916. Since that time there have been four revisions. Though these have altered the form of the act and changed details, the fifth draft is in substance similar to the first draft.

In the second draft, adopted in 1918, the form was changed chiefly by dividing the clauses of Section 1 of the first draft into the first 12 separate sections, and the act was thereby given practically the same physical appearance as it has today. Though there were several changes in phraseology, substantial changes were few in number. The prohibition against the reissuance of a revoked license contained in Section 6 of the second and subsequent drafts was not contained in the first draft. Section 1-e of the first draft prohibited the licensee both from making any loan and from transacting any business except at the place designated in the license; Section 8 of the second draft prohibited only his making a loan except at the designated place. The later draft required records to be preserved for two years (Section 11 of the second draft) instead of for one year (Section 1-h of first draft).

The second draft confined the licensee to loans of money (Section 13) and unlike the first draft did not allow him to accept loans also of "goods and things in action" (Section 2, first draft). Under the second draft the licensee was allowed to lend sums larger than $300 but such loans were to be subject to the regular usury laws of the state. Otherwise Section 2 of the first draft is Section 13 of the second. Section 3-a, b, and c of the first draft is Section 14 of the second, and Section 3-d of the first draft is Section 15 of the second. Sections 4 and 4-a of the first draft are Section 16 of the second, except that Section 16 dispensed with the consent of the spouse if the couple had been living apart for five months. Sections 5, 5-a, and 5-d of the first draft are Section 17 of the second draft. Sections 5-b and 5-c in substance are made Section 18 of the second draft. Section 6 of the first draft is made Section 19 of the second.

The third draft was adopted in November, 1919. The only material change made in the third draft from the second draft was that in Section 16 (Section 4 of the first draft) the requirement of the personal signature of the borrower and of his or her spouse was made to apply not only to wage assignments but also to chattel mortgages and other liens on household furniture in the possession and use of the borrower as well as to commissions and other compensation for services.

The fourth draft of the Uniform Law was adopted in December, 1923. It changed the third draft in three particulars. It clarified the meaning of the last paragraph of Section 13 and applied the $300 limitation not only to direct liabilities but to contingent liabilities such as those of an endorser, co-maker, or guarantor.[1] In Section 14 a paragraph was inserted which compelled the licensee to permit payment of any loan in whole or in part before its maturity with interest to the date of payment only.

[1] The obligation of over $300 by one borrower makes the loan void even though the excess part of such obligation was a mere accommodation endorsement: Westville and Hamden Loan Co. *v.* Pasqual, 109 Conn. 110 (1929).

The change which would seem to be most significant in the new draft was included merely as a precaution. This was the addition of a new section, numbered 16, which expressly brought all purchases of wages for $300 or less under the act. Necessarily this changed the numbering of the later sections. Under decisions in several jurisdictions[1] it had been believed that such so-called purchases were governed by the earlier drafts of the act, that they were in fact loans. The unfortunate decision of the Georgia Supreme Court,[2] and the Ohio case of State *v.* Mehaffey,[3] which construed one particular statute and was not intended to cover all such transactions, made the insertion of this clause advisable.

The fifth draft alters the Uniform Law in more than detail. The changes may be summarized largely by saying that they make the regulation of lenders more strict by giving greater discretion to the licensing authority. But there are important new provisions such as a minimum capital requirement for licensees, a new requirement for annual reports, a new arrangement of penalties. It may prove convenient to list the real innovations.

Several of the minor changes are precautionary in purpose to assure the law's constitutionality. The title has been altered so as to be more inclusive and prevent attack in states where the title must give notice of the full contents. There are specific provisions for judicial review of the commissioner's denial of license or other administrative orders. The constitutionality of the act is not to be impaired by the unconstitutionality of one part thereof.

The license is no longer issued annually but continues valid until revoked, subject to payment of an annual fee. Because the commissioner has discretion in the issuance of a license and must investigate the applicant's standing, an investigation fee of $50 is added. The applicant must prove not only his fitness but also possession of liquid assets of at least $25,000. Such capital must be constantly maintained.

[1] Willson *v.* Fisher, 75 Misc. (N. Y.) 382 (1912), affirmed, 155 App. Div. 877; Wilmarth *v.* Heine, 137 App. Div. 526 (1910); McWhite *v.* State, 143 Tenn. 222 (1920); Tennessee Finance Co. *v.* Thompson, 278 Fed. 597 (1922); State *v.* Tennessee Finance Co., 152 Tenn. 40 (1925); Cotton *v.* Cooper, 160 S. W. (Texas) 597 (1913), affirmed, 209 S. W. 135; Brandt *v.* Hall, 40 Ind. App. 651 (1907).

[2] Tollison *v.* George, 153 Ga. 612 (1922).

[3] 112 Ohio St. 330 (1925).

The commissioner's power of supervision is greatly increased. He may make rules and regulations, within the act, binding on the licensees; he may suspend a license pending investigation; he may require attendance of witnesses at examinations. The commissioner is required to take action on some occasions: he must revoke licenses for violations of the act or of his regulations thereunder; he must investigate licensees annually.

Licensees must make annual reports giving information required by the commissioner, and, in order not to confuse their accounts, must not conduct any other business in connection with their money-lending, except as authorized by the commissioner.

The fifth draft declares every contract of loan in violation of its provisions not only a misdemeanor but a nullity as well. It makes more clear the prohibition of additional charges beyond the authorized interest. And it recognizes the validity of loans made in other states under acts similar in principle to this act. The remaining additions are rules for change over from the previous licensing acts to the new act.

## MAIN PROVISIONS OF THE LAW SUMMARIZED

From this sketch it is apparent that though changes have been made in the form and detail of the Uniform Law and though improvements in administration have been added, there has been no change in the general plan and purpose of the act from its first drafting in 1916.

Its classification remains the same. The limit of $300 for small loans has been found by experience to meet the needs of the borrowers which the law seeks to protect.

The rate remains unaltered. The charge of 3½ per cent a month has proved itself adequate to attract the required capital. The charge, however, is not an absolute but a maximum one. Competition has already reduced the charge in some communities. The prohibitions of all charges other than authorized interest, of taking interest in advance, of compounding interest, and of computing interest other than on unpaid balances, have sufficed to keep the charges within the limits prescribed.

By allowing only licensees to charge this commercially profitable fee and confining non-licensees to the legal contract rate or the conventional banking rate, the law has given a monopoly of the small loan business to licensees. Non-licensees making small loans are punished criminally, and their loans are treated as void.

In compensation for a monopoly of the business, licensees must submit to official regulation and supervision. Their records are subject to examination by the commissioner at any time; they must make annual reports; they must not transact other business in connection with their loan business. Licenses are to be granted only to those applicants who will conduct their business properly and who have the required capital assets. They are to be revoked for violation of the act. Many of the supervisory requirements are meant specifically to protect the individual borrower. The license must set forth the lender's identity fully; it must be conspicuously posted. The lender must give the borrower memoranda and receipts, must inform him of the legal charges, must cancel papers on payment, and must not take powers of attorney or confessions of judgment. He may not publish misleading statements. Most important, he must file a bond adequate to protect the borrower and the state. Some of the supervisory requirements are meant to guard the borrower from his own improvidence. Certain loans require the consent of the spouse. Wage-assignment collections are limited to a small proportion of the wages due. Payment of the loan may be made at any time before the full term of the loan has expired, with interest only to the date of payment.

For violations of the act three sorts of penalties are provided. Both licensees and non-licensees are guilty of a misdemeanor for not observing requirements, and their loans, both as to principal and interest, are subject to forfeiture. Licensees are to suffer revocation of license in addition to other punishment.

Through these provisions the four essentials of small loan legislation have been supplied by the Uniform Law: proper classification, an economic charge, a monopoly by licensees so as to effect official supervision, and adequate penalties to make the requirements enforceable.

# CHAPTER VI

# THE ERA OF THE UNIFORM SMALL LOAN LAW, 1917–1932

## PROGRESS OF THE UNIFORM LAW

THE acceptance of the Uniform Law by the various states has been rapid.

In 1917 Illinois,[1] Indiana,[2] and Maine[3] all adopted and enacted into law the first draft of the Uniform Law, each with variations. These variations, although preventing the act from becoming as fully regulatory as the framers desired, did not affect its main essentials. For example, Indiana in its small loan law did not in any way regulate wage assignments, which were the subject of another statute; Maine did not limit the collection of wage assignments to 10 per cent of any payment of wages; and Illinois allowed 50 per cent of any payment of wages to be taken on a wage assignment[4] and permitted lenders to take confessions of judgment and powers of attorney to confess judgment. Indiana allowed, in addition to the 3½ per cent interest, a reasonable charge for attorney fees in foreclosure proceedings,[5] and added industrial banks to the list of exemptions. It permitted licensees to make loans greater than $300 but only at the legal rate of interest. Maine also exempted industrial banks and in 1923[6] amended its laws so as to require monthly reports of all loans over $10 and to allow a minimum fee of 25 cents.

Although in 1917 New Hampshire[7] adopted most of the Uniform

[1] Laws 1917, p. 553.

[2] Acts 1917, ch. 125.

[3] Acts and Resolves 1917, ch. 298.

[4] The provision as to assignment of 50 per cent of wages cannot be evaded by taking two assignments of 50 per cent each: Snite *v.* Chicago and E. I. Ry. Co., 247 Ill. App. 118 (1927).

[5] A provision for attorney fees, not in a foreclosure action, in addition to the authorized charges, is a violation of the statute and makes the loan void: Wells *v.* Indianapolis Co., 161 N. E. (Ind. App.) 687 (1928).

[6] Acts and Resolves 1923, ch. 144.

[7] Laws 1917, ch. 228.

Law, except for the wage-assignment regulation, it rejected the flat-rate system. Instead, it allowed 3 per cent a month interest on loans in excess of $15 and an added fee of $1.00 on loans of $50 or less and of $2.00 on other loans; it provided, however, that renewal charges were to be made no oftener than once in every four months. Even under the direct terms of this law the charge on practically all loans between $15 and $100 would be heavier than it would be under the flat 3½ per cent rate.

In 1918 both Maryland and Virginia adopted the uniform legislation. Maryland[1] enacted the second draft of the Uniform Law. This it amended in 1924[2] so that at present the Maryland law is substantially the fourth draft of the Uniform Act. In the list of exceptions Maryland omits pawnbrokers and adds industrial banks, specifying their charges.[3] Virginia[4] also adopted the elements of the Uniform Act except that it allowed 5 per cent a month on all loans not exceeding $50. Details of the law were amended in 1920.[5] This law was replaced by the Virginia act of 1922,[6] which was the third draft of the Uniform Act with only minor variations. It did not penalize an illegal small loan unless made by a person engaged in the business of lending small sums. This in turn was amended in 1928[7] by substituting the penalty provided in the fourth draft—which made any violation a misdemeanor—and by bringing wage assignments and salary purchases within the provisions of the small loan law.[8]

The year 1919 saw three more states tending toward uniform legislation. Arizona[9] adopted the "Ideal Small Loan Law" which contained, amid much unnecessary phraseology and matter, most of the essential provisions of the Uniform Act. Connecticut[10] adopted the Uniform Law practically in the form of the second draft. An amendment in 1923[11] gave the banking commissioner

[1] Laws 1918, ch. 88.

[2] Laws 1924, ch. 115.

[3] By amendment in 1929 (ch. 564) the charges of industrial banks was increased for Frederick County.

[4] Acts 1918, ch. 402.

[5] Acts 1920, ch. 299.

[6] Acts 1922, ch. 300.

[7] Acts 1928, ch. 152.

[8] This provision, that payments not exceeding $300 in consideration for the sale or transfer of wages shall be deemed a loan (Section 16 of the Uniform Law), was held constitutional in Virginia in 1929: Sweat *v.* Comm., 148 S. E. (Va.) 774 (1929).

[9] Acts 1919, ch. 91.

[10] Public Acts 1919, ch. 219.

[11] Public Acts 1923, ch. 223.

power to refuse a license. Pennsylvania, on the recommendation of its department of banking, amended its small loan act of 1915 by adopting in 1919[1] the flat-rate system and fixing 3½ per cent a month as the maximum charge on all loans of $300 or less. These amendments made the Pennsylvania law practically a Uniform Act. There were three principal differences and several minor ones. The banking commissioner had discretion to refuse or revoke a license. Loans made at illegal rates were void only to the extent of the charge over 6 per cent per annum but, if made by a licensee, were punished besides by a civil penalty of $50. Specific regulations as to wage assignments and confessions of judgment were omitted. If the decision of a lower court in Pennsylvania, that assignments of future wages are invalid,[2] is sustained by the Supreme Court, there is no reason for regulating wage assignments. And if it is overruled, the special statute as to wage assignments in Pennsylvania will remain in effect. The act differed from the Uniform Law also in that it did not prohibit false and misleading advertisements and, though limiting individual loans to $300, seems not to have limited the total indebtedness of an individual borrower.

In 1920 Georgia[3] enacted the second draft of the Uniform Act.[4] In 1921 Iowa[5] enacted the third draft, with minor changes exempting industrial banks and requiring the consent of the spouse to wage assignments notwithstanding separation. Michigan, however, in 1921[6] changed the Uniform Act in much the same way as New Hampshire had changed it. Michigan fixed the interest rate at 3 per cent a month on loans of $100 or less and at 2 per cent a month on loans between $100 and $300, and in addition provided for fees of $1.00 on loans of $50 or less and of $2.00 on loans between $50 and $300 if the loans were for four months, otherwise it per-

[1] Laws 1919, no. 186. [2] See p. 206.

[3] Acts and Resolutions 1920, no. 741, p. 215.

[4] The act as a whole is not unconstitutional: Morgan *v.* Lowry, 168 Ga. 723 (1929); appeal dismissed for want of federal question, 281 U. S. 691 (1930). Though the act appoints the state bank examiner to be licensing and supervising official and no such officer existed when the act was passed, the superintendent of banks may act in such capacity: Mathis *v.* Fulton Industrial Corporation, 168 Ga. 719 (1919); Morgan *v.* Lowry, *supra*. An agreement to pay attorney fees in addition to authorized charges makes the loan uncollectible: Seaboard Security Co. *v.* Jones, 40 Ga. App. 710 (1930).

[5] Acts 1921, ch. 35. [6] Public Acts 1921, no. 317.

mitted fees at half the above rates. Michigan in 1925[1] amended its law of 1921 by adopting the flat rate of 3½ per cent a month and by otherwise making the law correspond to the fourth draft of the Uniform Act.

In 1923 Rhode Island[2] enacted the third draft of the Uniform Law with a few minor variations. An amendment in 1927[3] permitted the bank commissioner to authorize any licensee under the small loan act to make loans, subject to regulations prescribed by him, of $300 or less for periods not exceeding one year, and on such loans to charge interest of 8 per cent a year, collectible in advance according to banking custom and repayable in instalments. A licensee who made such loans without the authorization of the commissioner or contrary to his regulations was to be guilty of a misdemeanor. This amendment permitted authorized licensees to engage in the industrial banking type of lending.

In 1925 West Virginia[4] adopted the fourth draft of the Uniform Act. Florida,[5] too, adopted the fourth draft except that its act exempted isolated transactions and bona fide purchases of choses in action, was not applicable to Morris Plan companies and those doing a similar business, or to counties having a population of less than 40,000, and omitted specific mention of wage "purchases."[6]

In 1925 Tennessee passed an act[7] which followed the third draft of the Uniform Law with several exceptions. The first section of the Tennessee act specified, "The provision of this Act shall apply to all persons, firms and corporations engaged in the business of buying, purchasing or taking assignments of any wages, or salary due or any future salary or wages, who for the purpose of this Act shall be deemed to be engaged in the business of loaning money." Tennessee made the licensing official the county court clerk of the county where the business was to be located and divided the license fee, $50 going to the county clerk and $50 to the state treasurer for the use of the superintendent of banks. In Tennessee the

[1] Public Acts 1925, no. 181.

[2] Public Laws 1923, ch. 2312.

[3] Public Laws 1927, ch. 1060.

[4] Acts 1925, ch. 91. Acts 1929, ch. 24, reduced the rate to 2 per cent a month.

[5] General Acts 1925, ch. 10177.

[6] This omission may not have affected the substance of the wage-assignment provisions. See pp. 222 ff.

[7] Public Acts 1925, ch. 153.

examination provided for in Section 10 of the Uniform Act might be conducted by either the licensing official or the superintendent of banks.

Section 13 allowed interest at the rate of 6 per cent per annum and called the other 3 per cent a month a fee; it was the 3 per cent a month fee which "shall not be payable in advance, but shall be made and computed on unpaid balances."[1] Notarial fees had to be paid by the lender. The Tennessee act did not prohibit taking of confessions of judgment and powers of attorney. In Section 16 (Section 17 of the fourth draft) the consent of the spouse was not required nor was the giving of wage assignments as security limited to debts contracted simultaneously with the execution of such assignments. Morris Plan banks and companies doing a similar business in the state of Tennessee were excepted.

Two states adopted the fourth draft in 1927. In Missouri[2] the commissioner of finance was designated the licensing and supervising official. The only change from the draft was the omission in the Missouri law of Section 16, which specified that "purchases" of wages not exceeding $300 were to be considered as loans. This omission was supplied by amendment two years later.[3] This amendment of 1929 reduced the interest charge to 2½ per cent a month and carefully set out the items which should be included in the licensees' annual reports. Wisconsin[4] made no such change in the Uniform Law. It gave authority to the commissioner of banking to license and supervise, and added credit unions to the list of those exempted from the provisions of the act.

Louisiana had some difficulty in her enactment because of the changes she attempted to make in the fourth draft. As first passed and approved July 11, 1928,[5] the Louisiana law not only provided specially for the form of note that the borrower was to give to the lender and the form of payment that the lender was to make to the borrower, but it added considerably to the list of those exempted from the provisions of the act. One such added exemption was inaccurate in what it purported to specify; several of the others

[1] This division of charges was made out of regard to the state constitution, art. 11, sec. 7, which forbids the legislature to enact laws permitting a higher rate of interest than 10 per cent per annum.

[2] Laws 1927, p. 252.

[3] Laws 1929, p. 201. See p. 104.

[4] Laws 1927, ch. 540.

[5] Acts 1928, no. 92.

were, according to a lower court, discriminatory and therefore caused the law to be unconstitutional.[1] To remedy such defect the legislature reenacted the law at its special session the same year.[2] As approved December 18, 1928, the law contained no special provision for form of note or payment and exempted only banks, trust companies, credit unions, and building and loan associations. In such form it was sustained by the state supreme court.[3]

The year 1929 witnessed three progressive amendments to the Uniform Laws of Maine, Missouri, and Connecticut. Maine gave the commissioner discretion in issuing licenses.[4] Missouri provided that all loans in violation of any provision of the act, and the security taken for such loans, were to be void.[5] The fourth draft had declared void only those loans wherein illegal charges were made. Connecticut, it will be remembered, had enacted the first draft in 1919 and subsequently had amended it to give the banking commissioner discretion to refuse a license. In 1929 Connecticut took another advanced step.[6] She amended the law to provide that the applicant for license must furnish the commissioner with satisfactory proof of a capital investment of $25,000, to be permanently maintained by the licensee, except in towns with a population of less than 10,000 where the investment must be not less than $10,000. Though this provision was not to apply to lenders already licensed, no license was to be transferable from one town to another. These three provisions—giving the commissioner discretion, making illegal loans void, and requiring a minimum capital investment —were later incorporated into the fifth draft of the Uniform Law.

In 1931 Oregon and California made changes in their basic small loan legislation. The Oregon small loan act, passed in 1916,

[1] Decision of Judge Walter L. Gleason, November 23, 1928, Civil District Court, Division "D," in Higgins *v.* Brock.

[2] Acts, Extra Session 1928, no. 7.

[3] State *v.* Hill, 168 La. 761 (1929). The act was again sustained, indirectly, in Davis Loan Co. *v.* Blanchard, 129 So. (La.) 413 (1930), when the court held void a loan agreement which provided for notarial fees in addition to the authorized charge.

[4] Acts and Resolves 1929, ch. 208. At the same session (ch. 319) Maine reduced the interest rate from 3½ to 3 per cent a month.

[5] Laws 1929, p. 201, sec. 13.

[6] Public Acts 1929, ch. 207.

was repealed and a new law enacted,[1] based in part on the latest (fifth) draft of the Uniform Law and partly on recommendations of the superintendent of banks. The new law contains many new features. Licenses may be granted to Oregon corporations or foreign corporations qualified to do business in the state, but individuals and members of co-partnerships or associations must be bona fide residents of the state to obtain license. Granting of licenses is conditioned upon the absence of any reason which in the judgment of the licensing official might warrant refusal thereof. Provision is made for appeal from refusal to license and from revocation. The licensing official is empowered to make rules and regulations for the proper conduct of the business. The licensing official may revoke a license for violation of any provision of the act or of any rule or regulation, for failure to pay fees or to maintain bond in effect, or failure to keep the corporation in good standing, if the licensee be a corporation. An annual report is required. Interest is limited to 3 per cent a month on unpaid balances, with a minimum charge of $1.00 on secured loans.

The provision governing interest on unsecured loans of $30 or less is particularly striking. On loans made to one person without additional signature, endorsement, or guarantee of another, the licensee may charge any agreed amount. The agreement must be in a form approved by the licensing official and must state the date, the amount, the terms of repayment, and the total amount of consideration charged. Borrowers do not have the option of prepaying loans under $30.

Liens on real estate may not be taken by licensees at a rate in excess of 10 per cent per annum. Conviction of a licensee of charging excess interest renders a loan void. Definite provision is made for prosecution of violators by district attorneys upon complaint of the licensing official. The exemption clause is general in language and does not list exempted institutions as does the Uniform Law.

The 1931 California legislation[2] consisted of amendments to the Personal Property Brokers Act, passed in 1909,[3] material for the amendments being derived mainly from some sections of the fifth draft of the Uniform Law. The benefit or percentage allowed to

[1] Oregon Laws 1931, ch. 385. [2] Statutes, 1931, ch. 273. [3] See p. 32.

licensees is increased to 3½ per cent from 2½ per cent a month on unpaid balances. Contracts calling for benefit in excess of the legal maximum are invalid. The commissioner of corporations is designated as the licensing official. Granting of licenses is dependent upon affirmative finding that the applicant is qualified by financial responsibility, experience, and general fitness. Revocation of license is compulsory for failure to pay fees or provide bond, for violation of the provisions of the act, for failure to comply with requirements of the licensing official. In addition, the provision of the fifth draft is included, requiring revocation if "any fact or condition exists which, if it had existed at the time of the original application for such license, would clearly have warranted the Commissioner in refusing the original issuance of such license."

The licensing official is given authority to take testimony of witnesses under oath. An annual report is required. Authority is granted the licensing official to establish rules and regulations, and the first rules, effective August 14, 1931, surround the loan transaction with many protections to the borrower.

In 1932 New York and New Jersey adopted small loan laws containing substantially all the provisions of the latest (fifth) draft of the Uniform Act. The New York maximum charge was fixed at 3 per cent a month on the first $150 of any loan and 2½ per cent a month on the balance. The splitting of loans was forbidden. The New Jersey rate was raised from 1½ per cent to 2½ per cent a calendar month, and, for the first time in small loan legislation, the day rate was set at one thirty-first of 2½ per cent for each elapsed day of a period less than a month. Both acts granted wide authority to the supervisory officials over issuance, revocation, and suspension of charters, and contained the fifth draft provisions for licensee examinations, annual reports, rules and regulations, and so forth, as well as the more clarifying language of this draft relating to violations by both licensees and non-licensees. To prevent repetition of the destructive stock-promoting activities of some licensees prior to the 1929 rate-reduction amendment, the New Jersey act included a provision forbidding corporate licensees to sell capital stock publicly without approval of the supervisor. These acts introduced the innovation of continuing licenses, to be granted only after investigation of the financial responsibility, experience, and character of the applicant and the need of the community. Minimum capital of $25,000 and bond of $5,000 is required by the new acts. Loans on real estate are forbidden.

Minor variations, as have already been indicated, were made in practically every state but, except in the case of Florida, none of the variations seems seriously to affect any of the essentials of the Uniform Act.[1]

## OTHER SMALL LOAN LEGISLATION

After 1917 the Uniform Act was sufficiently well known to be taken as a starting point in any consideration of small loan legislation. The question for the legislature became whether the Uniform Act should be adopted, either in whole or in part. But the very interest in the small loan problem which led to the formulation of the Uniform Law led to other acts which, before the Uniform Law was generally understood, diverged widely from it. The year 1917 witnessed several statutes of this sort. Delaware,[2] for instance, made its law of 1905,[3] allowing 11 per cent per annum to bonded registrants, applicable to loans of $500 or less. It made no provision for supervision.[4] Tennessee in 1917[5] practically repassed its personal property law of 1905[6] with the fees reduced and, to conform to the decision of its supreme court in Spicer *v.* King,[7] made the law state-wide in application and limited the exceptions to banks, pawnbrokers, and merchants taking mortgages to secure debts for goods and supplies furnished by them. The law was expressly made applicable only to those engaged in the business and not to incidental loans made by individuals.[8] The adoption of a modified Uniform Law in 1925[9] repealed this act by implication as far as loans of $300 or less were concerned.

The progress expressed in the Uniform Law had not affected Colorado in 1917,[10] for it passed an act providing that on loans not exceeding $500, secured by personal property or wage assignments, it was a misdemeanor to charge more than 1 per cent a month plus a

[1] See Chapter VII.

[2] Laws 1917, ch. 239.

[3] See p. 34.

[4] The law was in fact not enforceable.

[5] Public Acts 1917, ch. 62.

[6] See pp. 36 ff.

[7] 136 Tenn. 408 (1916).

[8] An amendment to this law was enacted in 1925 (ch. 76) which imposed on the state Department of Insurance and Banking the duty of enforcing the law.

[9] See p. 102.

[10] Laws 1917, ch. 93.

fee of $1.00, and a transaction in contravention was void. The act required service of wage assignments on the employer within seven days in order to permit of an action on the assignment. By its law of 1919[1] Colorado enacted practically verbatim the third draft of the Uniform Act except that it limited the return on loans of $300 or less to 1 per cent a month plus a fee of $1.00 four times a year.[2] This law, with its verbal provisions for licensing, regulation, penalty, and supervision, was in practice, of course, not an advanced piece of legislation. The low interest rate was in effect a return to the prohibitive theory. To evade the law Colorado lenders incorporated under the liberal provisions of the industrial bank act and, by using deceptive methods, could legally charge higher rates.

Ten years later Alabama[3] followed in the footsteps of Colorado. It enacted a law which in form followed the fourth draft of the Uniform Act. It provided for license, for bond, for supervision, for penalty, all in the most approved manner. But it limited the rate of interest to two-thirds of one per cent a month, 8 per cent a year. The act purported to apply to all counties of 200,000 population or more, and to all loans under $100, except those made by banks, trust companies, building and loan associations, and farmers and turpentine operators furnishing supplies to their employes. It repealed the law of 1901 which had allowed 12 per cent interest in the counties surrounding Birmingham.[4] Such legislation was, of course, useless. Not only did it seek to impose an uneconomic rate of interest; it sought to impose elaborate regulation on small loans and to make no compensation therefor. The legal rate of interest in Alabama was already 8 per cent. The lender of sums under $100 was therefore penalized by legal regulations rather than encouraged to supply needy borrowers.

The experience of Texas was no more intelligent than that of Colorado and Alabama. The Texas law of 1915, it will be remembered, was declared unconstitutional in so far as it provided for service of process on the county judge and judgment against the loan broker on the basis of such service.[5] With the sections omitted

[1] Laws 1919, ch. 159.

[2] The act has been held constitutional: Rice *v.* Franklin Loan and Finance Co., 82 Colo. 163 (1927).

[3] General Laws 1927, no. 268. [4] See pp. 32 f. [5] See pp. 75, 204 f.

that contained such provisions, there was no law in Texas sufficient for "regulating or punishing loan brokers who wilfully violate the laws." Money-lenders were "taking advantage of the poor, helpless, and ignorant class of people and . . . charging high and usurious rates of interest, and . . . accepting assignments of wages from such persons and having such persons discharged from positions."[1] For those reasons Texas in 1927 enacted a new law relating to loan brokers.[2]

The new law defined a loan broker as "a person, firm, or corporation who pursues the business of lending money, purchasing salaries and taking for security . . . an assignment of wages . . . or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture." Such loan brokers had to file with the county clerk their own names and residences and the names of agents in the county on whom process could be served. They had, as well, to file a bond. Each such broker had to register all transactions in a book open to public inspection, which showed all details of the security given; and had to give the borrower a memorandum and receipts showing the amount of interest. Wage assignments had to be assented to by the wife. Violation of such provisions was punishable by fine and imprisonment. All contracts for usurious interest were declared contrary to public policy "and all of such interest . . . shall be void." The Texas law provides that interest is usurious above 10 per cent per annum.[3]

It is obvious that the Texas act is not satisfactory legislation. Its one merit is that it avoids the provision that caused the former act to be declared unconstitutional. It requires little official regulation, no official supervision. Most important, it enacts a rate of interest that is, for small loans, economically impossible.

Delaware with a rate of 11 per cent, Colorado with 12 per cent, Alabama with 8 per cent, and Texas with 10 per cent, were all enacting the prohibitive theory. California made no great improvement over these four states by her legislation in 1918. Prior to 1918 California had been a free contract state with no usury laws. Through the use of the initiative it passed a general usury act,[4] seemingly with no consideration of the experiments elsewhere

[1] General and Special Laws, Extra Session 1927, ch. 17. [2] *Ibid.*

[3] Revised Civil Statutes 1925, art. 5071. [4] Statutes 1919, LXXXIII.

in small loan legislation. Its effect was to limit the return on secured loans of $1,000 or less to 12 per cent per annum plus a fee of 5 per cent per annum if the loan were for six months, with no fee allowed on renewals within a year. The act made no provision for regulation or supervision. It has been superseded, of course, as it applies to small loans, by the act of 1931.

Of all the states which have enacted completely new legislation since 1916 and have not taken the Uniform Law as their model, Utah alone has been successful in meeting the problem. Utah in 1917 followed the New Jersey law of 1914 and thereby adopted a comparatively advanced piece of legislation.[1]

Amendments to the pre-uniform acts were not frequent. The states either adopted the Uniform Law as a whole or rested content with their existing legislation. In 1929 Ohio adopted the uniform classification and established a limit of $300 on loans on which interest over the contract rate could be charged.[2] The law had formerly established no limit. Licensees lending over $300 can now charge only 8 per cent per annum on the excess.

In 1928 New Jersey enlarged the powers of provident loan associations to allow them to make loans up to $300.[3] The limit had formerly been $200. As we have already noted, in 1929 New Jersey reduced the interest allowed under her small loan law to 1½ per cent a month.[4] In 1930[5] she applied the same rate to provident loan associations.

In 1929 Delaware attempted in a way to remedy the defects in her inadequate laws of 1905 and 1917. The new law[6] was statewide in its application. The state bank commissioner was to issue "certificates of registration" to applicants to make loans not exceeding $500. Though no bond was to be required, the commissioner was given authority to refuse or revoke the certificate. The act provided some slight regulation as to the lender giving the borrower a copy of the instrument and made careful provision for penalties for violations. But it made no provision for supervision and, most important, it made no change in the interest rate. The sole effect of the new law was to make applicable to the whole state a rate on small loans that was formerly allowed only in one county. That rate is 11 per cent per annum.

[1] Laws 1917, ch. 41.
[2] Acts 1929, p. 43.
[3] Laws 1928, ch. 250.
[4] See p. 68.
[5] Laws 1930, ch. 193.
[6] Laws 1929, ch. 260.

In 1931 Oregon passed a motor vehicle finance act,[1] requiring license for the business of making loans on motor vehicles at rates in excess of 10 per cent per annum. The act is modeled closely upon its 1931 small loan act, and contains identical provisions regarding licensing, bond, examination and report, penalties, and so forth. The maximum rate of interest allowed is 3 per cent a month on unpaid principal balances, with a maximum loan at this rate of $800. Charges for insurances are limited to $15.

## WAGE-ASSIGNMENT LEGISLATION

Because of the rapid adoption of the Uniform Law there were few statutes on the subject of wage assignments which were not a part of the small loan legislation in general. Minnesota in 1917[2] required wage assignments to be served on the employer within three days. In 1918 Kentucky[3] prescribed that no assignment of wages should be valid against the employer unless assented to by him in writing. In 1927 Delaware[4] similarly enlarged its wage-assignment law to require the written consent of the employer and provided that the only charge on wage-assignment loans should be interest at 6 per cent per annum.

Three states made loans secured by wage assignments subject to the same regulation as other small loans. The North Carolina usury law of 1907 had limited interest on loans secured by mortgages on household furniture to 6 per cent per annum. In 1927[5] it made the same limitations applicable to money lent "upon any assignment or sale of wages, earned or to be earned." The next year New York[6] added to her small loan law the provision of the fourth draft of the Uniform Act that all assignments or sales of wages or salaries, earned or to be earned, made in consideration for the payment of $300 or less, should be considered a loan and subject to the small loan law. This provision was also included in the 1931 Oregon law, the 1932 New York and New Jersey laws, and was added by amendment to the Virginia[7] act in 1927, and to the Ohio[8] and Missouri[9] acts in 1928. This amendment was the more

[1] Oregon Laws 1931, ch. 377.
[2] Session Laws 1917, ch. 321.
[3] Acts 1918, ch. 36.
[4] Laws 1927, ch. 208.
[5] Public Laws 1927, ch. 72.
[6] Laws 1928, ch. 365.
[7] Acts 1928, ch. 152.
[8] Acts 1929, p. 43.
[9] Laws 1929, p. 201.

necessary in Ohio because of the decision in State *v.* Mehaffey.[1] At the same time[2] Ohio reduced the amount of wages that could be assigned, formerly 50 per cent in all cases, to 25 per cent where the wage-earner is married.

## CHANGE IN THE LEGISLATIVE SITUATION

By 1916 the Russell Sage Foundation had worked out all the principles of effective small loan legislation except the exact rate of interest to be allowed licensed lenders. These principles, however, had been adopted in their entirety only by one state, New Jersey. The Foundation's recommendations were opposed in every state by practically all the high-rate commercial lenders. There were almost as many theories as to what were proper and necessary provisions in a small loan act as there were laws on the subject. When a new act was introduced into any legislature, the Foundation had to begin at the beginning and inform the legislators about the purpose of the enactment and the practicable ways of solving it. There was no accepted standard with which to compare the proposed act.

The situation soon changed. By 1917 a satisfactory rate of interest had been ascertained. The Foundation and the reputable lenders had united their efforts to attain the same end. It was no longer necessary to argue from experience under different types of laws: this uniform measure had become the law in three states, in five states, in eight states, and finally in 25 states. There were practical results to show that the act had worked satisfactorily.

[1] See p. 221, note.

[2] Acts 1929, p. 479.

# CHAPTER VII

## EXISTING SMALL LOAN LEGISLATION

LAWS specially regulating small loans exist at present in 36 states. Regardless of the influence of the Uniform Law the legislation is still diverse. The chronological presentation, emphasizing as it does the gradual development of a certain uniformity in about half the states, has tended to obscure the heterogeneity of the laws. As an aid to recalling and systematizing the discussion, the states are now to be listed alphabetically and the laws classified under a uniform set of headings.

The headings will show the statutory references to the latest codes or compilations available in 1932, as well as the citation of the original act and its amendments. Under states in which the Uniform Law has been enacted this fact and the particular draft or form of the law to which the local act conforms will be noted. It will also be shown whether the act applies to the whole state or only to certain parts. Next will be stated the maximum charge on loans and the amount and type of loan to which the act applies. If the statute conforms to the Uniform Law the headings, "Regulation" and "Supervision," will be brief, for reference to the draft of the Uniform Law will give details. If the statute does not conform to the Uniform Law, the main features of regulation and supervision will be stated. Then will follow a statement of penalties, both criminal and civil,[1] and finally under "Discussion" the references to the text where the law is treated at greater length.

There is no statute, apart from the general usury law, which is generally applicable to small loans in the following states: Arkansas, Idaho, Kansas, Kentucky, Montana, New Mexico, North

[1] When the law makes an act in violation of its provisions a misdemeanor, though it does not specifically declare void a loan made in violation of its provisions, the loan may nevertheless be held void: Wells *v.* Indianapolis Co., 161 N. E. (Ind. App.) 687 (1928) and citations; Westville and Hamden Loan Co. *v.* Pasqual, 109 Conn. 110 (1929). *Contra,* Rosenbusch *v.* Fry, 136 Atl. (N. J.) 711 (1927), *dictum.*

Dakota, Nevada, Oklahoma, South Carolina, South Dakota, and Washington.[1]

## CLASSIFICATION OF LAWS REGULATING SMALL LOANS IN 36 STATES

### Alabama

*Enactment:* General Laws 1927, no. 268.
*Uniform Law:* Fourth draft.
*Application:* Counties over 200,000.
*Charges:* Interest 8 per cent per annum.
*Amount:* $100 or less.
*Type of Loan:* Secured or unsecured.
*Regulation:* License and bond.
*Supervision:* Probate judge.
*Penalty:* Violation, misdemeanor. Overcharge, all interest forfeited.
*Deficiencies:* Inadequate rate, limited application.
*Discussion:* See p. 108.

### Arizona

*Reference:* Revised Code 1928, secs. 1989–2013.
*Enactment:* Laws 1919, ch. 91.
*Uniform Law:* No, but contains most essentials thereof.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured, except where security is a public bond or real estate mortgage.
*Regulation:* License and bond.
*Supervision:* State auditor.
*Penalty:* Violation, misdemeanor. Overcharge, forfeiture of principal and interest.
*Discussion:* See p. 100.

### California

*Reference:* General Laws (Deering) 1923, vol. 2, p. 2366.
*Enactment:* Statutes 1909, ch. 634; 1911, ch. 490; 1931, ch. 273.

[1] A few of these states that have no special small loan legislation have statutes regulating wage assignments. See pp. 209 f.

*Uniform Law:* Fifth draft, abridged.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured by chattel mortgage or wage assignment.
*Regulation:* License and bond.
*Supervision:* Commissioner of corporations.
*Penalty:* Failure to give proper memorandum, misdemeanor. Overcharge, loan void and excess payments recoverable.
*Deficiencies:* Inadequacy of penalty, wage-assignment, and advertising regulation. (See 1931 Rules.)
*Discussion:* See pp. 32, 105 f.

### Colorado

*Reference:* Courtright's Mills Annotated Statutes 1930, secs. 5008o–5008g.
*Enactment:* Laws 1919, ch. 159.
*Uniform Law:* Third draft, except as to charges.
*Application:* State-wide.
*Charges:* Interest 1 per cent a month; inspection fee, $1.00, but not oftener than four times a year.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Bank commissioner.
*Penalty:* Violation, misdemeanor. Overcharge, loan not enforceable.
*Deficiencies:* Inadequate rate, possibility of evasion by incorporating as industrial bank.
*Discussion:* See pp. 107 f.

### Connecticut

*Reference:* General statutes 1930, secs. 4066–4082.
*Enactment:* Public Acts 1919, ch. 219; 1923, ch. 223; 1929, ch. 207.
*Uniform Act:* Second draft.
*Application:* State-wide.
*Charges:* 3½ per cent a month.

*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond. Licensing official has discretion to refuse license. Licensee must have minimum capital.
*Supervision:* Banking commission.
*Penalty:* Violation, misdemeanor. Overcharge, loan not enforceable.
*Discussion:* See pp. 100, 104.

### Delaware

*Reference:* Laws 1929, ch. 260.
*Uniform Law:* No.
*Application:* State-wide.
*Charges:* 11 per cent per annum (legal rate plus 5 per cent).
*Amount:* Not exceeding $500.
*Type of Loan:* "On personal property or otherwise."
*Regulation:* License (called certificate of registration). Licensee to give borrower copy of instruments evidencing loan and security.
*Supervision:* State bank commissioner has discretion to refuse license and to revoke it for violations.
*Penalty:* Overcharge by licensee or usurious charge by non-licensee, misdemeanor. Failure to give copy of instrument, misdemeanor.
*Deficiencies:* Inadequate rate; insufficient regulation and supervision; no civil penalty on licensee.
*Discussion:* See pp. 34, 107, 110.

### District of Columbia

*Reference:* Code 1929, title 17, ch. 2.
*Enactment:* Act of 4 Feb. 1913, 37 Stat. at L. 657.
*Uniform Act:* No.
*Application:* Throughout the District.
*Charges:* Interest, 1 per cent a month; attorney fees on foreclosure, 10 per cent of amount due.
*Amount:* Not exceeding $200.
*Type of Loan:* Secured loans at over 6 per cent.
*Regulation:* License and bond.

*Supervision:* Commissioners of District of Columbia to receive annual reports, may inspect books, revoke license after hearing, and make rules for enforcement.

*Penalty:* Violation, fine and imprisonment (engaging in business must be proved against non-licensee). Overcharge, forfeiture of interest plus one-fourth of principal.

*Deficiencies:* Inadequate rate, application only to secured loans; penalty on non-licensees only if "engaged in the business."

*Discussion:* See pp. 60, 62.

## Florida

*Reference:* Compiled General Laws 1927, secs. 3999–4017, 7880.

*Enactment:* Acts 1925, ch. 10177.

*Uniform Act:* Fourth draft, with exceptions.

*Application:* Counties over 40,000.

*Charges:* 3½ per cent a month.

*Amount:* Not exceeding $300. (On loans over $300 interest limited to 10 per cent.)

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond.

*Supervision:* State comptroller.

*Penalty:* Violation, misdemeanor (engaging in business must be proved against non-licensees). Overcharge, forfeiture of principal and interest.

*Deficiencies:* Penalty on non-licensees restricted to those "engaged in the business"; non-application to counties under 40,000; omission to include wage "purchases" specifically.

*Discussion:* See p. 102.

## Georgia

*Reference:* Code 1926, secs. 1770 (61)–1770 (79).

*Enactment:* Acts 1920, p. 215.

*Uniform Act:* Second draft.

*Application:* State-wide.

*Charges:* 3½ per cent a month.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* State bank examiner.
*Penalty:* Violation, misdemeanor. Overcharge, loan not enforceable.
*Discussion:* See p. 101.

## Illinois

*Reference:* Revised Statutes 1929, ch. 74, secs. 13–18.
*Enactment:* Laws 1917, p. 553; 1925, p. 454.
*Uniform Act:* First draft.
*Application:* State-wide.
*Charges:* Interest, 3½ per cent a month; attorney fee of 10 per cent of amount due, on foreclosure or entry of judgment.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Department of trade and commerce.
*Penalty:* Violation, misdemeanor. Overcharge, forfeiture of principal and interest.
*Discussion:* See p. 99.

## Indiana

*Reference:* Burns' Annotated Statutes, 1926, secs. 9777–9782.
*Enactment:* Acts 1917, p. 401.
*Uniform Act:* First draft, omitting wage-assignment provisions.
*Application:* State-wide.
*Charges:* 3½ per cent a month, plus a reasonable attorney fee in foreclosure action.
*Amount:* Not exceeding $300. (On loans over $300 interest limited to 8 per cent.)
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Auditor of state.
*Penalty:* Violation, misdemeanor. Overcharge, loan not enforceable.
*Discussion:* See p. 99.

## Iowa

*Reference:* Code 1927, secs. 9410–9438.
*Enactment:* General Acts 1921, ch. 35.
*Uniform Act:* Third draft.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Superintendent of banking.
*Penalty:* Violation, misdemeanor. Overcharge, loan void, principal and interest forfeited.
*Discussion:* See p. 101.

## Louisiana

*Reference:* Acts, Extra Session, 1928, no. 7.
*Uniform Law:* Fourth draft.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* State bank commissioner.
*Penalty:* Violation, misdemeanor. Overcharge, loan void, principal and interest forfeited.
*Discussion:* See pp. 103 f.

## Maine

*Reference:* Revised Statutes 1930, ch. 57, secs. 143–161.
*Enactment:* Acts and Resolves 1917, ch. 298; as amended by 1919, ch. 163; 1923, ch. 144; 1929, chs. 208, 319.
*Uniform Act:* First draft, amended.
*Application:* State-wide.
*Charges:* 3 per cent a month, with a minimum charge of 25 cents.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.

*Supervision:* Bank commissioner. Besides first-draft provisions commissioner has discretion in issuing and revoking licenses.

*Penalty:* Violation, misdemeanor, loans not enforceable.

*Discussion:* See pp. 99, 104.

## Maryland

*Reference:* Annotated Code 1924, and Supplement 1929, art. 58A.

*Enactment:* Public General Acts 1918, ch. 88; 1924, ch. 115; 1929, ch. 564.

*Uniform Law:* Fourth draft.

*Application:* State-wide.

*Charges:* 3½ per cent a month.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond.

*Supervision:* Bank commissioner.

*Penalty:* Violation, misdemeanor. Overcharge, loan void, interest and principal forfeited.

*Discussion:* See p. 100.

## Massachusetts

*Reference:* General Laws 1921, ch. 140, secs. 96–114.

*Enactment:* Acts and Resolves 1911, ch. 727; 1912, ch. 675; 1913, ch. 347; 1916, ch. 224; 1919 ch. 350.

*Uniform Law:* No.

*Application:* State-wide.

*Charges:* Established by commissioner, not to exceed 3 per cent a month.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond. Licensee to post license conspicuously, to give receipts for payments, to make annual reports.

*Supervision:* Commissioner of banks to issue license, to approve bond, to investigate and examine licensees, to establish regulations governing the business.

*Penalty:* Engaging in business without license and other violations of act or commissioner's regulations, punishable by fine of $500 and revocation of license. Overcharge, allows borrower to recover illegal interest plus twice legal costs, may allow commissioner to order repayment of excess, and may allow court to declare loan void.

*Deficiencies:* Penalties inadequate—principal not necessarily forfeited, and "engaging in business" must be proved.

*Discussion:* See pp. 59 f., 71.

## Michigan

*Reference:* Compiled Laws 1929, secs. 12198–12218.

*Enactment:* Public Acts 1921, no. 317, as amended by 1925, no. 181.

*Uniform Law:* Fourth draft.

*Application:* State-wide.

*Charges:* 3½ per cent a month.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond.

*Supervision:* Commissioner of banking department.

*Penalty:* Violation, misdemeanor. Overcharge, loan void, interest and principal forfeited.

*Discussion:* See pp. 101 f.

## Minnesota

*Reference:* Mason's Minnesota Statutes 1927, secs. 7042, 7043.

*Enactment:* Session Laws 1913, ch. 439, as amended 1915, ch. 117.

*Uniform Law:* No.

*Application:* Cities, first class (over 50,000).

*Charges:* 1 per cent a month interest, plus fees ranging from $1.75 to $5.75 where a chattel mortgage is taken.

*Amount:* Not exceeding $200.

*Type of Loan:* Secured by wage assignment and chattel mortgage.

*Regulation:* License. Fees not to be split up, and payable only once a year.

*Supervision:* City clerk to issue license only on affidavit that dividends for preceding year did not exceed 8 per cent.

*Penalty:* Acts prohibited by statute constitute misdemeanors (sec. 10047). Usurious loans are void (sec. 7038).

*Deficiencies:* Applies only to semi-philanthropic associations and does not regulate commercial money-lenders.

*Discussion:* See p. 73.

## MISSISSIPPI

*Reference:* Code 1930, secs. 1952–1972.

*Enactment:* Code 1906, ch. 90.

*Uniform Law:* No.

*Application:* State-wide, with local administration.

*Charges:* 10 per cent interest, plus fees depending on size of loan.

*Amount:* Not limited.

*Type of Loan:* Secured by personal property or by wage assignment.

*Regulation:* License and bond. Licensee to keep books, to give memoranda of loans and receipts for payments, and to pay privilege tax of $2,000 a year.

*Supervision:* Municipal officer or county sheriff issues license; mayor, sheriff, or grand jury may inspect books.

*Penalty:* Engaging in business contrary to provisions, misdemeanor. Overcharge, license revoked. Failure to obtain license, interest on loan forfeited.

*Deficiencies:* Inadequate supervision; local administration; applicability only to secured loans.

*Discussion:* See pp. 36 f., 75.

## MISSOURI

*Reference:* Revised Statutes, Supplement 1927, secs. 11932b–11932b22, as amended by Laws 1929, p. 201.

*Enactment:* Laws 1927, p. 252; 1929, p. 201.

*Uniform Law:* Fourth draft, amended.

*Application:* State-wide.

*Charges:* 2½ per cent a month.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond.

*Supervision:* Commissioner of finance.

*Penalty:* Violation, misdemeanor, and loan void.

*Discussion:* See pp. 103, 104, 111.

## Nebraska

*Reference:* Compiled Statutes 1929, secs. 45–112—45–123.
*Enactment:* Laws 1915, p. 435.
*Uniform Law:* No.
*Application:* State-wide.
*Charges:* Interest, 10 per cent per annum; brokerage fee, 10 per cent of loan, collectible every six months; examination fee, 50 cents on loans not exceeding $50.
*Amount:* Not limited.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond. Licensee to do business only in authorized name, to post license conspicuously, to keep books and give memorandum of loans and receipts for payments, to take no instruments whose blanks are not filled in and no power of attorney to fill them in.
*Supervision:* Secretary of state may inspect records, reject and revoke license.
*Penalty:* Violation, criminal offense and principal and interest forfeited. Engaging in business without a license, misdemeanor.
*Deficiencies:* No provisions that brokerage fee is chargeable on unpaid balances only.
*Discussion:* See pp. 70 f.

## New Hampshire

*Reference:* Public Laws 1926, ch. 269.
*Enactment:* Laws 1917, ch. 228.
*Uniform Law:* First draft, with exceptions as to charge and security.
*Application:* State-wide.
*Charges:* Interest, 3 per cent a month; inspection fee (collectible three times a year), $1.00 on loans less than $50, $2.00 over $50.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured, with no special reference to wage assignments.
*Regulation:* License and bond.

*Supervision:* Bank commissioner.
*Penalty:* Violation, criminal offense. Overcharge, loan void, principal and interest forfeited.
*Deficiencies:* Fee system subject to some manipulation and puts premium on prompt collections.
*Discussion:* See pp. 99 f.

### New Jersey

*Reference:* Not indexed when this volume went to press.
*Enactment:* 1932 (Assembly Bill no. 363).
*Uniform Law:* Fifth draft, modified.
*Application:* State-wide.
*Charges:* 2½ per cent a month for each calendar month and 1/31 of 2½ per cent for each elapsed day in any period less than a calendar month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* Continuing license. Bond renewed annually. Licensee to transact business only at authorized place. No other business at authorized place. Minimum capital of $25,000. Memorandum of loans and receipts for payments required. License to be conspicuously displayed.
*Supervision:* Commissioner of banking and insurance may reject, suspend, or revoke licenses; must examine annually and require annual reports; may make rules and regulations; must approve issue of capital stock of licensed corporations before sale.
*Penalty:* Non-licensees making loans over legal rate, misdemeanor. Overcharge, loan void. Contracts involving misdemeanor, void.
*Discussion:* See p. 106. For discussion of provident loan corporations, see pp. 28 f., 110.

### New York

*Reference:* Banking Law, art. 9, supplemented by art. 2.
*Enactment:* 1932 (Assembly Bill no. 2243).
*Uniform Law:* Fifth draft, modified.
*Application:* State-wide.

*Charges:* Interest, 3 per cent a month on the first $150 of any loan and 2½ per cent a month on the balance.

*Amount:* Not exceeding $300.

*Type of Loan:* Secured and unsecured.

*Regulation:* Continuing license. Bond renewed annually. Licensee to transact business only at authorized place. No other business at authorized place. Minimum capital of $25,000. Memorandum of loans and receipts for payments required. Loans not to be divided. License to be conspicuously displayed.

*Supervision:* Superintendent of banks may reject, suspend, or revoke licenses; must examine annually or oftener; must require annual reports; may make rules and regulations.

*Penalty:* Non-licensees making loans over legal rate, misdemeanor. Overcharge, loan void. Contracts involving misdemeanor, void.

*Discussion:* See p. 106.

## North Carolina

*Reference:* Code 1927, sec. 4509.

*Enactment:* Public Laws 1907, ch. 110; 1927, ch. 72.

*Uniform Law:* No.

*Application:* State-wide.

*Charges:* 6 per cent per annum.

*Amount:* No limit.

*Type of Loan:* Unsecured, or secured by wage assignment or chattel mortgage on household furniture.

*Regulation:* Lender must give receipts for payments and surrender note and security on discharge of debt.

*Supervision:* None.

*Penalty:* Violation, misdemeanor.

*Deficiencies:* Inadequate interest; no provision for supervision or for adequate regulation.

*Discussion:* See pp. 27, 111.

## Ohio

*Reference:* Throckmorton's Code 1929, secs. 6346–1—6346–12 and Baldwin's Ohio Code Service, 3d series.

*Enactment:* Acts 1911, p. 469; 1915, p. 281; 1917, p. 509; 1923, p. 209; 1929, pp. 43, 479.

*Uniform Law:* No.

*Application:* State-wide.

*Charges:* Interest, 3 per cent a month; inspection fee, $1.00 (collectible every four months) on loans not exceeding $50.

*Amount:* Not exceeding $300. Over $300, charges limited to 8 per cent per annum.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond. Licensee to do business only in authorized name, to post license conspicuously, to give memorandum of loans and receipts for payments.

*Supervision:* Commissioner of securities shall inspect records annually or oftener, may revoke licenses, and shall enforce act.

*Penalty:* Violation, criminal offense (engaging in business must be proved against non-licensees) and is ground for revocation of license (second conviction requires revocation). Overcharge or violation, loan void, principal and interest forfeited.

*Deficiencies:* Non-licensee not punishable unless engaging in the business; no prohibition of confessions of judgment or powers of attorney.

*Discussion:* See pp. 68 f., 71, 110, 111 f.

## Oregon

*Reference:* Laws 1931, ch. 385. See also Motor Vehicle Finance Law—Laws 1931, ch. 377.

*Uniform Law:* Fourth and fifth drafts.

*Application:* State-wide.

*Charges:* 3 per cent a month, with $1.00 minimum, on loans between $30 and $300.

*Amount:* Not exceeding $300. Under $30 interest rate subject to written agreement between borrower and lender.

*Type of Loan:* Secured and unsecured.

*Regulation:* License and bond. Licensee to keep registry of loans open to inspection by authorized officials, and to make annual reports.

*Supervision:* Superintendent of banks may inspect registers of licensees and may make rules and regulations. State banking board may refuse or revoke licenses.
*Penalty:* Violation, misdemeanor (engaging in business must be proved against non-licensee). Overcharge, loan void.
*Deficiencies:* Non-licensee not punishable unless engaging in the business.
*Discussion:* See pp. 104 f., 111.

## Pennsylvania

*Reference:* Digest of Statute Law 1920, secs. 14112–14121.
*Enactment:* Laws 1915, no. 432; 1919, no. 186.
*Uniform Law:* In substance, not in form.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Banking commissioner.
*Penalty:* Violation, misdemeanor. Overcharge, excess over 6 per cent recoverable, plus penalty of $50.
*Deficiencies:* No prohibition of confessions of judgment or of misleading advertisements.
*Discussion:* See pp. 70, 101.

## Rhode Island

*Reference:* Acts and Resolves 1923, ch. 2312; 1927, ch. 1060.
*Uniform Law:* Third draft.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Bank commissioner.
*Penalty:* Violation, misdemeanor. Overcharge, loan void, principal and interest forfeited.
*Discussion:* See p. 102.

### Tennessee

*Reference:* Public Acts 1925, ch. 153.
*Uniform Law:* Third draft.
*Application:* State-wide.
*Charges:* Interest, 6 per cent per annum; fee, 3 per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License from county court clerk, certificate from superintendent of banks, and bond.
*Supervision:* County court clerk is supervising official but superintendent of banks may also investigate business.
*Penalty:* Violation, misdemeanor. Overcharge, loan void, principal and interest forfeited.
*Discussion:* See pp. 102 f.

### Texas

*Reference:* Vernon's Annotated Revised Civil Statutes, 1925, arts. 6162–6165; Cumulative Supplement 1930, art. 6165a; Penal Code, Cumulative Supplement 1930, art. 1129a.
*Enactment:* Acts 1915, ch. 28; 1927, ch. 17.
*Uniform Law:* No.
*Application:* State-wide.
*Charges:* 10 per cent per annum (art. 5071).
*Amount:* No limit.
*Type of Loan:* Secured by wage assignment or purchase or by chattel mortgage on household furniture.
*Regulation:* Registration with county clerk and bond. Licensee to keep records, and to give borrower memorandum of loan and receipts for payments.
*Supervision:* None.
*Penalty:* Violation, misdemeanor. Overcharge, loan void.
*Deficiencies:* Inadequate rate; no supervision; insufficient regulation; limited application to secured loans.
*Discussion:* See pp. 108 f.

### Utah

*Reference:* Compiled Laws 1917, secs. 4380–4389.
*Enactment:* Laws 1917, ch. 41.
*Uniform Law:* No.

*Application:* State-wide.
*Charges:* 3 per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured, except where security is real estate.
*Regulation:* License and bond. Licensee to keep books, to give memorandum of loan and receipts for payments, and make annual report as required.
*Supervision:* Bank commissioner may reject or revoke license, shall investigate licensees annually or oftener, and may make rules and regulations governing the business.
*Penalty:* Violation, misdemeanor, loan null and void. Overcharge by non-licensee not "engaged in the business" governed by general usury law.
*Discussion:* See p. 110.

### Virginia

*Reference:* Code 1930, secs. 4168 (38)–4168 (57).
*Enactment:* Acts 1918, ch. 402; 1920, ch. 299; 1922, ch. 300; 1928; ch. 152.
*Uniform Law:* Third draft, with fourth draft provisions for penalty and for wage purchase.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Chief examiner of banking division of state corporation commission.
*Penalty:* Violation, misdemeanor. Overcharge, loan not enforceable.
*Discussion:* See pp. 100, 111.

### West Virginia

*Reference:* Code 1931, ch. 47, art. 7.
*Enactment:* Acts 1925, ch. 91; 1929, ch. 24.
*Uniform Law:* Fourth draft, except as to charge and special procedural provisions.

*Application:* State-wide.
*Charges:* 2 per cent a month.
*Amount:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Commissioner of banking.
*Penalty:* Violation, loan void. Overcharge, loan void, principal and interest forfeited.
*Deficiencies:* Inadequate rate of interest.
*Discussion:* See p. 102.

### Wisconsin

*Reference:* Statutes 1929, secs. 214.01–214.22.
*Enactment:* Laws 1927, ch. 540.
*Uniform Law:* Fourth draft.
*Application:* State-wide.
*Charges:* 3½ per cent a month.
*Amounts:* Not exceeding $300.
*Type of Loan:* Secured and unsecured.
*Regulation:* License and bond.
*Supervision:* Commissioner of banking.
*Penalty:* Violation, misdemeanor. Overcharge, loan void, principal and interest forfeited.
*Discussion:* See p. 103.

### Wyoming

*Reference:* Compiled Statutes 1920, secs. 4352, 4353.
*Enactment:* Session Laws 1909, ch. 135.
*Uniform Law:* No.
*Application:* State-wide.
*Charges:* 25 per cent per annum.
*Amount:* Less than $200.
*Type of Loan:* Secured and unsecured.
*Regulation:* None.
*Supervision:* None.
*Penalty:* Violation, misdemeanor.
*Deficiencies:* Inadequate rate; lack of regulation and supervision; absence of civil penalty.
*Discussion:* See p. 32.

# CHAPTER VIII

## THE CONSTITUTIONALITY OF SMALL LOAN LEGISLATION

### THE SMALL LOAN BUSINESS SUBJECT TO REGULATION UNDER POLICE POWER

THE right to acquire property and the right to contract with reference to it are natural rights which men in the rudest state of nature exercise at will; but when they enter into a social compact these rights are to a very great extent placed under the control of the government thus formed.

This control is included in the term "police power," a definition of which is difficult. The language of a great jurist in this respect has often been adopted:

> We think it a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it . . . shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. . . . The power we allude to is . . . the police power, the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes, and ordinances . . . as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.[1]

The legitimate objects of the exercise of the police power have been stated in broad terms, as follows:

> Another vital principle is that, except as restrained by its own fundamental law, or by the Supreme Law of the Land, a State possesses all legislative power consistent with a republican form of government; therefore each State, when not thus restrained and so far as this court is concerned, may, by legislation, provide not only for the health, morals and safety of its people, but for the common good, as involved in the well being, peace, happiness and prosperity of the people.[2]

[1] Shaw, C. J., in Comm. *v.* Alger, 7 Cush. (Mass.) 53, 84 (1851).

[2] Halter *v.* Nebraska, 205 U.S. 40 (1907).

The fact that the business of lending money is a lawful and useful calling does not prevent its control by legislation.

The Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public.[1]

As indicated in this excerpt, the nature of a perfectly lawful business may be such as to require regulation to prevent public injury. The constitutional power to regulate extends at least to the prevention of those evils that grow out of the business.

The unregulated small loan business has in fact produced a chain of evil consequences. Of this, experience has furnished conclusive demonstration. Borrowers have almost invariably been poor people at times of their most exigent needs. Untrained in the refinements of business negotiations, usually ignorant of the existence of usury laws, and incapable of using the rights which the law gave them, they have often fallen easy victims of unconscionable money lenders. The lenders, on the other hand, have generally been persons endowed with a shrewd business sense for profitable opportunities, and in many cases have been more devoid of respect for usury statutes than the more responsible lenders of larger sums. Frequently this has been due not so much to the inordinate greed of lenders, as to the fact that the usury laws assumed risk and expense factors in lending much below those in the small loan business. Whatever its cause, the result has been to subject a considerable body of the public to oppressive and illegal interest exactions. The sufferers have been the economically weak. The conditions under which lender and borrower met lacked that equality of bargaining power essential to just business transactions. That the state has a right to prevent the stronger from pressing his advantage to the point where it entails injurious social results has been recognized by the courts in the following language:

The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former

[1] Murphy *v.* California, 225 U.S. 623, 628 (1912).

> naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . . But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the State of the power to interfere—where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself.[1]

It is to be noted that the very fact that parties do not stand upon an equality is held to justify the state's interposition. The right of a state to regulate insurance rates was supported in part by a reference to the inequality of bargaining power of the insurer and the insured.[2] The whole purpose of regulating the rates of public utilities is to prevent them from fully realizing the economic advantages of their monopolistic position.[3]

Such statutes, too, limit the right of one party to a business transaction to secure the full advantage of his economic position. The same principle is involved in those statutes that prohibit the payment of wages in orders on a company store not redeemable in cash. These statutes have been upheld as a valid exercise of the police power.[4]

In all these cases the court has sustained the power of a state to limit the individual's freedom of contract and right to transact business so as to prevent the evils incident to an unlimited use by one party to a business transaction of the superior advantages of his position. In some of them, as the regulation of public utility rates and the usury statutes, the ultimate end has been to prevent such use of economic power. In other cases that end has been to prevent other injurious consequences to the general welfare that experience has shown followed from unregulated dealings between those in unequal positions. It follows, therefore, that state and

[1] Holden *v.* Hardy, 169 U.S. 366, 397 (1898).

[2] German Alliance Ins. Co. *v.* Lewis, 233 U.S. 389 (1914).

[3] Munn *v.* Illinois, 94 U.S. 113 (1876); Budd *v.* New York, 143 U.S. 517 (1892).

[4] Knoxville Iron Co. *v.* Harbison, 183 U.S. 13, 18 (1901); Keokee Consol. Coke Co. *v.* Taylor, 234 U.S. 224 (1914).

federal constitutions interpose no obstacle to the regulation of the small loan business, even if the only evil aimed at were the unconscionable use of superior economic power. The protection of the weak against the exactions of the strong is itself an ingredient of that general welfare that constitutes a legitimate end of the police power.

There are, however, other evils incident to the unregulated small loan business that justify the interposition of the government's regulatory powers. Experience has demonstrated that, as usually conducted, this business inevitably leads to social deterioration of the borrowers, and accentuates the bad social effects of poverty. The general welfare is thereby detrimentally affected. Furthermore, it is this business that presents the most flagrant and frequent violations and evasions of existing usury laws. It may be stated without qualification that those laws do not in practice protect the small borrower dealing with the money-lender. Yet the small borrower, of all persons, needs protection most. The state therefore has a constitutional power to substitute a general scheme of regulation, the validity of which can no longer be questioned, for the ineffective prohibitions of existing usury laws. It has a like power to promote the general welfare by controlling the activities of a business which has invariably aggravated poverty.

All question as to the state's power to regulate the small loan business is set at rest by a mere enumeration of those businesses which have been held subject to government regulation. Banking may be prohibited except on such conditions as the state may prescribe, such as incorporation;[1] the business of receiving deposits for safe keeping, or for transmission, may be prohibited unless a license is procured;[2] so with the business of selling securities,[3] of conducting employment agencies,[4] of acting as a private detective,[5] of operating grain elevators,[6] and of selling agricultural products on commission.[7]

[1] Noble State Bank *v.* Haskell, 219 U.S. 104 (1911); Shallenberger *v.* First State Bank, 219 U.S. 114 (1911).

[2] Engel *v.* O'Malley, 219 U.S. 128 (1911).

[3] Hall *v.* Geiger-Jones Co., 242 U.S. 539 (1917).

[4] Brazee *v.* Michigan, 241 U.S. 340 (1916).

[5] Lenon *v.* City of Atlanta, 242 U.S. 53 (1916).

[6] Munn *v.* Illinois, 94 U.S. 113 (1876).

[7] State ex rel. Beek *v.* Wagener, 77 Minn. 483 (1899).

Finally it is settled law, both federal and state, that statutes fixing rates of interest on money and defining usury are within the police power.

It is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of a State for the use of money loaned within the jurisdiction of the State is one within the police power of such State.[1]

### REGULATION RESTRAINED IN PART BY STATE AND FEDERAL CONSTITUTIONS

This control of the natural rights of property is subject, however, to those reservations contained in the various bills of rights and in certain provisions of many of the state constitutions which, in substance, declare that all men are equal in their rights; that none shall have exclusive privileges; that all laws shall be general and uniform in their operation; and that no special law shall be passed regulating the rate of interest on money.

Upon such control of natural property rights by state governments various restraints are also imposed by the federal Constitution, the particular restraint important here being the Fourteenth Amendment, which provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment operates upon the states alone, while the Fifth Amendment similarly restrains action by Congress, by providing that "no person . . . shall be deprived of life, liberty or property, without due process of law."

### SMALL LOAN LEGISLATION VALID UNDER PRINCIPLE OF CONSTITUTIONAL CLASSIFICATION, DESPITE RESTRAINTS

Notwithstanding the constitutional guarantees of equality and uniformity and the prohibitions against special laws, it is manifest that a law may be just and equitable when applied to one state of facts and unjust and inequitable under an entirely different state of facts, and that to require each law to operate alike upon every person and every place and every thing is quite impossible.

[1] Griffith *v.* Connecticut, 218 U.S. 563, 569 (1910).

Therefore it is a settled principle in the United States that, notwithstanding the constitutional restraints already referred to, a legislature in enacting a law may divide a subject into classes and apply different rules to the different classes, provided it adopts a proper basis of classification and that the law enacted operates alike upon all the subjects of the class; and that when it does this, the law is not a special law, but a general law.

> Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.[1]
>
> A law is general, in the constitutional sense, which applies to and operates uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to itself in matters covered by the law.[2]

We have already shown that the purposes sought to be obtained by controlling the small loan business are valid police power ends. The question in each case, as to small loan laws, is as to the validity of the means employed to secure those ends. Their validity depends upon whether they have a real and substantial relation to the objects of the statute and do not go unreasonably beyond the necessities of the case:

> It is with the state to devise the means to be employed to such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own constitution or the Constitution of the United States. The cases which sanction these principles are numerous, are well known to the profession, and need not be here cited.[3]

We can judge of the validity of the means in each case only by examination of the given small loan act. Practically all small loan laws enacted in recent years or approved by bodies interested in securing the enactment of such laws contain certain general regulatory features and certain details of regulation through which the purposes of such laws are intended to be accomplished. We will

[1] Barbier *v.* Connolly, 113 U.S. 27, 32 (1885).

[2] State *v.* Cooley, 56 Minn. 540, 549 (1893).

[3] House *v.* Mayes, 219 U.S. 270, 282 (1911).

now briefly examine the more prominent of these in an effort to demonstrate that such laws may be framed on a constitutionally sound basis. They may be grouped as follows:

1. Control of the small loan business through an optional system of license and regulations;
2. Restriction of the scope of small loan laws to loans of a certain size;
3. Discrimination in interest rates between licensed and unlicensed lenders;
4. Prohibition of the absolute sale of wages, within fixed limits (Section 16);
5. Exemptions from operation of the laws.

## Control of Small Loan Business through an Optional System of License and Regulations

A state can constitutionally require a license as a condition to engaging in a business that it has a right to regulate.[1] It therefore follows that the state may require all those wishing to engage in the small loan business to take out a license. It does not, however, impose a system of compulsory licenses, but provides an optional plan. No one is forbidden to engage in the small loan business; no one is required to take out a license. Neither the Fourteenth Amendment nor any of the state constitutions prohibit a state from making its regulatory system optional, nor from creating a situation in which motives of private advantage will induce those intended to be regulated to come within the regulatory scheme. In Assaria State Bank *v.* Dolley, 219 U. S. 121 (1911), which involved the validity of the Kansas Bank Depositors Guaranty Act, the argument had been advanced that the optional character of the law invalidated it as an exercise of the police power. Holmes, J., disposed of this contention in the following language:

> We cannot agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop. (p. 127.)

[1] Engel *v.* O'Malley, 219 U.S. 128 (1911); Cargill Co. *v.* Minnesota, 180 U.S. 452 (1901).

The same principle has been upheld in the case of state voluntary workmen's compensation acts in which pressure was put upon employers to join the plan by depriving non-consenting employers of their right to rely on the usual common law defenses against liability for injury to employes.[1]

These cases establish that an optional system, coupled with "the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop," constitutes a valid form of regulation, immune to Fourteenth Amendment objections. The general plan of regulation of the Uniform Small Loan Law, so called, is therefore constitutional.

As the Uniform Small Loan Law is the latest expression of small loan legislation, the validity of some of the principal details of regulation will be briefly considered here, as typical of small loan acts. The power to require a license carries with it power to impose a reasonable license fee. The requirement for a bond, with sureties, is reasonable. It has a tendency to promote the observance of the law, and to protect those injured by its violation. These are valid ends, and the requirements are not oppressive. Limiting the conduct of a licensee's business to one place for each license increases the probability of successful supervision. In view of the fact that the law places no limit on the number of licenses any person may secure, these provisions limit no one's right to engage in the business as extensively as he may desire, except in so far as the requirement for a license may operate. But, as already shown, the requirement for a license could be imposed in the first instance; a fortiori it can be imposed as a condition of the conduct of business in more than one place by those who have voluntarily submitted to the licensing system in respect of the conduct of business at one place. This in no way discriminates in favor of unlicensed lenders where right to operate is not thus restricted, since licensees are accorded certain advantages in return for submitting to regulation. It would be unreasonable for them to insist that such regulation stop short of what is reasonably required to make it effective. The advantage given licensees is given them in part in return for submitting to

[1] Hawkins *v.* Bleakly, 243 U.S. 210 (1917); Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571 (1914).

effective regulation. By securing a license they submit to all those provisions of the act reasonably necessary to secure such regulation.

The law requires licensees to deliver to the borrower at the time of making a loan what is in substance a written memorandum of the essential elements of the loan transaction; to deliver written receipts for all payments made on the loan; and, when the loan has been repaid, to indicate in writing the fact of payment upon all papers signed by the borrower. These provisions are all intended to protect the borrower against the oppression of false claims. The state has the constitutional power to require such formalities in connection with its regulation of a business.[1]

The same considerations support those provisions which forbid licensees to take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which made, and the interest rate. The prohibition against the taking by the licensee of any confession of judgment or power of attorney is clearly intended to protect borrowers, and is reasonably adapted to secure that end. It therefore meets the constitutional test of validity. The provisions dealing with assignments of wages are valid under the rule of Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911), and many other cases.

The Uniform Small Loan Law also requires licensees to keep certain books and records to enable the state to determine whether the provisions of the law are being complied with. Similar provisions are contained in the South Dakota blue sky law and were sustained.[2]

The provisions with reference to examination by the state of the licensee's business are valid; public authorities are constitutionally entitled to such information; the methods provided are reasonably adapted to make probable the success of the regulation of the business and go no farther than necessary to facilitate the enforcement of the law.

The provision as to revocation of license is constitutional. Due process requires only that the statute does not permit arbitrary suspension or revocation.[3]

[1] Brodnax *v.* Missouri, 219 U.S. 285 (1911).

[2] Caldwell *v.* Sioux Falls Stock Yards Co., 242 U.S. 559 (1917).

[3] Yick Wo *v.* Hopkins, 118 U.S. 356 (1886).

The Uniform Small Loan Law permits suspension or revocation only in cases where the licensee has violated some provision of the act. In construing the Uniform Small Loan Law of Illinois the Supreme Court of that state pointed out that if a licensee were aggrieved "he would have an unquestioned right to resort to the courts to compel a restoration of his license and have his rights in the premises adjudicated by a court of law irrespective of the determination of the Department of Commerce and Labor in the premises."[1]

The provision that no person shall, except as authorized by the Uniform Small Loan Law, charge more than the general contract rate of interest is intended to apply to isolated transactions. The state has a right to regulate the small loan business. This carries with it the right to do any reasonable thing necessary or proper to insure the effectiveness of that regulation. That right is not restricted to the enacting of provisions applicable solely to the field principally regulated. Although the federal government has no direct power over intrastate commerce, it has the right to control intrastate commerce in order to insure the effective enforcement of the policy it intends to apply to interstate commerce.[2]

The principle deducible from the cases is this: the power to regulate a given business implies a power to control transactions not within the field to which the regulation is intended primarily to apply, if the control of such transactions has a reasonable tendency to increase the effectiveness of the regulation of the given business, or is reasonably necessary or proper thereto. If this is true even in a case where the federal powers do not directly extend to intrastate commerce, a fortiori it is true where the transactions incidentally controlled are directly within the power of the state. Such is the case where the state regulates isolated loans of $300 or less, as an incident to the control of the business of making such loans. The whole question is whether the control of such isolated transactions is a reasonably necessary or proper incident to the regulation of the small loan business. It is clearly so, for it effectively closes one loophole for the evasion of the act. "Not only the

[1] People *v.* Stokes, 281 Ill. 159, 176 (1917).

[2] Railroad Commission of Wisconsin *v.* Chicago, Burlington and Quincy Ry. Co., 257 U.S. 563 (1922); Interstate Commerce Commission *v.* Goodrich Transit Co., 224 U.S. 194 (1912); Southern Ry. Co. *v.* United States, 222 U.S. 20 (1911).

final purpose of the law must be considered, but the means of its administration—the ways it may be defeated."[1]

Although not within the scope of this discussion, it is of interest that the Supreme Judicial Court of Massachusetts has held that when a small loan act purports to regulate the business of small loans, but contains no prohibition against a single, isolated transaction, such a transaction does not offend the act.[2]

## Restriction of Scope of Small Loan Laws to Loans of Certain Size

Small loan acts generally apply only to loans of a certain amount, usually $300 or less, and not even to all of them. This raises two questions of classification, only one of which will be considered under this heading.[3]

The effects of this restriction are twofold: lenders who make loans for more than the stated maximum are denied all opportunity to avail themselves of the higher rates permitted by the act, while those who lend sums within that maximum, but do not comply with the law, are also denied such opportunity.

The validity of these differences depends on the reasonableness of the classification, and the relation of those differences to the purposes and ends for which the classification was made. The first question to be determined is the validity of the classification, which applies one set of rules to loans for $300 or less, and another to those in excess of $300. The general principles which are applicable in settling questions of classification under the Fourteenth Amendment and are universally recognized were thus stated by the Supreme Court of the United States:

> The rules by which this contention must be tested, as is shown by repeated decisions of this Court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is

[1] St. John *v.* New York, 201 U.S. 633, 637 (1906); Reagan *v.* District of Columbia, 41 App. D.C. 409 (1914); Rice *v.* Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927).

[2] Goodowsky *v.* Rubenstein, 225 Mass. 448 (1917).

[3] The other is that involved in the exemptions created by such acts and will be specially treated on pp. 161 ff.

without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.[1]

Unless, therefore, it can be shown that there is no reasonable basis for the classification, and that no conceivable state of facts exists under which it could be deemed reasonable, the classification is valid. Reliance on any such negative grounds is not, however, necessary. It can be affirmatively established that there exists a reasonable basis for the classification, and that not only a conceivable, but an actual, state of facts exists under which its reasonableness is beyond question.

The existence of the evil aimed at by the act is sufficiently notorious not to require extended comment. The exaction of oppressive and usurious interest by certain lenders constitutes such an invariable characteristic of the business as to have the quality of practical certainty. Another equally well-known fact is that the loans made by the class indicated are not for large amounts. This is, of course, owing to the fact that the needs of the borrower at any one time are seldom large. Experience has shown that $300 represents a reasonable maximum limit. Furthermore, the needs of these small borrowers are usually supplied by a fairly well defined class of lenders, who in fact constitute a class as distinct almost as the borrowers themselves. In short, the lines that divide both the lenders and the borrowers of this type from the rest of the community of lenders and borrowers are drawn with the same degree of distinction that characterizes any of the ordinary classifications of human society.

The legislature therefore does not create these classes; it merely recognizes the fact that they exist. Finding them, it has inevitably to adopt some practical way of defining them which will not be so vague as to defeat effective enforcement of the law. The distinc-

[1] Lindsley *v.* Natural Carbonic Gas Co., 220 U.S. 61 (1911).

tive factor that almost invariably defines them is the size of the loan transaction. Selecting the size of the loans as a criterion for defining this class of borrowers and lenders is therefore natural and quite necessary. It constitutes a standard that has a natural relation to the problem with which the law deals. Fixing the limit at $300, as most of the present day laws do, rather than at some other figure, is clearly warranted. The purpose of the law is to protect the small necessitous borrower against oppression. It is certainly not beyond the limits of valid legislative discretion to fix a limit certain to cover most, if not all, of the loan transactions in which such borrowers usually engage. The court has frequently held that where the validity of classifications adopted by state laws may depend on local conditions, it will accord the greatest deference to the legislative judgment.

> The deference due to the judgment of the legislature on the matter has been emphasized again and again. Of course, this is especially true when local conditions may affect the answer, conditions that the legislature does but that we cannot know.[1]

Fixing the exact point at which a given line dividing classes shall be drawn is a matter affected by local conditions. This is peculiarly true of the case under consideration, where only local experience can determine just what constitutes the general limits of dealings between a recognized class of lenders and borrowers. The test adopted is clearly not arbitrary.

The classification is valid because it is reasonably adapted to the particular evil at which the law was directed.

> It was pressed that there is no justification for the particular selection of fire insurance companies for the prohibitions discussed. . . . Again, if an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all embracing terms. . . . And if this is true, then in view of the possible teachings to be drawn from a practical knowledge of the business concerned, it is proper that courts should be very cautious in condemning what legislatures have approved.[2]

[1] Dominion Hotel, Inc., *v.* Arizona, 249 U.S. 265, 268 (1919).

[2] Carroll *v.* Greenwich Insurance Co., 199 U.S. 401, 410 (1905).

It follows therefore that unless the judgment of the legislature in fixing the limit at $300 is so unreasonable as to amount to arbitrary action, it is valid. If its determination that the existing evils and the practical needs of the situation would be met by adopting that limit is not arbitrary, its selection of that limit is reasonable, and the resulting classification constitutional.

The facts that are the common property of those familiar with the business clearly support the inference that the field selected for regulation is that in which experience has shown the evil to be most felt.

The classification in question is valid even though seemingly based on size alone. The circumstances under which size constitutes a valid basis of classification have been thus stated:

> Again, it is argued that the statute makes unconstitutional discriminations by excepting the classes mentioned in Section 29(d) above, especially those in whose business the average amount of each sum received is not less than $500, and those who give a bond of $100,000 or $50,000. But the former of these exceptions has the manifest purpose to confine the law as nearly as may be to the class thought by the legislature to need protection, and the latter merely substitutes a different form of security, as it well may. Legislation which regulates business may well make distinctions depend upon the degree of evil. It is true, no doubt, that where size is not an index to an admitted evil, the law cannot discriminate between the great and the small. But in this case size is an index. Where the average amount of each sum received is not less than $500 we know that we have not before us the class of ignorant and helpless depositors, largely foreign, whom the law seeks to protect.[1]

Size is therefore a valid basis for classification if it is an index of an existing evil. State courts have in several cases given judicial sanction to the reasonableness of the legislative judgment in adopting a fixed limit of size of the loan as the basis of classification in the field of small loan legislation.[2]

[1] Engel *v.* O'Malley, 219 U.S. 128, 137 (1911).

[2] Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911); State *v.* Wickenhoefer, 6 Penn. (Del.) 120 (1906); State *v.* Sherman, 18 Wyo. 169 (1909); Reagan *v.* District of Columbia, 41 App. D. C. 409 (1914); People *v.* Stokes, 281 Ill. 159 (1917); Comm. *v.* Puder, 261 Pa. St. 129 (1918); Badger *v.* State, 154 Ga. 443 (1922); State *v.* Hill, 168 La. 761 (1929).

## Discrimination in Interest Rates between Licensed and Unlicensed Lenders

Small loan acts produce discriminations of several kinds between licensed and unlicensed lenders, depending upon the provisions of the acts themselves and the general interest laws of the states in which they are enacted.

In nearly all states the rate of interest that may be contracted for was fixed by statute before any small loan law was enacted; the rate generally is from 6 to 8 per cent per annum. Most of the small loan acts provide that on loans within their scope (generally $300 or less) no person shall charge more than the contract rate already fixed by statute, unless he takes out a license and otherwise complies with the small loan acts; and they all provide that persons who comply with them may contract for a much higher rate.

In three states the discrimination works somewhat differently. Maine, for one, has no statute limiting the rate of interest that may be contracted for; persons may contract for any rate they choose. In Massachusetts on loans of less than $1000, 18 per cent per annum may be contracted for, and in Rhode Island, with exceptions not important herein, persons may contract for 30 per cent per annum. The Uniform Small Loan Law is in existence in Maine and Rhode Island, and in Massachusetts a similar law is in force which fixes the rate of interest at not to exceed 3 per cent a month. In these three states the small loan acts provide that persons who do not comply with such acts, in making loans within their scope ($300 or less) may charge only 12 per cent per annum. The result is that on loans of $300 or less, in these three states, lenders who make loans within the scope provided by these small loan acts and who do not choose to comply with them, not only may not contract for as high a rate as the licensed lenders, but may not contract for as high a rate as they could before the small loan acts took effect or as high as lenders of sums in excess of $300 may charge. The question presented in these three states is therefore somewhat different from that presented in other states, but the difference is one of degree only.

The question is as to the legality of this discrimination. In so far as the economic problem is presented to a legislature, there are ample reasons for the discrimination. The credit and financial responsibility of the borrower and the value of the security, if there is any, are always much less than in ordinary loan transactions; the risk therefore is greater. The overhead expense of making and collecting small loans and the losses upon them are greater. Hence the rate of interest should be greater.

But in examining the constitutionality of the discrimination, the court may not inquire into the problem that presented itself to the legislature, except in so far as it may take judicial notice of facts that are commonly and generally known; it must be guided by the legal principles that govern the question; it is the province of the legislature to make laws and of the court to construe them. Whether these discriminations are valid depends upon the validity of the classification and the reasonableness of this difference in treatment.

There is no doubt that the state may offer advantages to those who accept regulation under its optional plan, or may subject those who refuse to disadvantages. We have seen that an optional system of regulation is valid.[1] It is equally valid to provide a reasonable difference in treatment for different members of the regulated group according as they do or do not submit to control, in order to insure the general acceptance of the plan of control.

This same general question has been several times passed upon in cases dealing with the constitutionality of optional workmen's compensation laws. These laws divided employers into consenting and non-consenting classes; some of them made a like classification of employes. All these laws penalized non-consenting employers by depriving them of the usual common law defenses, in some cases in all personal injury actions brought by employes, in others only where the action was by a consenting employe. The usual pressure relied on to induce employes to assent was to cut down their common law rights of action against consenting employers. The situation is therefore exactly analogous to that presented by the classification of small loan dealers into licensed and unlicensed lenders. The decisions and reasoning of the courts in those cases thus furnish the principles applicable to the question now under consideration. Such laws have invariably been sustained against objections

[1] Assaria State Bank *v.* Dolley, 219 U.S. 121 (1911).

founded on both the due process and equal protection clauses of the Fourteenth Amendment.[1]

In Hawkins *v.* Bleakly, 243 U.S. 210 (1917), a case under the Iowa optional law, the court answered as follows an objection based on the due process clause:

> Some of the appellant's objections are based upon the ground that the employer is subjected to a species of duress in order to compel him to accept the compensation features of the Act, since it is provided that an employer rejecting those features shall not escape liability for personal injury sustained by an employee, arising out of and in the usual course of the employment because the employee assumed the risks of the employment, or because of the employee's negligence, unless this was wilful and with intent to cause the injury, or was the result of intoxication, or because the injury was caused by the negligence of a co-employee. But it is clear, as we have pointed out in New York C. R. Co. *v.* White, No. 320, decided this day (243 U. S. 188, 1917), that the employer has no vested right to have these so-called common law defenses perpetuated for his benefit, and that the Fourteenth Amendment does not prevent a state from establishing a system of workmen's compensation without the consent of the employer, incidentally abolishing the defenses referred to. (p. 213.)

The small loan laws limit the unlicensed lenders—those who fail to submit to regulation—to interest charges lower than those enjoyed by licensees, lower than lenders of sums beyond those covered by the laws, and lower than the rates allowed before the laws took effect. The language of the court in the workmen's compensation case cited above is therefore in point in determining whether the provisions of the small loan acts so limiting the rates of unlicensed lenders violate the due process clause. The argument implied in the quotation is that the state may constitutionally prescribe for those who refuse to submit to regulation any rule of law which it might prescribe for all. It is undeniable that a state might, as far as due process is concerned, prescribe a 6 per cent, or 12 per cent or any other reasonable rate, for all small loans.[2] Hence, it may also prescribe such rate for those of that class of dealers who refuse to accept the regulatory small loan act. This

[1] Hawkins *v.* Bleakly, 243 U.S. 210 (1917); Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571 (1914); Middleton *v.* Texas Power & Light Co., 249 U.S. 152 (1919).

[2] Griffith *v.* Connecticut, 218 U.S. 563 (1910).

feature of the small loan acts does not therefore violate the due process clause of the Fourteenth Amendment.

The same class of cases is equally decisive on the issue of classification. Although in but one of them did the court touch on an objection based on discrimination between members of the included classes, the principles on which it decided all of them clearly justify the distinction between licensed and unlicensed lenders. The true approach to this question was indicated in Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571, 578 (1914), as follows:

> This is not a statute which simply declares that the defense of contributory negligence shall be available to employers having less than five workmen, and unavailable to employers with five or more in their service. This provision is part of a general plan to raise funds to pay death and injury losses, by assessing those establishments which employ five and more persons and which voluntarily take advantage of the law. Those remaining out and who might come in because of the number employed are deprived of certain defenses which the law might abolish as to all if it was seen fit to do so.

From the above excerpt it follows that the validity of the classification now under discussion, like that of all classifications, must be judged in the light of the fact that it is but one part of a general plan of regulation. That general plan is valid, and the part is equally so if it has a reasonable relation thereto and is not purely arbitrary. That part now in question clearly bears such relation to the general plan of the small loan acts, since it is a reasonable, and in fact the only practicable method for insuring success to an optional scheme of regulation.

In addition it may be said that, in a state which does not limit the contract rate, the small loan act must necessarily place some limit of rate on those who lend sums within the scope of the act without complying with it; otherwise the act would be worthless.

In Hawkins *v.* Bleakly, 243 U.S. 210 (1917), which involved the Iowa voluntary Workmen's Compensation Act, the court overruled an objection based on the difference in treatment between employers and employes for the simple reason that "all employers are treated alike." The Iowa law differentiated between consenting and non-consenting employers by depriving the latter of the common law defenses. The equality of treatment accorded all employers consisted therefore in giving all an opportunity to assent, and subjecting all to the same disadvantages for failure to do so. The small loan acts similarly treat all small loan dealers equally. All are given an opportunity to take out a license and submit to regulation and secure the advantages that go with that act; all are subjected to the same disadvantages for failure to submit. Judged by the test of the Hawkins case, this scheme provides a constitutional procedure and classification. An even stronger case is that of Middleton *v.* Texas Power & Light Co., 249 U.S. 152 (1919). In that case an employe objected to the Texas voluntary Workmen's Compensation Act because it deprived employes of consenting employers of their common law right of action irrespective of their own assent to the plan, while employes of non-consenting employers were given a right of action freed from the usual common law defenses. This therefore involved a division of the employes who were within the terms of the act into two classes, one of which received more favorable treatment than the other. The court, in answering the objection, said:

> The discrimination that results from the operation of the act as between employees of different employers engaged in the same kind of work, where one employer becomes a subscriber and another does not, furnishes no ground of constitutional attack upon the theory that there is a denial of the equal protection of the laws. That the acceptance of such a system may be made optional is too plain for question; and it necessarily follows that differences arising from the fact that all of those to whom the option is open do not accept it must be regarded as the natural and inevitable result of a free choice, and not as a legislative discrimination. (p. 159.)

In this case the act of choice which produced the discrimination was not even that of the party against whom the discrimination operated. If under such circumstances the resulting discrimination does not constitute a denial of equal protection, then it surely does not when the choice producing the difference in treatment is the act of the person subjected to the discrimination. The difference in treatment under the Uniform Small Loan Law between licensees and unlicensed lenders in the matter of the rate legally chargeable is clearly one which, under these principles, must be regarded as the "inevitable result of a free choice, and not as a legislative discrimination." It is therefore not a denial of the equal protection of the laws; and the courts of many states have justified the discrimination.[1]

## Prohibition of the Sale of Wages (Section 16 of Uniform Small Loan Law)

It has always been a favorite method of defeating usury laws to clothe the transaction in the form of a sale. Small loans at exorbitant rates of interest to necessitous wage-earners, in which the transaction takes the form of a purchase of their wages, have increased so rapidly in late years that public attention has been attracted. To combat this growing evil the small loan laws of several states and the general form of the Uniform Small Loan Law, so called, which is urged for general enactment by many civic welfare bodies, contain this provision:

> The payment of $300 or less in money, credit, goods or things in action as a consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall be deemed a loan within the provisions of this Article secured by such assignment, and the amount by which such assigned compensation exceeds such payment shall be deemed interest upon such loan from the date of such payment to the date such compensation is payable. Such loan and such assignment shall be governed by and subject to the provisions of this Article.[2]

This provision is commonly known as Section 16 and for brevity and convenience will be so called in this discussion. Issues are raised by this section which do not generally arise where the small loan laws apply to transactions wherein the parties in fact intended a loan. These issues may be stated as follows:

[1] Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911); State *v.* Wickenhoefer, 6 Penn. (Del.) 120 (1906); State *v.* Sherman, 18 Wyo. 169 (1909); Reagan *v.* District of Columbia, 41 App. D.C. 409 (1914); People *v.* Stokes, 281 Ill. 159 (1917); Comm. *v.* Puder, 261 Pa. St. 129 (1918); Badger *v.* State, 154 Ga. 443 (1922); State *v.* Ware, 79 Ore. 367 (1916); Eaker *v.* Bryant, 24 Cal. App. 87 (1914); Dewey *v.* Richardson, 206 Mass. 430 (1910); Edwards *v.* State, 62 Fla. 40 (1911); King *v.* State, 136 Ga. 709 (1911); State *v.* Hill, 168 La. 761 (1929); Warner *v.* People, 71 Colo. 559 (1922); Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929); Rice *v.* Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927); Morgan *v.* Lowry, 168 Ga. 723 (1929), appeal dismissed in Morgan *v.* Georgia, 281 U.S. 629 (1930); Brand *v.* State, 3 S.W. 2nd (Tex.) 439 (1927); Beneficial Loan Soc. *v.* Cobb, Law and Eq. Ct. Richmond, Va.; Household Fin. Corp. *v.* Smith, No. 133943 Cir. Ct. Wayne Co., Mich.

[2] Bagby's Ann. Code (Md.), art. 58A, sec. 16.

1. The validity of the prohibition of an absolute sale of wages within the limits fixed by Section 16;
2. The validity of the inclusion of other forms of personal compensation than wages;
3. The validity of limiting the amount of assigned wages that borrowers may give and lenders take.

*1. Prohibition of Absolute Sale of Wages.* It has been held that Section 16 does not prohibit absolute sales of wages.[1] A careful examination of the language of the section discloses that it merely classifies certain purchases of wages with loans for the purpose of subjecting them to the regulatory provisions of the Small Loan Law without necessarily changing their essential character from sales to loans.

Nevertheless, it is also sometimes contended that Section 16 completely prohibits certain absolute sales of wages. Under this construction the section is more difficult to defend against an attack on constitutional grounds and, accordingly, its constitutionality will be discussed herein on the theory that the section does work a complete prohibition of certain absolute sales of wages.

The constitutional provisions involved are the due process clause of the Fourteenth Amendment and the provisions of the constitutions of the states in which Section 16 may be challenged.

The prohibition in question must be considered (a) in its application to wages already earned and, (b) in its application to future earnings.

*a.* Earned Wages. Applied to past earnings, within the limits of Section 16, the prohibition of assignments is valid. By "limits fixed by Section 16," we refer to the features of Section 16 which limit the transaction to $300 and leave the wage-earner free to transfer his wages as security for a loan.

The property protected by due process and similar clauses includes not only the res itself, but also the power to acquire, use and dispose of it.[2] The liberty protected includes the right to make all contracts proper for the free enjoyment of all a person's faculties.[3]

[1] Dunn *v.* State, 36 Ohio App. 170, 173 N.E. 22, affirmed in 122 Ohio St. 431 (1930) and appeal dismissed in Dunn *v.* Ohio, U.S. Sup. Ct., Oct. 27, 1930.

[2] Buchanan *v.* Warley, 245 U.S. 60, 74 (1917).

[3] Allgeyer *v.* Louisiana, 165 U.S. 578 (1897).

To prohibit the owner of past earnings from making an absolute disposal thereof, and to limit him to transfers by way of security for a loan, does take from him a property right that he theretofore had and does deprive him of a part of the liberty that was his. Whether it does so without due process of law depends on whether it transcends the legitimate scope of the state's police power.

In this discussion we will not consider Section 16 as standing alone. We will consider it as part of the small loan law, the objects of which are to prevent exploitation of necessitous persons and to regulate the business of making small loans to such persons.

The evils incident to the small loan business have frequently been referred to by the courts. The same is true of the evils connected with the assignment of wages. It is elementary that the lending of money at interest and the assignment of wages are proper subjects of regulation under the police power of the state.[1] We have herein already shown that it has been frequently held that courts will sustain legislation if any state of facts reasonably can be conceived under which it can be sustained; that they will accord great deference to the legislative judgment that conditions warranted the enactment, and refuse to hold the legislation invalid unless they can declare "the judgment to have been wholly without foundation"; and that due process requires only that the means adopted to remedy the evils have a real and substantial relation to the attainment of that object.

These principles and the pronouncements of courts themselves on the evils of unrestricted powers of assigning wages make it certain that the courts will respect and follow the legislative judgment that conditions warranted the legislation against those evils.[2]

The means adopted to limit the evils referred to, namely the prohibition of absolute transfers of wages within the limits of Section 16, are evidently reasonable; they strike at the source of the evils by prohibiting the acts from which they may result. The Supreme Court of the United States has recognized that decided cases involving similar or analogous limitations of individual rights are important factors in deciding questions of due process.

[1] Griffith *v.* Connecticut, 218 U.S. 563, 569 (1910); Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911).

[2] Lindsley *v.* Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911); Dominion Hotel, Inc. *v.* Arizona, 249 U.S. 265 (1919); Otis *v.* Parker, 187 U.S. 606, 610 (1903).

It said in Merrick *v.* Halsey & Co. 242 U.S. 568 (1917):

> Every new regulation of business or conduct meets challenge, and, of course, must sustain itself against challenge and the limitations that the Constitution imposes. . . . We may feel the difficulties of the new applications which are invoked, the strength of the contentions and arguments which support or oppose them, but our surest recourse is in what has been done, and in the pending case we have analogies if not exact examples to guide us. (p. 586.)

The decisions have sustained many prohibitions and limitations on the right to dispose of one's property where this was a reasonable means for coping with an existing or threatened evil. The sale of intoxicants may be prohibited even though owned at the time the law took effect; the sale of food preservatives containing boric acid may be forbidden; the blue sky laws, which bristle with prohibitions of the sale of certain securities and which amount to a complete denial of the right to sell, have been sustained against due process objections; also the sale of condensed skimmed milk and of stocks of goods in bulk.[1]

The cases referred to involved complete or partial prohibitions on the power to dispose of property. Cases dealing with other phases of "property" protected by due process reveal a similar trend of judicial opinion. The right to possess property lawfully acquired and owned may be absolutely prohibited. A state in carrying out its policy to protect wild game within its borders may prohibit the possession of game acquired outside the state even where it could readily be distinguished from the domestic variety; a state may prohibit the use of land for the construction of a distillery within a certain distance of a rectifying plant. The cases clearly show that there is no element of the property protected by our constitutions the exercise of which cannot be limited or completely prohibited without violating the due process clause if reasonably necessary to secure proper governmental ends. The only requirement is that the limitation or prohibition be a reasonable means for meeting the existing or threatened evil.[2]

[1] Mugler *v.* Kansas, 123 U.S. 623 (1887); Price *v.* Illinois, 238 U.S. 446 (1914); Caldwell *v.* Sioux Falls Stock Yards Co., 242 U.S. 559 (1917); Hebe Co. *v.* Shaw, 248 U.S. 297 (1919); Purity Extract Co. *v.* Lynch, 226 U.S. 192 (1912); Lemieux *v.* Young, 211 U.S. 489 (1909).

[2] New York *v.* Hesterberg, 211 U.S. 31 (1908); Mason *v.* Rollins, Fed. Cas. No. 9252 (1869).

It is well known that the device of a sale and purchase of wages is being employed to circumvent those small loan laws that do not contain Section 16 and is also being used as a substitute for transactions includible within such laws.[1]

The result in either case is to defeat to a considerable extent the purpose of such laws. The reasonableness of a regulation, and hence its conformity to due process, can best be determined by considering its relation to an efficient administration of the governmental policy: "not only the final purpose of the law must be considered, but the means of its administration—the ways it may be defeated."[2] Due process does not require the exemption of harmless beverages from the scope of a prohibition law which exemption "would facilitate subterfuges and frauds and fetter the enforcement of the law."[3]

The end aimed at by the small loan laws is clearly a valid governmental policy. The state can therefore adopt such means for realizing it as will prevent its defeat by both evasion and substitution. It can prohibit those acts which defeat its administration of that policy. Since the sale of wages threatens that very result and is a most effective way by which the laws may be defeated, the prohibition thereof is valid under the principles set forth.

This conclusion is reinforced by the well recognized principle validating particular legislative provisions that are an integral part of a more comprehensive plan, because of their relation thereto.[4] This principle sustains the extensive regulations of the Harrison Anti-Narcotic Act, which, but for that relation, were clearly beyond the powers of Congress.[5]

It is immaterial that the prohibited act, considered by itself, is innocent of the particular evil aimed at by the broader legislative policy. The prohibition of the sale of non-intoxicating liquors was held not to violate due process because it was reasonably necessary for the enforcement of a prohibition law; the prohibition of the sale of oleomargarine, which is in fact not injurious to health, does

[1] Wight *v.* Baltimore & Ohio Ry. Co., 146 Md. 66 (1924); Tollison *v.* George, 153 Ga. 612 (1922); McWhite *v.* State, 143 Tenn., 222 (1920); Rosenbush *v.* Fry, 136 Atl. (N.J.) 711 (1927).

[2] St. John *v.* New York, 201 U.S. 633, 637 (1906).

[3] Purity Extract Co. *v.* Lynch, 226 U.S. 192, 204 (1912).

[4] Jeffrey Mfg. Co. *v.* Blagg, 235 U.S. 571 (1914).

[5] United States *v.* Doremus, 249 U.S. 86 (1919).

not violate due process, when involved in a health measure; margin sales of stock, though not in themselves objectionable, may be forbidden in a statute aimed at gambling; the sale of non-injurious food stuffs may be thus prohibited, and so with lending money to a voter to pay his poll tax, even though such loans might be perfectly innocent.[1]

As stated in Purity Extract Co. *v.* Lynch, 226 U.S. 192, 201 (1912):

> When a state exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction, separately considered, is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government.

Courts have uniformly sustained legislative restrictions upon the power of wage-earners to assign earned wages. Compromises of sums due under workmen's compensation acts may be prohibited: Workmen's Compensation Board *v.* Abbott, 278 S.W. (Ky.) 533 (1925). A Maryland statute that subjected assignments of wages to burdensome restrictions was recently held not to violate any of the guarantees of the state or federal constitutions even as applied to a transaction which was admittedly a sale of wages: Wight *v.* Baltimore & Ohio Ry. Co., 146 Md. 66 (1924).

The prohibition of absolute sales of wages within the limits fixed by Section 16 is certainly no more severe than a prohibition of all assignments without the consent of those whose consent cannot be compelled. Furthermore, the prohibition of absolute sales in Section 16 still leaves their owner free to transfer them as security for a loan, thus enabling him to realize every purpose of their sale as fully as would such sale itself. He is thus deprived only of a technical legal power while being permitted to retain the substance. Such slight diminutions of previously existent rights of property may be imposed for the sake of preventing manifest evils without effecting any infringement on constitutional rights: Rideout *v.*

[1] Purity Extract Co. *v.* Lynch, 226 U.S. 192 (1912); Powell *v.* Pennsylvania, 127 U.S. 678 (1888); Otis *v.* Parker, 187 U.S. 606 (1903); Booth *v.* Illinois, 184 U.S. 425 (1902); Fisher Flouring Mills Co. *v.* Brown, 109 Wash. 680 (1920); Solon *v.* State, 114 S.W. (Tex.) 349, 357 (1908).

Knox, 148 Mass. 368 (1889). This, coupled with the fact that the property involved is choses in action upon whose assignment courts have developed numerous limitations on the score of public policy, makes it certain that the prohibition in question will be uniformly sustained as a reasonable exercise of the state's police power.

It follows that the prohibition of absolute transfers of wages, within the limits fixed by Section 16, is in no sense violative of due process, because it is a reasonable means for preventing evils connected with the prohibited acts; is reasonably justified as an integral part of the small loan acts; is a reasonable means for preventing evasions of said acts and for making their administration effective; and is supported by the authority of decided cases involving identical or analogous prohibitions.[1] Furthermore, if Section 16 be regarded as merely regulating sales of wages instead of prohibiting them, a fortiori it is constitutional, since the power to prohibit necessarily carries with it the power to regulate.

*b.* Future Wages. The prohibition of absolute transfers of future earnings, within the limits of Section 16, is valid. The constitutional right here involved is freedom of contract. As we have already shown, there is no such thing as absolute freedom of contract; due process requires only that legislation on it be reasonable and not arbitrary. The reasoning employed to establish the validity of the prohibition of absolute sales of past earnings is equally applicable here and alone would sustain this restriction on freedom of contract. But additional arguments sustain it. The right to assign future earnings has always been severely limited by the courts, which have held such assignments void as against public policy if without limit as to time or amount.

The element of public policy involved is stated by the Pennsylvania Supreme Court as follows:

> Should the law be declared to be that such an assignment is valid, it is not difficult to see that it would open the door to improvidence and profusion on the part of the assignor and in the end to utter and hopeless poverty. . . . A man may not sell himself into slavery.[2]

[1] Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929); State *v.* Hill, 168 La. 761 (1929); Dunn *v.* State, 122 Ohio St. 431 (1930), appeal dismissed in Dunn *v.* Ohio, U.S. Sup. Ct., Oct. 27, 1930.

[2] Lehigh Valley Ry. Co. *v.* Woodring, 116 Pa. St. 513 (1887); Leitch *v.* Northern Pacific Ry. Co., 95 Minn. 35 (1905).

A married man may be prohibited from assigning his future wages, even by way of security for a loan, without the consent of his wife, even though such consent could not be legally compelled.

The legislative power to prescribe other limitations which experience has shown necessary is clear. The decided cases bear it out.[1]

Indiana has sustained a statute absolutely prohibiting the assignment of future wages as a reasonable means for protecting the wage-earner from fraud, extortion and oppression; Missouri has sustained a similar statute.[2]

The Supreme Courts of Maryland, Louisiana, Virginia and Ohio have sustained statutes identical with Section 16 in respect of wages to be earned in the future.[3]

It follows that the prohibition of the absolute transfer of future earnings, within the limits of Section 16, leaving their owner free to transfer them by way of security for loans, is a reasonable exercise of the state's police power and is free from constitutional objection.

2. *Protection for Persons Other Than Wage-Earners.* It has sometimes been held that the evils at which restrictions on the power to assign earnings aim are more likely to exist in the case of wage-earners than in the case of those who receive other forms of compensation, such as salaries or commissions, because not so many of the latter are compelled by circumstances to resort to money lenders for small loans.[4] This fact, while it might justify, does not require the exclusion of the latter classes. These come under the intent of the law. The principle involved was considered in Louisville & Nashville Ry. Co. *v.* Melton, 218 U.S. 36 (1910). The railroad objected to the inclusion of employes not engaged in train operation within the provisions of a statute which deprived the railroad of the right to plead the fellow-servant rule in cases against it for injuries to such employes; that is, its objection was not to the narrowness of a classification but to its breadth. The

[1] Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911); Fay *v.* Bankers Surety Co., 125 Minn. 211 (1914); Wight *v.* Baltimore & Ohio Ry. Co., 146 Md. 66 (1924).

[2] International Text-Book Co. *v.* Weissinger, 160 Ind. 349 (1902); Chicago & Erie Ry. Co. *v.* Ebersole, 173 Ind. 332 (1910); Heller & Lingston *v.* Lutz, 254 Mo. 704 (1914).

[3] Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929); State *v.* Hill, 168 La. 761 (1929); Dunn *v.* State, 122 Ohio St. 431 (1930).

[4] Massie *v.* Cessna, 239 Ill. 352 (1909).

court held this did not deny the equal protection of the law and characterized as destructive of the whole power of classification the railroad's argument that

> . . . the states are prohibited from exerting their legitimate police powers upon grounds of the generic distinction obtaining between persons and things, however apparent such distinction may be; but, on the contrary, must legislate upon the basis of a minute consideration of the distinctions which may arise from accidental circumstances as to the persons and things coming within the general class provided for.

The quotation is the court's language in stating the contention of the railroad. The principle deducible is that it does not deny equal protection to include within a class all cases presenting the general conditions with reference to which the classification is made, and that it is not required to apply special rules to each conceivable sub-class into which the ingenuity of counsel might divide the general class.

It is not true today, when many wage-earners receive as much or more compensation than many salaried persons or those who work for commissions, that a distinction primarily based on the manner of payment determines the propriety of a classification for the purpose of coping with an evil that is independent of the method in which the compensation is paid. The evils are the same whether the compensation of the victim be wages, salary, or other forms of personal compensation.

The Illinois Small Loan Act which limited the amount of wages or salary which might be assigned was sustained in People *v.* Stokes, 281 Ill. 159, and the objections urged against the inclusion of salaries, on the basis of Massie *v.* Cessna, were overruled because those objections had been adequately met by limiting the amount assignable to $300. Section 16 contains the same limitation and hence is sustained by this decision. Other statutes regulating wage assignments and sales have been sustained, though applicable to salaries and other forms of compensation.[1]

Furthermore these provisions merely make the prohibitions of Section 16 co-extensive with the other provisions of the small loan

[1] Heller & Lingston *v.* Lutz, 254 Mo. 704 (1914); Wight *v.* Baltimore & Ohio Ry. Co., 146 Md. 66 (1924); Eaker *v.* Bryant, 24 Cal. App. 87 (1914); Badger *v.* State, 154 Ga. 443 (1922); Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929).

laws, which apply irrespective of the form in which the borrower receives compensation and which have often been sustained in the cases already cited. Section 16 therefore is not invalid because too inclusive.

*3. Limiting Amount of Assigned Wages.* It is valid to limit the amount of assigned wages that a borrower may give and a lender take. The provision of Section 16 that the difference between the amount paid and the assigned compensation shall be deemed interest on the loan is an essential part of the section. Due process requires that the standard of conduct on which civil or criminal liability depends (and violations of Section 16 entail both kinds) shall be sufficiently definite fairly to advise those subject to the law as to what conduct is required or prohibited.[1]

Transactions of the kind at which Section 16 aims exclude by their very nature all reference to the items of principal and interest. Since the section declares these transactions to be loans, some principle must be fixed for determining what shall constitute principal and interest items in a loan that assumes this form. Failure to furnish any doctrine whatever might be held to make the section void for uncertainty. The legislature has removed that danger by stating the tenet in clear terms, adapted to the character in which the parties have chosen to frame their transaction. The only question is whether the principle actually adopted is reasonable. That it is so is evident from the fact that courts in substance adopt the same principle in determining whether transactions, in which the parties intended a loan but sought to conceal it under the guise of a purchase, are usurious.[2] It follows that this provision does not violate due process in so far as it defines the method for determining the principal and interest items in the loan.

It has the direct effect, however, of limiting the amount of security in the form of assigned wages which a borrower may give and a lender take, in so far as it requires that that form of security shall exactly equal the principal of the loan and the permissible interest thereon. This provision thus involves a limitation on the power of an owner to dispose of his property by limiting the amount thereof that he can dispose of for any given amount of consideration. This

[1] International Harvester Co. *v.* Kentucky, 234 U.S. 216 (1914).

[2] Rosenbush *v.* Fry, 136 Atl. (N.J.) 711 (1927).

is no more than any usury statute does. Section 16 can be sustained on the same general principles upon which the constitutionality of usury legislation ordinarily is sustained, not only because the character of the evils aimed at by both is the same, but especially because the scheme of regulation provided by Section 16 is intended primarily as a means of preventing evasions of the broader usury statute of which it is a part.

In this connection it is important to note that the United States Supreme Court not only has held that Section 16 does not violate any provision of the federal Constitution, but also, in so holding, it apparently has regarded Section 16 as a usury regulation. This is evidenced by the fact that in dismissing the appeals in the two cases where the question of the constitutionality of a state's attempt to regulate sales of credit and of wages, respectively, has been presented to that court, the cases relied on in support of the court's determination that no substantial federal question was presented involved usury statutes. These two cases are Dunn *v.* Ohio, U.S. Supreme Court, October 27, 1930; and Morgan *v.* Georgia, 281 U.S. 691 (1930).

The Dunn case involved an appeal from a decision of the Ohio Supreme Court in which the constitutionality of the section of its small loan law corresponding to Section 16 had been sustained. The Morgan case involved an appeal from a decision of the Georgia Supreme Court sustaining the constitutionality of the Georgia Small Loan Law. The Georgia law did not contain a provision exactly identical with Section 16 but it did purport to regulate the "sale" of credit, and this fact was stressed by the appellant.

Likewise state courts of last resort in considering the constitutionality of Section 16 have recognized that its primary purpose was to prevent evasions of a usury act.[1]

However, the constitutionality of this rate-fixing feature of Section 16 does not necessarily depend upon establishing that that section is a usury measure. Its constitutionality is sufficiently established by the fact that on every occasion where the question has been presented to a court of last resort the constitutionality of Section 16 in its entirety has been sustained. In some of the cases this

[1] State *v.* Hill, 168 La. 761 (1929); Dunn *v.* State, 122 Ohio St. 431 (1930).

conclusion is arrived at without giving particular consideration to the question whether or not Section 16 is a usury measure.[1]

### Exemptions under the Small Loan Laws and Limitation of Operation of These Acts to Localities

*Persons.* Certain persons and concerns are exempt from the operation of small loan laws. These generally are banks, trust companies, building and loan associations and some other corporations, and pawnbrokers. The effect of these exemptions is that licensed lenders are subject to one set of rules while the exempted classes are subject either to the general interest laws, or, as is often the case with pawnbrokers and other exempted persons or concerns, to laws passed for their own specific cases.

What is the effect of these exemptions upon the constitutionality of these acts? The same question is involved in considering the classification between persons making loans within the named scope of the act and those making loans of a greater amount.

The purpose of the Uniform Small Loan Law is to provide a system of regulation for the small loan business. It has already been shown that it may constitutionally be restricted to loans for $300 or less. The question now in issue is whether it is legal to limit it to less than all the loans of that size.

> Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment.[2]

If, therefore, the exempted classes are not in a similar situation with the small loan dealers, the classification is valid. The decided cases furnish some of the tests by which the court determines similarity of situation in questions of this kind. In Hall *v.* Geiger-Jones Co., 242 U.S. 539 (1917), the court answered as follows a claim of illegal classification because of exemptions:

[1] Palmore *v.* Baltimore & Ohio Ry. Co., 156 Md. 4 (1928); Sweat *v.* Comm., 152 Va. 1041 (1929); State *v.* Hill, 168 La. 761 (1929); Dunn *v.* State, 122 Ohio St. 431 (1930); Dunn *v.* Ohio, U.S. Supreme Court, Oct. 27, 1930.

See also: Morgan *v.* Lowry, 168 Ga. 723 (1929); Morgan *v.* Georgia, 281 U.S. 691 (1930).

[2] Barbier *v.* Connolly, 113 U.S. 27, 32 (1885).

If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law. (p. 557.)

In Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911), when the same claim was made, because of exemptions, it said:

Legislation may recognize degrees of evil without being arbitrary, unreasonable or in conflict with the equal protection provision of the Fourteenth Amendment to the Constitution of the United States. (p. 235.)

These cases show that there is sufficient dissimilarity in situation to support a classification if an evil is present in one case and not in another, or, if present in both, if it exists to a greater degree in the one than in the other.

A second set of tests is furnished by the adoption of the court's own definition of what is meant by "evils" in cases of this kind. In Rast *v.* Van Deman & Lewis Co., 240 U.S. 342 (1916), it said, "It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury, but obstacles to a greater public welfare." (p. 357.)

If, therefore, there exist some obstacles to the public welfare in the case of the small loan dealers that are not present in the case of the exempted classes, there is a sufficient dissimilarity in their situation to warrant a difference in treatment. The legislative judgment that such evils or obstacles exist in the one case and not in the other, or that they are present in both, but in different degrees, will not be overthrown by the courts unless it is clearly and palpably arbitrary and utterly without reasonable basis.

It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety.[1]

If any state of facts reasonably can be conceived that would sustain a classification, the existence of that state of facts at the time the law was enacted must be assumed, and the classification sustained.[2]

The evils at which the small loan acts were aimed were the op-

[1] Rast *v.* Van Deman & Lewis Co., 240 U.S. 342, 357 (1916).

[2] Rast *v.* Van Deman & Lewis Co., 240 U.S. 342 (1916); Lindsley *v.* Natura Carbonic Gas Co., 220 U.S. 61, 78 (1911).

pressive and illegal practices of a definite class of lenders in loan transactions with poor and necessitous borrowers, and the injurious social consequences thereof. Banks and trust companies do not as a general rule make loans of the size usually required by such borrowers; furthermore, the borrowers whom the law was intended to protect do not generally resort to such institutions for the obvious reason that they cannot generally meet the conditions those institutions impose. Building and loan associations do not generally seek this class of necessitous borrowers, and the legal restrictions upon their lending powers effectually prevent them from meeting the needs of these borrowers. Pawnbroking is a well-known and distinct class of loans economically and legally different from any other, and is generally supervised by the police under state laws or municipal ordinances.

The evils at which the small loan acts are aimed are not present in the exempted classes or, if present, are there to a lesser degree; and some of the exempted classes are regulated by laws enacted for them especially. Therefore under the established principles of constitutional classification already discussed the exemptions are valid.[1]

*Localities.* Small loan laws, restricted in their operation to portions of a state, have occasionally been enacted and their validity for that reason challenged. Delaware sustained such a law which applied to one county only in State *v.* Wickenhoefer, 6 Penn. (Del.) 120 (1906), against the objection that it violated the equality and due process clauses of the Fourteenth Amendment and a provision of the Delaware Constitution that a person shall not be deprived of property contrary to the law of the land. Tennessee, in Spicer *v.* King Bros. & Co., 136 Tenn. 408 (1916), held such a law invalid, which applied only to counties of 50,000 population, on the ground that it was obnoxious to Section 8 of Article XI of the state constitution forbidding the passage of local laws. That section, however, did not in terms refer to local laws; it provided that the legislature should have no power "to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same

[1] See cases cited in footnote one on p. 150.

law, extended to any member of the community, who may be able to bring himself within the provision of such law." The court said that money is lent on personal property in counties of less than 50,000 and that such loans do not exist alone at the centers of population; the Delaware court proceeded on the theory that the legislature had the right to determine where and by whom the injurious business at which the law was aimed was engaged in.

In New York a small loan act which exempted two counties from its operation was enforced in Lowry *v.* Collateral Loan Association, 172 N.Y. 394 (1902). The federal court sitting in Alabama, in Re Home Discount Co., 147 Fed. 538 (1906), enforced an Alabama wage-assignment law which applied to only four counties. In neither of these cases was the precise point argued or discussed.

Minnesota enacted a small loan law applicable only to cities of a certain size (Laws 1913, ch. 439) and Michigan has enacted two such laws (Laws 1907, no. 337, and Laws 1915, no. 228), but as to none of these has the question been raised.

The effect of such restriction of operation has been considered as to local option laws which have generally been sustained;[1] also as to laws regulating business such as handling of grain, explosives, employment agencies and others.[2] In many, if not all such cases, however, features which do not enter into the consideration of a small loan law, such as the public health or morals, or the validity of processes of legislation, were involved, and for that reason they are not on all fours with the case of small loan laws.

It is felt that there is not ample warrant in case law for laying down any positive rule as to the effect of such restriction in small loan laws, but we shall refer to the general principles which should guide in the determination of the question as to any given small loan act. The validity or invalidity of any given act because of such restriction of application to a locality must rest upon the construction of the Fourteenth Amendment and of the prohibitions, if any, against such restriction in the constitution of the state by which the law was enacted.

[1] Ohio ex rel. Lloyd *v.* Dollison, 194 U.S. 445 (1904). See also The Police Power, by Ernst Freund, Callaghan & Co., Chicago, 1904, p. 205.

[2] People *v.* Budd, 117 N.Y. 1 (1889), affirmed in 143 U.S. 517 (1892); People ex rel. Armstrong *v.* Warden, 183 N.Y. 223 (1905); In re Montgomery, 163 Cal. 457 (1912).

As to the Fourteenth Amendment the rule is quite clear; the Delaware court in 6 Pennewell 120, 129 (1906) stated it rather too broadly when it said that "those parts of the 14th Amendment . . . which relate to 'due process of law' and 'the equal protection of the laws' are subject to the rightful exercise of the police power of the State and were not designed to restrict such power." We believe the rule is more correctly stated by the Supreme Court of the United States in Hayes *v.* Missouri, 120 U.S. 68, 71 (1887), as follows: "The Fourteenth Amendment does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed"; and again in People ex rel. Armstrong *v.* Warden, 183 N.Y. 223, 225 (1905) "the equality within the contemplation of the Fourteenth Amendment does not necessarily include territorial equality."

Therefore, it may be laid down as a settled principle that the Constitution of the United States, in securing due process of law and the equal protection of the laws, does not prohibit state legislation which is limited as to the territory within which it is to operate, if not palpably arbitrary and if uniform within the class which is created. (Mutual Loan Co. *v.* Martell, 222 U.S. 225 [1911]; 6 Ruling Case Law, p. 388.)

As to prohibitions, if any, in state constitutions, against such territorial restrictions, the rule is not so clear. There are a variety of requirements in state constitutions that may be claimed to amount to such prohibitions; to decide whether or not they are such is the problem as to the law of any given state.

The constitutional requirements that will generally be relied on to defeat such restrictions are those which provide that laws shall be equal; that they shall confer no exclusive privileges; that they shall have uniform operation throughout the state; that local or special laws affecting certain given subjects shall not be enacted; and that no special law shall be enacted where a general law could be made applicable.

In the Delaware case (State *v.* Wickenhoefer, 6 Penn. [Del.] 120 [1906]), while objection to the law was made under a prohibition of the state constitution against taking property contrary to the law of the land, the court did not discuss that objection but treated the case as if the Fourteenth Amendment alone were involved; while in the Tennessee case (Spicer *v.* King Bros. & Co., 136 Tenn. 408 [1916]) the question of classification, which is the real question involved, was given but scant consideration.

What is equality, what is uniformity of operation, what is general and what is special has been defined in many cases to which we have already called attention. We repeat, a law is general and uniform which operates equally upon all the subjects within the class of subjects for which the rule is adopted.[1] For the purpose of applying the rule the legislature has the power to make classifications, to some of which classes the law may apply and to others of which the law may apply in a different way or not at all. In making the classification, the legislature cannot adopt a mere arbitrary method, but the classification must be based upon matters which are germane to the objects or purposes to be effected by the law; it must be suggested by such a difference in the situation and circumstances of the subjects placed in the different classes as to disclose the necessity or propriety of different legislation in respect thereto. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, it may be dealt with, although otherwise and merely logically it is not distinguishable from other classes not embraced in the law. Legislation may recognize degrees of evil without being arbitrary, and by evils we mean not some definite injury but obstacles to a greater public welfare. Finally, "it makes no difference that the facts may be disputed or their effect opposed by arguments of serious strength. It is not within the competency of the courts to arbitrate in such contrariety."[2]

Our question here will be whether there is any natural reason why a law regulating small loans should apply to cities or counties or other localities, either of a designated population or of other designated characteristics or of no designated characteristics, and exclude other localities? The correct application of the foregoing

[1] Nichols *v.* Walter, 37 Minn. 264, 271 (1887).

[2] Mutual Loan Co. *v.* Martell, 222 U.S. 225 (1911); Rast *v.* Van Deman & Lewis Co., 240 U.S. 342 (1916); Murray *v.* Board, 81 Minn 359, 361 (1900).

principles to any given small loan law will result in the correct solution of the question whether the restriction of the application of such law to a locality is constitutional or unconstitutional.

### MISCELLANEOUS CONSTITUTIONAL REQUIREMENTS

Small loan laws, like all other laws, may need to be examined in the light of various other constitutional requirements, failure to comply with which is frequently urged. Some of these will be briefly considered.

Many state constitutions provide that no law shall embrace more than one subject and that this subject shall be expressed in its title. The objection that a statute includes more than one subject and that the title does not express the subject is one which is frequently urged and seldom sustained. The constitutional requirement has frequently been under consideration, and the reasons governing its application are well established.

The object of the provision is not to hinder legislation or require that the title of an act should be a complete index to the subject matter which follows and minutely and exactly express every related matter which was included in the act, but it is for the purpose of apprising the legislature and the public, through the title of the act, of the general subject matter with which it deals and to secure a separate consideration of each distinct legislative measure. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated should fall under some one general idea, should be so connected with or related to each other, either logically or in popular understanding, as to be parts of or germane to one general subject. This may be done either by expressing in the title a brief, general statement of the objects and purposes of the act, or by so framing the title as to express the principal features of the act more in detail. Either method will answer the requirements of the constitution so long as the general subject matter of the legislation is fairly indicated. This constitutional provision is to be liberally construed and all doubts resolved in favor of the sufficiency of an act adopted by the legislature.[1]

The federal and probably all state constitutions prescribe formalities for the legislature to comply with in enacting a bill into law. These vary greatly in different constitutions. Among them are that every bill shall be read a certain number of times on different days; that it shall be enrolled after having passed both houses; that it shall be signed by certain officials; that it shall be presented to the executive within a certain time.

While these requirements are designed to safeguard the orderly passage of bills, they are in a sense technical, and some of them may be waived; if objection is made to an act because of noncompliance with such requirements, it is often necessary to follow the measure from the time of its introduction into the legislature, and resort must be had to the legislative journals and records to ascertain whether these formalities have been complied with.

Some state constitutions provide that no law shall be revived or amended by reference to its title only, but that the law revived or amended shall be inserted at length in the new act. Objection was made to the Uniform Small Loan Law of Illinois upon this ground, the claim being made that it was an amendment to the general interest law of Illinois.

This constitutional requirement is not violated when the act in question is a complete law within itself and not merely an amendment of some other statute. The Illinois court held that the object of the Uniform Small Loan Law of that state was not to regulate the rate of interest but to regulate the business of making loans of small sums of money; that the provision as to the rate of interest was inserted only as an incident of such regulation, and that the constitutional requirement therefore was not offended.[2]

All American constitutions, either by specific provision or from the nature of the instruments, separate the sovereign powers of the state into three departments, the legislative, the executive, and the judicial, and forbid, either directly or by necessary implication,

[1] People *v.* Stokes, 281 Ill. 159 (1917); Morgan *v.* Lowry, 168 Ga. 723 (1929); Rice *v.* Franklin Loan and Finance Co., 258 Pac. (Colo.) 223 (1927).

[2] People *v.* Stokes, 281 Ill. 159 (1917); People *v.* Mahaney, 13 Mich. 481 (1865).

that any department should exercise the powers of the others. Sometimes a statute violates this requirement by conferring on one department of the government powers and duties that properly belong to another. Because the claim that this has been done in any particular case entails careful examination of the subject and of adjudicated cases, we shall not here go into the matter extensively.

The Uniform Small Loan Law of Illinois was attacked upon the ground that it conferred judicial powers upon the head of the banking department of that state (there called the Department of Commerce and Labor), with respect to requiring additional bonds, because it vested him with the power to revoke licenses and because it empowered him to call and examine persons under oath for the purpose of ascertaining whether or not the licensee was complying with the law. The court said:

> The sole power granted is to license and regulate the business, which carries with it as a necessary incident, the right to determine whether or not the applicant for such license possesses the qualifications required by law and is a fit person to conduct such business. While the determination of such questions requires the exercise of judgment and discretion, and to that extent is of a judicial nature, it is not judicial power as contemplated by the provisions of the constitution. . . . The granting of such powers to ministerial officers has never been held to vest them with judicial powers within the meaning of our constitution. . . . If any licensee deems himself aggrieved by the acts of the department in revoking his license and contends that his license has been revoked without proper cause, he would have an unquestioned right to resort to the courts to compel a restoration of his license and have his rights in the premises adjudged by a court of law irrespective of the determination of the Department of Commerce and Labor in the premises.[1]

The same objection was made to the Small Loan Act of Pennsylvania and was likewise overruled.[2]

## WHO MAY RAISE QUESTIONS ON THE CONSTITUTIONALITY OF STATUTES AND GENERAL PRINCIPLES FOLLOWED BY COURTS IN DETERMINING THEM

It is always of importance to know who may raise a constitutional question. It is the rule that only those whose rights are

[1] People *v.* Stokes, 281 Ill. 159 (1917).

[2] Comm. *v.* Puder, 261 Pa. St. 129 (1918); O'Neill *v.* American Fire Insurance Co., 166 Pa. St. 72 (1895); Morgan *v.* Lowry, 168 Ga. 723 (1929).

directly affected can properly question the constitutionality of a statute and invoke the jurisdiction of the courts in respect thereto. Mr. Justice Hughes laid down the rule as follows:

> One who would strike down a state statute as a violation of the Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution.[1]

We have discussed only the general principles applicable to the constitutionality of small loan laws. If the constitutionality of any particular small loan law is challenged it must be examined in the light of those principles and must stand or fall upon its own provisions; it can be judged by other small loan laws only as the same or similar provisions in them have been construed by the courts.

There are certain general principles that courts follow in determining constitutional questions, some of which have already appeared in this discussion; but it will not be amiss again to refer to them in conclusion. They are so generally recognized and their wisdom is so apparent that nothing more is required than the mere statement of them.

Courts will take judicial notice of all facts commonly and generally known; of the general business affairs of life and the manner in which business is ordinarily conducted; of all facts bearing upon the constitutionality of a law under consideration.

There is a presumption of constitutionality that attaches to all legislative acts. The burden is on him who assails the validity of the act, and that burden is not discharged if any reasonable doubt remains as to whether the law is or is not constitutional. It is only in the clearest cases of conflict between the legislative act and the fundamental law that courts will declare the former void.

Courts will not substitute their judgment on the expediency of the law for that of the legislature. If any state of facts can be reasonably conceived under which the law would be valid, its constitutionality will be sustained. Courts invariably bear in mind the

[1] Standard Stock Food Co. *v.* Wright, 225 U.S. 540, 550 (1912); State *v.* Hill, 168 La. 761 (1929).

fact that local conditions, with which the legislature was familiar, but of which they themselves can scarcely know, may justify legislative action which on its face might appear unreasonable.

Where a part only of a statute is unconstitutional the court will not declare the entire act void if otherwise good, unless the unconstitutional part is essentially and inseparably connected in substance with the whole.[1]

While these general principles do not determine the specific issues as to any concrete law, they do furnish a valuable guide to the approach to such issues and assist in defining the limits within which the legislative machinery may move without offending the fundamental law.

## ADDENDUM

After the preparation of Chapter VIII, the Tennessee Supreme Court handed down a decision sustaining the constitutionality of the Tennessee small loan law in the case of Koen *v.* State (Tenn. June 10, 1931), 39 S.W. 2d 283. The Tennessee law closely approximates the small loan laws of other states, the constitutionality of which has been previously adjudicated, except that it provides for one-half of 1 per cent a month interest and a maximum of 3 per cent a month fees. This provision presumably was so arranged to comply with Article XI, Section 7, of the Tennessee constitution, which reads as follows:

> *Interest conventional rate.*—The legislature shall fix the rate of interest, and the rate so established shall be equal and uniform throughout the state; but the legislature may provide for a conventional rate of interest, not to exceed ten per centum per annum.

This law constitutes a legislative recognition that items in addition to interest should be taken into account in determining a fair charge for small loans.

The Court construed the statute as a limitation on the service charge which could legally be made on the class of loans subject to the act, rather than as an authority for such a charge. It necessarily recognized the right of the lender to charge a "reasonable

[1] Lewis-Sutherland, Statutory Construction, I, 576 Chicago, 1904; Morgan *v.* Lowry, 168 Ga. 723 (1929); State *v.* Hill, 168 La. 761 (1929).

fee," in addition to one-half of 1 per cent a month interest, to cover the items of expense enumerated in the statute. The possible implications of this recognition are of unusual interest.

The case is important because the constitutions of several southwestern states contain similar provisions limiting the maximum rate of interest.

See Joy *v.* Provident Loan Society (March 27, 1931), Texas Civil Court of Appeals (rehearing denied April 2, 1931), 37 S.W. 2d 254, where there was no statute involved similar to the Tennessee act.

## TABLE OF CASES

# PART II

# WAGE-ASSIGNMENT LAWS

# CHAPTER IX

## THE LAW OF WAGE ASSIGNMENTS PRIOR TO 1900

### NECESSITY OF SPECIAL TREATMENT OF WAGE ASSIGNMENTS

THERE are two reasons why the law relating to wage assignments given to secure loans must be considered apart from the general subject of small loan legislation. The first is that some states have failed to recognize that it is a part of the problem and have special laws on the subject of wage assignments. This failure to understand the problem may arise from historical change. In the nineteenth century such assignments were generally made to tradesmen to obtain credit for household or family necessities. Some states do not realize that new abuses have developed now that wage assignments have become an instrument largely of money-lenders. Or their failure to see the wage assignment in the setting of the small loan problem may arise from a too marked realization of the abuses of wage assignments. They may have sought to cure the ailment by alleviating but one of its symptoms.

Whatever the reason, the results are clear. The only legislation, aside from the general usury laws, in the states of Arkansas, Kentucky, Montana, and Vermont, which affects small loans, consists of statutes prohibiting or regulating wage and salary assignments. Except for the authorizing of remedial loan corporations with limited dividends, the same condition exists in Minnesota. Maine requires that wage assignments, given to secure small loans, and made to a licensed lender under its small loan act, must conform to her wage assignment act.[1]

In Nebraska general loan laws and specific wage-assignment laws exist side by side. The courts would probably imply a requirement in Nebraska that wage assignments, taken to secure loans made under the general loan laws, must comply with the wage-assignment law, if the security was to be valid. Indiana, New Hampshire, and Pennsylvania make no specific mention of

[1] Acts and Resolves 1917, ch. 298.

wage assignments in their small loan laws; they have other laws regulating wage-assignments. In those states doubtless the assignment statute would affect such assignments even though given to secure loans made under the small loan law.

In New York, on the other hand, the 1915 loan law expressly declares that assignments subject to such law are not subject to the general wage-assignment law. The same result is to be expected in Colorado, Connecticut, Iowa, Maryland, and Tennessee, for though both the small loan laws and the wage-assignment laws there provide specific regulations for wage assignments given to secure small loans and though the small loan laws are not expressly inclusive, they were in fact enacted later in point of time. The courts would, without doubt, realize in such states that the small loan act was intended to be a comprehensive regulation of the entire subject. And the same result should, of course, be reached in Rhode Island, where the small loan law rather needlessly declares that its wage-assignment provisions do not apply to assignments made in accordance with the provisions of the "Wage Assignment Act to secure any indebtedness other than an indebtedness for a loan of money of three hundred dollars or less under this act."

These examples are sufficient to indicate that any treatment of the law relating to small loans would be incomplete unless it included a treatment of the law relating specifically to wage assignments in so far as it affects small loans. But there is a second reason for a separate discussion. At the present time the most pressing problem in this field arises from wage assignments. The loan shark, accustomed to exorbitant rates, is seeking to evade regulation by putting his transaction in the form not of a loan secured by an assignment, but in the form of a purchase of the wages. By "buying" wages instead of making a loan, he is claiming to be exempt from all usury and loan laws.[1] An examination of the statutes and decisions concerning wage assignments is necessary to demonstrate how unsound and how unwarranted is this claim that there is legal warrant for so palpable an evasion of the plain purpose of small loan legislation.

[1] An example of the usual procedure is to purchase for $10 the right to $15 worth of wages payable in one week. In such a case the interest would be 2600 per cent a year.

## LAW OF WAGE AND SALARY ASSIGNMENTS, INDEPENDENT OF STATUTE

No question has ever been raised concerning the assignability of a claim for wages earned at the time of the assignment. A claim for wages already earned, like a claim for merchandise sold and delivered, is simply a chose in action. If the one could be assigned, there was apparently no reason why the other could not be assigned. Certainly there was no reported decision making any distinction between the two. At first such assignments of choses in action were good only in equity, but later assignments of choses in action generally became good at law. It followed that assignments of wages already earned became enforceable at law.

In the middle of the last century the courts went a step farther and held that wages to be earned in the future under an existing contract of employment were also assignable.[1] Furthermore the contract of employment was not required to be for any definite time; the fact that the assignor was working for an employer and expected to continue the employment was sufficient to make the assignment of future earnings valid even though the assignor might lose such employment at any time.[2] These decisions have been generally followed and, except in those jurisdictions where it is otherwise provided by statute, are law today in practically every state.[3]

On the other hand, it has been generally held that wages to be earned under a contract of employment not existing at the time of the assignment constituted a mere possibility not coupled with an

[1] Weed *v.* Jewett, 2 Met. 608 (1841); Brackett *v.* Blake, 7 Met. 335 (1844); Emery *v.* Lawrence, 8 Cush. 151 (1851); Mulhall *v.* Quinn, 1 Gray 105 (1854); Thayer *v.* Kelley, 28 Vt. 19 (1855).

[2] Thayer *v.* Kelley, 28 Vt. 19 (1855); Kane *v.* Clough, 36 Mich. 436 (1877).

[3] Mallin *v.* Wenham, 209 Ill. 252; Monarch Discount Co. *v.* C. & O. Ry. Co., 285 Ill. 233; Rudijkeit *v.* Andrews, 74 Ohio St. 104 (citing many authorities); Bell *v.* Mulholland, 90 Mo. App. 612; Manly *v.* Bitzer, 91 Ky. 596; Schilling *v.* Mullen, 55 Minn. 122; Quigley *v.* Welter, 95 Minn. 383; Augur *v.* N. Y. Belting Co., 39 Conn. 536; Garland *v.* Harrington, 51 N. H. 409; Provencher *v.* Brooks, 64 N. H. 479; Low *v.* Pew, 108 Mass. 347; McCormick *v.* Towns, 64 N. H. 278; Dole *v.* Farwell, 72 N. H. 183; Lightbody *v.* Smith, 125 Mass. 51; O'Keefe *v.* Allen, 20 R. I. 414; C. B. & Q. R. Co. *v.* Provolt, 42 Col. 103; McKneely *v.* Armstrong, 212 S.W. (Texas) 175; Welborn *v.* Buck, 114 Ala. 277; Harrison *v.* Louisville and Nashville Ry. Co., 120 Ala. 42; Metcalf *v.* Kincaid, 87 Iowa 443; Wade *v.* Bessey, 76 Me. 413; Hall *v.* Boston Plate & Window Glass Co., 207 Mass. 328; Falconio *v.* Larsen, 31 Ore. 137; Jermyn *v.* Moffit, 75 Pa. St. 399, 402; Lehigh Valley Ry. Co. *v.* Woodring, 116 Pa. St. 513.

interest and were, therefore, not assignable.[1] Such assignments are generally invalid, even though the wage-earner executes a power of attorney and under such power an assignment is executed, if the wage-earner has a different employment at the time of the execution of the assignment from that which he had at the time of the execution of the power.[2] Only in an unusual case has it been held that, if the future employment is specified and the assignment is for a limited time only, the assignment will be held valid in equity.[3] Except for some unusual case, it will generally be held, unless a statute otherwise provides, that wages to be earned under a contract of employment not existing at the time of the assignment cannot be assigned. This rule has been held to apply even where the assignor, after leaving the employment existing at the time of the assignment, goes back to the very same employment.[4]

It has also been held in Minnesota that an assignment of future wages indefinite in point of time is invalid,[5] and a query has been raised on this point in Iowa.[6] However, when such an assignment has been assented to by the employer, it has been held enforceable against him.[7]

In England and in most of the American states the unearned fees

[1] Hartley *v.* Tapley, 2 Gray 565; Lehigh Valley Ry. Co. *v.* Woodring, 116 Pa. St. 513; Metcalf *v.* Kincaid, 87 Iowa 443; Rudijkeit *v.* Andrews, 74 Ohio St. 104; Thompson *v.* Gimbel, 71 Misc. 126, affirmed, 207 N. Y. 659; Porte *v.* C. & N. W. Ry. Co., 162 Wis. 446; Jermyn *v.* Moffit, 75 Pa. St. 399, 402; National Biscuit Co. *v.* Consolidated Agencies, 153 Ill. App. 214; Stromberg *v.* Hill, 170 Ill. App. 323; Draeger *v.* Wisconsin Steel Co., 194 Ill. App. 440; Tolman *v.* Union Casualty & Surety Co., 90 Mo. App. 274.

[2] Thompson *v.* Gimbel, 71 Misc. 126, affirmed, 207 N. Y. 659; Blakeslee *v.* Make-Man Tablet Co., Ill. App. 515; Ogle *v.* Shauman, 188 Ill. App. 4; Ellis *v.* Saline County Coal Co., 199 Ill. App. 219.

[3] Edwards *v.* Peterson, 80 Me. 367. And there are dicta in other decisions to the same effect: Rudijkeit *v.* Andrews, 74 Ohio St. 104; Close *v.* Independent Gravel Co., 156 Mo. App. 411; Hax *v.* Acme Cement Co., 82 Mo. App. 447. The Maine decision, however, was undoubtedly influenced by the fact that the assignment in question was for what the court called most meritorious consideration, being for groceries furnished the assignor and his family, and the court called attention to the fact that the rights of no other creditor were involved. The dicta in the other cases seem to be based more or less on Edwards *v.* Peterson.

[4] Porte *v.* Chicago & N. W. Ry. Co., 162 Wis. 446; National Biscuit Co. *v.* Consolidated Agencies, 168 Ill. App. 214; O'Keefe *v.* Allen, 20 R. I. 414.

[5] Steinbach *v.* Brant, 79 Minn. 383. See also Leitch *v.* Northern Pacific Ry. Co., 95 Minn. 35.

[6] Peterson *v.* Ball, 121 Iowa 544.

[7] Boylen *v.* Leonard, 2 Allen 407.

and salaries of public officers and employes have been held unassignable on the ground of public policy.

The law presumes, with reference to an office of trust, that he required the payment which the law has assigned to him for the purpose of upholding the dignity and performing properly the duties of that office, and therefore it will not allow him to part with any portion of those fees either to the appointer or anybody else. He is not allowed to charge or incumber them. . . . Any attempt to assign any portion of the fees of his office is illegal on the ground of public policy, and held therefore to be void.[1]

To the same effect are numerous decisions in the United States.[2] Massachusetts and Kentucky alone have held the contrary, and that without any discussion of the question of public policy.[3] The rule is otherwise where the compensation has been already earned by the public officer; the assignment is then valid.[4]

If the assignment were for only a part of the wages due to the assignor at any one time, the assignment could not be enforced at law. Such enforcement would violate the well-known legal rule against the splitting of actions; it might involve the employer in two lawsuits, one by the assignee and the other by the assignor for the balance of the wages not assigned.[5] Such an assignment, however, could be enforced in equity, where both the assignor and the employer could be joined and the entire matter disposed of in one action. The legal prohibition of part assignments had little practical importance, for the assignee could always take an assignment of the entire claim and agree to repay the balance to the assignor.

The common law, therefore, prior to the present century, was well settled that generally an assignment of wages earned or to be earned under a contract of employment existing at the time of the employment was valid, and that an assignment of wages was in-

[1] Liverpool *v.* Wright, 28 L. J. (n. s.) (Ch.) 871, quoted in Bliss *v.* Lawrence 58 N. Y. 442.

[2] Bowery National Bank *v.* Wilson, 122 N. Y. 478; State *v.* Williamson, 118 Mo. 146; and the decisions cited at length in 5 Corpus Juris p. 872, note 70.

[3] Macomber *v.* Doane, 2 Allen 541; Mulhall *v.* Quinn, 1 Gray 105; Brackett *v.* Blake, 7 Met. 335; Manly *v.* Bitzer, 91 Ky. 596.

[4] Roesch *v.* Worthen, 95 Ark. 482; Ex parte Stewart, 185 Ala. 216.

[5] C. B. & Q. Ry. Co. *v.* Provolt, 42 Col. 103; Thompson *v.* Gimbel, 71 Misc. 126, affirmed, 207 N. Y. 659; Central of Ga. Ry. Co. *v.* Dover, 1 Ga. App. 240.

valid if the contract of employment was not in existence at the time of the delivery of such assignment. The exceptions were of comparatively little importance.

## THE EARLY STATUTES: PROTECTION OF CREDITORS

The first considerable use of wage assignments in America was in the New England States. They appeared in litigation during the rise and early development of the textile factories. The cases during all of this early period concerned assignments given to tradesmen for groceries or other family necessities. It should be kept in mind both that factories in those days paid wages only monthly and that they attracted to the factory towns a class of people quite different from the natives. These newcomers were strangers, unknown to the local tradesmen, and after a time were mostly of alien races, Irish or French Canadians. In the case of the French Canadians this strangeness was exaggerated by the lack of familiarity with English, the language of the local tradesmen. Whereas the native population generally were home-owners and a part of their respective communities, this new class of people had no community ties. Even their household furniture was scanty and poor. There was no reason why they might not leave on a monthly pay-day in order to escape paying for the supplies which had been furnished their families during the month. The problem was to make sure that the money received at the end of the month would be applied to the payment for the supplies furnished during the month. To protect himself the local tradesman would demand an assignment of wages, so that he himself could collect at the end of the month and credit such wages on his bills. He thereby added to the obligation of this nomadic stranger the obligation of the factory.

With assignments used for such purposes, three difficulties and only three seem to have arisen. First, there was the question of who was to be preferred when the factory was served on pay-day, or just prior thereto, both with notice of the assignment by the assignee and with an attachment or trustee writ by another creditor of the assignor. Second, there was the difficulty of a double assignment: one tradesman might give a wage-earner credit believing he would be paid the next pay-day, only to find that the wages had been assigned to a rival tradesman. Third and of relatively less importance, there was the protest of the employer that he should not be obliged at his peril to decide as to the priority or that he should not be brought into disputes between his employe and the outsider or between two outsiders. The first and third of these objections created a burden for the employer, the second for the creditor. Though the assignment might antedate the writ of attachment or trusteeship, the service of the latter on the employer might precede service of notice of the assignment. And in any case both were served before the wages were due under the assignor's contract of employment.

The three difficulties were solved simultaneously by the passage of a recording act. The Massachusetts act of 1865 provided that no assignment of future earnings should be valid against a trustee writ, unless before service of such writ upon the employer the assignment had been recorded in the office of the municipal clerk.[1] In 1873 New Hampshire enacted that no assignment or order for wages to be earned in the future should be valid against any creditor of the assignor until a copy of such assignment duly accepted in writing, was filed in the office of the municipal clerk.[2] In 1876 Maine provided that no assignment of wages should be valid except as between the parties unless it was recorded in the office of the municipal clerk.[3] In 1884 Rhode Island[4] passed an act substantially similar to the Maine act. Massachusetts thereby settled the question of priority against trustee process,[5] while Maine, New Hampshire, and Rhode Island settled the question both as to the trustee process and as to all creditors. New Hampshire gave the employer an option as between the creditors with whom he would have to deal. These statutes seemed to have solved all the problems of the use of wage assignments by local tradesmen, for there were no new statutes in any of these states until 1898.

[1] Acts and Resolves 1865, ch. 43.
[2] Laws 1873, ch. 9.
[3] Acts and Resolves 1876, ch. 93.
[4] Acts and Resolves 1884, chs. 433, 458.
[5] Similarly Vermont: Acts and Resolves 1906, no. 69.

## THE CHANGE IN POLICY IN WAGE-ASSIGNMENT LEGISLATION: PROTECTION OF THE ASSIGNOR

Toward the end of the nineteenth century the aims of wage-assignment laws began to show a marked change. The earlier acts in New England had sought to give protection to the creditors of the assignor. These later acts sought rather to shield the wage-earner and his family from the attacks of the assignee. The New Jersey act of 1884[1] is a good example of this change in attitude. It made it a misdemeanor for anyone to receive more than the legal rate of interest (6 per cent per annum) on an assignment of wages given to secure a loan. The statute by its terms covered transactions put in the form of purchases of wages, and exempted assignments "for the payment of any goods, wares or merchandise sold to such employee for the full value or for any professional service rendered to such laborer or employee mentioned in such assignment." Such an inclusion and such an exemption are a fair indication of the purpose of the statute. It was not directed against the use to which the wage assignment had been put in New England. It was directed against the loans of money at usurious rates. This statute seems to be in force in New Jersey at the present time.

In 1891 Pennsylvania provided in a semi-monthly payment law that "no assignment of future wages payable semi-monthly, under the provisions of this act, shall be valid."[2] In 1899 Indiana similarly prohibited the assignment of all future wages of employes which were payable weekly.[3]

In 1898 Massachusetts passed a new and more inclusive kind of law,[4] aimed at the regulation of all loans of sums of $200 or less at a rate greater than 12 per cent. It required a license and a bond to engage in the business; it provided for an official determination of the return to be received on such loans; and it specifically provided that assignments of wages to secure such loans should state the actual amount of the loan, the time for which it was made, the rate of interest thereon, and the expense of making and securing the loan. Receipts were to be given for payments; and anyone engaging in the business without a license was to be guilty of a misdemeanor. In other words, Massachusetts by 1898 had found

[1] Laws 1884, ch. 166.

[2] Laws 1891, no. 71.

[3] Laws 1899, ch. 124.

[4] Acts and Resolves 1898, ch. 577.

that her old recording act of 1865, which had apparently met the situation for many years, no longer fully covered the new situation which had evolved, of securing small loans by wage assignments.

The use of the wage assignment as security for loans was in itself no legal abuse. But it came to be a social abuse. The money-lender found the wage assignment to be a convenient tool. It added to the obligation of a possibly irresponsible wage-earner the obligation of a responsible employer. A wage assignment had an advantage over a legal judgment for the debt: by assigning his wages the debtor waived the benefit of the exemption laws which generally freed a substantial part of his earnings from judicial seizure.[1] In some jurisdictions, moreover, the obligation arising from the assignment of unearned wages was not terminated by a discharge in bankruptcy.[2]

The convenience of this legal instrument led to its misuse. With such adequate security the unscrupulous money-lenders enforced their demands for huge interest rates. As the legislatures became aware of the dire abuses, so did the courts come to recognize them. In sustaining the Alabama act of 1901[3] in Re Home Discount Co.,[4] Judge Jones said:

> The mischief which called forth the statute is well known. It arose in the contracting and collection of small loans in dealings with necessitous borrowers and small wage-earners, who as a rule had no security except the pledge or assignment of wages to be earned and household goods. The borrowers agreed to whatever rate of interest was demanded. In this case, the rate was 120 per cent per annum. As an assignment or hypothecation of wages, generally, without regard to some subsisting contract is not valid here, lenders took an assignment of wages to be earned under some particular contract. When disputes arose between borrower and lender as to the date or amount of payments made, or the date or the amount of the loan, or the borrower was slow in meeting his promises, the lender would file with the employer the instrument assigning the wages. The

[1] Mallin *v.* Wenham, 209 Ill. 252 (1904).

[2] Mallin *v.* Wenham, 209 Ill. 252; Monarch Discount Co. *v.* C. & O. Ry. Co., 285 Ill. 233; Citizens Loan Association *v.* B. &. M. Ry. Co., 196 Mass. 528; Covington *v.* Rosenbusch, 148 Ga. 459. The weight of authority, however, is *contra* Re West, 128 Fed. 205; Re Home Discount Co., 147 Fed. 538; Re Lineberry, 183 Fed. 338; Leitch *v.* Northern Pac. Ry. Co., 95 Minn. 35; Rate *v.* Refining Co., 56 Mont. 277; Levi *v.* Loevenhart, 138 Ky. 133.

[3] See pp. 32 f.

[4] 147 Fed. 538, 545.

laborer was thus prevented from receiving his wages, although he continued to work, until the dispute was settled. Cut off from his means of subsistence, the borrower was almost invariably forced to succumb to the demands of the lender. Much suffering ensued among laborers, and great harassment and injury resulted to employers, who could not determine with any certainty how long their employes or laborers would remain in their service under contracts which had already assigned their earnings as to which disputes were likely to arise at any time. Railroad companies, owners of furnaces and mills, and other large employers of labor, made and enforced rules, for their own protection, that employes who had unsettled disputes about an assignment of their wages should be laid off, and if the dispute were long continued, should be discharged. . . . The differences between lenders and borrowers, and the steps which the employers felt compelled to take in consequence, brought on conditions which were yearly reducing hundreds of laborers and other small wage-earners to a condition of serfdom.

The Supreme Court of Oregon took similar note of the evils. It is a fact of common knowledge that in the larger cities and towns there are men whose business it is to prey upon the necessities of the improvident and the unfortunate by lending money at exorbitant rates of interest, with the effect that in many instances the borrower becomes the bond slave of the lender, if, indeed, he possesses enough character to prevent his desperation from dragging him into overt acts of crime.[1]

In sustaining the act of 1899, the Supreme Court of Indiana said: "It is clear that the object of the act of 1899 . . . was the protection of wage-earners from oppression, extortion, or fraud on the part of others, and from the consequences of their weakness, folly, or improvidence."[2] The New York court merely followed the general consensus when it spoke of the duty to protect the wage-earner: "It does, however, concern the employer if thereby his employes be left in a state of constant worry over their tangled financial affairs and the employer be annoyed and harassed by the clamor of their creditors; and it is the duty of the court to enforce the public safety, of this state, as declared by the Legislature, within constitutional limits."[3]

[1] State *v.* Ware, 79 Ore. 367 (1916).

[2] International Text-Book Co. *v.* Weissinger, 160 Ind. 349, 354 (1902).

[3] Thompson *v.* Gimbel, 145 App. Div. 436 (1911), affirmed, 207 N. Y. 659.

# CHAPTER X

## THE PRESENT WAGE-ASSIGNMENT LAWS

### STATUTES NOW IN FORCE

FROM the latter part of the last century the aim and trend of legislative action has been constantly in the direction of protection for the assignor and his family. Some of the states have, moreover, viewed the matter as one of the subjects to be covered by the small loan or personal property loan laws and have, outside of general usury laws, no statutes in force affecting wage assignments except as parts either of small loan laws or of personal property loan laws, or of secured debt laws.[1] These provisions have all been adequately treated in earlier chapters of this study.

Other states, however, seem to have believed that the wage assignment was the only problem involved in small loans. In Montana and Vermont the wage-assignment laws are the only regulations affecting small loans. The same is true of Arkansas and Kentucky, except that in the former state the regulation applies only to "assignments of unearned wages to secure loans of less than $200" and in the latter to "transfers of wages when the consideration is less than $200." And wage-assignment laws are the only small loan regulations of Minnesota except for a remedial loan law.

As a general rule the states have both a wage-assignment act and either a small loan or a personal property loan act. Very often these acts supplement each other, though in some states the personal property loan acts or the small loan acts are so comprehensive as to justify the assumption that assignments given under such laws are exempt from the operation of the separate wage-assignment statutes.[2]

The different states have adopted different remedies which must be discussed separately.

[1] See Chapter II.

[2] See pp. 180, 210.

### Prohibition of Assignment of Unearned Wages

The evil of wage assignments was felt to be so great that Montana has prohibited the assignment of all unearned wages. Georgia imposes a similar prohibition if the assignment is made to secure a loan.[1] Pennsylvania has prohibited the assignment of unearned wages if they are payable semi-monthly, and Indiana at one time prohibited such assignments of wages that were made payable weekly. The argument against this course is that such prohibition deprives a wage-earner of the use of an asset which is sometimes his only property and thereby prevents him from obtaining credit which he might otherwise receive and of which he may stand in need.

Some states have realized that such statutes go too far, that the wage-earner needs protection in the use of this asset, but that destruction is not protection. In 1909, ten years after the passage of its other statute, Indiana allowed, as security for a loan, the assignment of wages earned during a period of thirty days from the date of the assignment. Colorado, in its act of 1909, had the same provision,[2] though it is probable that assignments given a licensed lender in Colorado to secure a loan of $300 or less are exempt from that provision and subject only to the provision of the Colorado Small Loan Law of 1919. Alabama has the same provision limiting assignments of unearned wages to those earned within thirty days, except assignments "given to secure payment for groceries, clothing, medicine, insurance, medical attention or house rent" and assignments by a laborer of his interest in the crop to be raised the year the assignment is made. Minnesota limits such assignments to those earned within sixty days and Wisconsin to those earned within two months, Kentucky to ninety days, and Maryland to six months. Massachusetts limits assignments of unearned wages made to secure loans of less than $300 to one year and all other assignments of wages to two years. Rhode Island limits all assignments of future wages to one year, except those which are given a

[1] Citations for statements in the text may be found by reference to the statutory summaries at the end of this chapter.

[2] The Colorado act of 1909, ch. 530, is printed in the 1930 Annotated Statutes and is treated in this work as an existing law. There is some question whether it was not impliedly repealed by the Colorado secured debt law of 1917 or modified by the Colorado small loan law of 1919.

licensed small loan lender to secure a loan of $300 or less and which are subject to the provision that no more than 10 per cent of any one payment of the assignor's wages can be taken by the lender. Arizona limits the duration of assignments of unearned wages to forty months.

### Limitation of Amount Recoverable by Assignee From Any One Wage Payment

The small loan laws of Colorado and Rhode Island illustrate the later tendency in legislation, that is, to leave the wage-earner free to assign all his future earnings but to provide that the assignee can recover only a certain amount of each wage payment, the balance being reserved for the support of the wage-earner and his family. Massachusetts provides that 75 per cent is so reserved on all assignments except those given to secure loans of less than $300, on which $10 a week is reserved. Ohio in its personal property loan act provides for a similar reservation of 50 per cent of each wage payment on any assignment of unearned wages to secure a loan, unless the assignor is married, when the reservation is 75 per cent. This is the character of the regulation in the Uniform Small Loan Law as to assignments of future wages or salaries, and that act has been either the model or inspiration of practically all the more recent legislation on the subject. Thus the small loan laws of Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Maryland, Michigan, Missouri, New Jersey, New York, Oregon, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin allow only 10 per cent of each wage payment to be taken by the assignee and that of Illinois 50 per cent.[1]

### Consent of Wife or Spouse

The next most important regulation of wage assignments is the requirement that, if the assignor is a married man, his wife must join in the assignment or consent thereto. In the later statutes the requirement is that the spouse must join or consent. The importance of this provision as a preventive against improvidence is apparent.

[1] Actual experience seems to have shown that limitation of the amount to be taken from any wage payment gives the wage-earner better credit facilities with less injury to himself and family than is afforded by any other method.

Arkansas, Louisiana,[1] and Wyoming require the consent of the wife to an assignment of unearned wages; Colorado and Montana[2] require the consent of the wife to an assignment of earned wages; and Indiana requires such consent to the assignment of any wages. Massachusetts requires the consent of the wife to any assignment of future wages and Minnesota to such an assignment for $200 or less; Wisconsin requires the consent of the wife, if she then be a member of the household, to any assignment of wages exempt from garnishment.

Iowa and Nebraska require the consent of the spouse to any assignment of wages; Ohio requires the spouse's consent to the assignment of future earnings when such assignment is given to secure a loan; and Colorado requires such consent for the assignment of unearned wages and of wages not yet due. The Uniform Law also requires the consent of the spouse to all assignments made under that act, unless the couple have been living separate and apart for five months. Such provision is therefore a part of the law as to assignments given licensed small loan lenders in Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, New York, Rhode Island, Tennessee, Utah, Virginia, West Virginia, and Wisconsin. In substantially all the states, therefore, the family is protected by a requirement that either the wife or spouse must join in any assignment of future wages, and in many cases of earned wages, that would be likely to bring hardship on the family.

### Consent of Employer

The employer's objection to dealing with the assignee, on account of the risk of being involved in a dispute between the assignor and the assignee, has been met in some states by requiring the consent of the employer as a condition of the validity of the assignment. Pennsylvania and New Hampshire have this requirement as to assignment of unearned wages; Arkansas, Kentucky, Minnesota, and Wyoming as to unearned wages when made to secure a loan or for a consideration of less than $200, and Massachusetts as to unearned wages when made to secure a loan of less

[1] Unless the couple have been separated for five months.

[2] If she resides in said state.

than $300. New Jersey seems to require this consent to all assignments, whether of earned or unearned wages, if made to secure a loan of $300 or less. The general adoption of the requirements that the instrument of assignment must contain the details of the contract, and that the assignor must be given either a copy or a detailed memorandum thereof, may obviate the necessity of this requirement. Neither the Uniform Small Loan Law nor any of the more recent laws on the subject include this requirement.

### Recording of the Assignment

Recording is still required for assignments of unearned or future wages in Arkansas (to be valid against the employer when they secure loans of less than $200); in Massachusetts (to be valid against employer where they secure loans of less than $300 and for other assignments to be valid against trustee process); in Minnesota (to be valid against the employer for loans of $200 and less); in New Hampshire (to be valid against a creditor to secure a loan); and in Ohio (where an annual refiling is also required). Maine requires the recording of all assignments of wages to be valid against any person except the parties thereto. And Rhode Island requires for validity, except as between the parties, the recording of all assignments of future earnings other than those given to secure small loans made by licensed lenders under its small loan act. Connecticut and Vermont require, against attaching creditors, the recording of assignments of future earnings made to secure a loan. In Connecticut this requirement will probably not be held to apply to assignments given under the small loan act, and, if the Colorado wage-assignment law has any effect at all, assignments under the small loan act will probably not be subject in Colorado to the requirement that no assignment of future wages shall be valid against any creditor unless recorded within five days from the date thereof.

With the requirements that details and copies of assignments be given to the assignor, the need for recording as far as he is concerned has disappeared. Recording may still be of importance to creditors and prospective creditors, but inasmuch as legislation is now mainly interested in the protection of the assignor, the more recent laws on the subject do not contain this requirement; it is not in the Uniform Act or, except in Maine, in any law based thereon. Recording does not affect the employer; the injustice of binding the employer by constructive notice has been realized, and in the states where recording is required there are additional provisions for actual notice to the employer as a condition precedent to any liability on his part. This is merely a restatement of the rule under the common law. The employer would not be liable to an assignee until and unless he had actual notice of the assignment. Such is, therefore, the law in the states which do not require recording.

### Notice to or Service upon the Employer within a Certain Limited Time

Certain states provide that an assignment of wages is not enforceable unless notice thereof is served on the employer within a certain definite limited time. Colorado requires service of such notice in ten days from the execution of the assignment; New York in three days (except for assignments given under the small loan law, which exception probably also exists in Colorado); Indiana in ten days; Maryland in three days; Minnesota in three days of unearned wages; Georgia in five days of earned wages; and Montana of earned wages in one day. This provision was undoubtedly caused by the custom of money-lenders not to notify the employer as long as the borrower paid promptly, but to hold the threat of such notice over his head. The attitude of the employer has, however, been very largely changed by education, to the degree that industrial employers no longer threaten to discharge an employe for assigning his wages. The need for this provision therefore seems to be past, except as a curb upon the practices to be described in the next chapter. The requirement is not found in the Uniform Small Loan Law or in any legislation based thereon.

### Furnishing the Assignor with a Copy of the Instrument or of a Detailed Memorandum of the Transaction

As has been indicated, this requirement of a memorandum is of great importance; it protects the assignor from ignorance of the agreement and does away in great measure with the necessity of recording and of securing the employer's consent. This is a simpler method of giving the wage-earner accurate knowledge of the transaction. Such a requirement is contained in the personal property or chattel loan laws of Mississippi, Nebraska, and Ohio (applicable to wage assignments given to secure a loan) and, as to future or unearned wages, in the wage-assignment laws of Rhode Island and Massachusetts (other than to secure loans of less than $300 in Massachusetts, which must be recorded). We also find such a requirement in the small loan laws of the following states in all cases applicable to assignments of wages, whether earned or unearned, given to secure loans made under that act: Arizona, Colorado (where other assignments have to be recorded), Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, West Virginia, and Wisconsin; Illinois requires it of her wage-loan corporations, institutions of the remedial type with limited dividends. Georgia also apparently requires it as to all wage assignments.

### Execution by the Assignor in Person: Invalidity of Execution by an Attorney under Power

The purpose of this provision is of course to eliminate the chance of an abuse of a power of attorney, which it was the custom of the loan sharks to demand. This provision is found in the wage-assignment laws of Kentucky and Maryland; in the laws governing the assignment of future earnings in Massachusetts (other than to secure loans of less than $300) and Rhode Island; in the personal property laws of Nebraska and Ohio; and in the small loan laws of Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, New York, Oregon, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin.

### Limitation of Interest on Loans Secured by Wage Assignments

As already indicated, loans secured by wage assignments are governed in a few states by personal property or chattel loan laws. The rates of interest or discount allowed in these states have already been discussed. It is sufficient here to call attention only to the fact that they allow a certain definite return greater than the usual contract rate and that they punish severely those who exceed that rate. So far as such assignments are governed by the small loan laws, the rates have also been discussed. These laws generally show the same tendency to allow a certain definite rate of interest greater than the regular contract rate and to punish all who exceed that rate.

It only remains for us to discuss the rates on wage assignments which are governed solely by wage-assignment laws. They are shown by the following table:

| | | |
|---|---|---|
| Colorado[a] | | 2 per cent a month |
| Georgia | (on loans not made under the small loan act) | 8 per cent a year plus fees |
| Illinois | (when made by a wage-loan corporation, a remedial loan type of institution) | 3 per cent a month |
| Indiana | (on loans not made under the small loan act) | 8 per cent a year |
| Louisiana | (on loans not made under the small loan act) | 18 per cent a year |
| Maryland | (on loans not made under the small loan act) | 6 per cent a year |
| Minnesota | (when made by a remedial corporation in a city of over 50,000) | 1 per cent a month |
| Montana | | 12 per cent a year |
| New Jersey | (other than on those given to the licensee under the small loan act) | 6 per cent a year |
| New York | (when not made under the small loan act) | 18 per cent a year |
| Wyoming | | 25 per cent a year |

[a] See p. 190, note.

It will be noticed that while New Jersey, Indiana, and Maryland provide for only the legal rate and Louisiana and New York for 18 per cent a year, all five states have small loan laws under which most of the wage-assignment loans are undoubtedly made. Such is also bound to be the case in Georgia, now that the Georgia Court of Appeals has decided that wage assignments in Georgia must come under either the Uniform Small Loan Law or the Household Goods Mortgage Act of 1904.[1]

### Form of Assignment

Rhode Island requires assignments of future wages (other than those to secure small loans made by licensed small loan lenders) and Massachusetts those to secure loans of $300 or more to be in a prescribed form. Connecticut (as to future earnings), Kentucky (as to wages due or to be paid in the future), Missouri (as to earned wages), and Massachusetts (as to loans of $300 or more) require the details of the transaction to appear on the instrument. Of course, where the assignee is required to give the assignor a detailed memorandum of the transaction as provided in Section 14 of the Uniform Small Loan Law, the necessity of this requirement no longer exists. Such a memorandum is required in many states for wage assignments given to secure loans made by licensed lenders under the different small loan acts.

### Forfeiture in Case a Greater Rate of Interest Is Charged Than Allowed by the Statute

The Uniform Small Loan Law (Section 13) provides that both principal and interest are to be forfeited if interest is charged at a higher rate than the statute allows. Such forfeiture will therefore take place on loans of $300 or less made by a licensed lender in the states of Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Maine, Michigan, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Tennessee, Utah, Virginia, West Virginia, and Wisconsin, whether or not such loans are secured by assignments. Loans for any amount secured by wage assignments, bearing a greater rate of interest than allowed by statute, will carry the same forfeiture in the states of Maryland, Nebraska, New York, and Ohio; Illinois prescribes the same forfeiture for such loans if made by her wage-loan corporations. Indiana, Colorado,[2] and Louisiana provide for such a forfeiture on wage loans generally upon conviction for a violation,

[1] McLamb *v.* Phillips, 129 S. E. 570. Though the situation in Georgia is not clear, all wage assignments there must come either under the Uniform Small Loan Law or the Household Goods Act of 1904.

[2] See p. 190, note.

while Montana provides that any such violation shall make the assignment void against creditors of the assignor. In all of the above cases the forfeiture takes place whether the assignment be of earned or unearned wages. In many other states, where no specific provision of forfeiture is to be found in the wage-assignment, small loan, or personal property laws, nevertheless such forfeiture would follow under the general usury laws of the state.

### Violation of the Wage-Assignment Law Made a Misdemeanor

Violation of the wage-assignment law constitutes a misdemeanor in Colorado, Indiana, Louisiana, Montana, New Jersey, New York, and Wyoming. The same result is reached in Nebraska, Ohio, and Oregon by provisions in the personal property loan laws of those states. Violation includes charging a greater rate of interest than is allowed by statute. Illegal charge is specifically made a misdemeanor in California. Engaging in the business without a license is made a misdemeanor in Georgia, Mississippi, and Tennessee. Charging or receiving a greater rate of interest than allowed by statute, and engaging in the business without a license, are, moreover, both made penal by most of the small loan laws of the country. The penalties apply whether the loans are secured by wage assignments or otherwise. When no specific provision is made in a state as to whether or not charging or receiving any certain rate of interest on wage assignments or on loans secured by them is penal, the general usury laws of the state will apply; in some of these states such a charge or receipt will be penal thereunder.

### Requirement That Loans Secured by Assignments of Future Earnings Must Precede or Concur with the Delivery of the Assignment

Massachusetts requires that the delivery of the assignment must follow any loan secured by an assignment of future earnings, except where the assignment is given to secure a loan of less than $300. Rhode Island has a similar requirement except that the loans exempted are those made by a duly licensed small loan lender, which under its small loan law have to be made simultaneously with the delivery of the assignment. New York requires all assignments of wages (except those given to secure loans of $300 or less made by a licensed small loan lender) to be made the same day as that on which the loan is made. Ohio in its personal property loan law requires that all assignments of wages, earned or unearned, given to secure a loan, be made simultaneously with the contracting of the loan. The Uniform Small Loan Law provides that assignments of wages, earned or to be earned, given thereunder shall be valid only when given to secure loans contracted simultaneously with the execution of the assignment. Such provision is therefore law as to loans for $300 or less by licensed small loan lenders in the states of Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, New York, Oregon, Rhode Island, Tennessee, Virginia, West Virginia, and Wisconsin. Illinois allows such a loan to be made prior to or simultaneously with the assignment, and Arizona allows the loan to be contracted or renewed simultaneously with the delivery of the assignment.

## Regulation of the Business

In Louisiana the business of lending money on assignments of wages is specially regulated. The law exacts a license tax from all engaged in the business, requires reports and the keeping of records, and specifically exempts the employer from having to accept the assignment unless it was given to persons engaged in the business. On the other hand, it allows such persons a higher rate of interest (18 per cent) than the usual contract rate of 8 per cent, leaving all other assignments of wages to be governed by the general law or the small loan law. The Montana law also regulates the business and requires a license from all engaged in it, limiting the return on any money advanced or lent on such wage assignments to 12 per cent per annum, as opposed to the contract rate of 10 per cent per annum. The Supreme Court of Montana in Costello *v.* Great Falls Iron Works,[1] so construed the definition in the act that no one can take an assignment of wages in that state for any money given or lent in consideration of such assignment without such person coming under the provisions of the act. The Colorado and Indiana acts of 1909 are similar in definition to the Montana act and should be given the same construction. As noted, these two statutes of

[1] 59 Mont. 417 (1921).

Louisiana and Montana have many of the characteristics of small loan laws. It is unfortunate that Montana has no law regulating other types of small loans. The wage-earner who borrows on his chattel furniture or on the endorsement of friends needs protection, of course, as much as the wage-earner who borrows on his wages.

This fact was recognized by Tennessee, Nebraska, and Mississippi, all of which regulate the business of taking wage assignments, whether by purchase or by assignment, exactly as they regulate the chattel mortgage business. Georgia either regulates the wage-assignment business as it now regulates all small loans or regulates it as it formerly regulated the chattel mortgage business.[1] Since very few wage assignments are, in practice, for more than $300, by expressly providing that their small loan acts shall apply where the sum advanced on such an instrument does not exceed $300, Louisiana, Michigan, Maryland, Missouri, New Jersey, New York, Ohio, Oregon, Virginia, and West Virginia have subjected wage assignments, or the business thereof, to all the regulations of small loans. In addition, wage assignments as now made are generally loans in fact and, therefore, the Uniform Law should be held to regulate them within the $300 limit, in all states having this law.

## Summary of Requirements

The present statutes show a steadfast purpose to protect the assignor. Various methods have been tried in various states, and even in the same state at various times. The tests of experience and of survival of the fittest seem to recommend that the wage-earner and his family should be protected against improvidence

1. By limiting the amount that may be taken from any one wage payment, preferably to 10 per cent thereof,

2. By requiring the consent of the wife or spouse to any assignment of wage, and

3. By limiting such assignments to debts contracted simultaneously with the delivery thereof;

That he should be protected against fraud

1. By requiring the assignee to deliver to him at the time of the transaction either copies of all papers connected therewith (which should contain all the details thereof) or a detailed memorandum

[1] See pp. 36, 206.

of the transaction which will bind the assignee, as well as a receipt for all payments, and

2. By requiring that all papers be executed by the assignor in person; and

That the assignor should be protected against extortion by

1. Limiting the rate of interest or return to the assignee and giving the state full supervisory power over him, in return for which a reasonable rate greater than the usual contract rate of interest in the state should be allowed on transactions of $300 or under;

2. By inflicting severe civil and criminal penalties in case of disobedience of the law, particularly as regards the rate of interest or return.

## CONSTITUTIONALITY OF WAGE-ASSIGNMENT STATUTES

The constitutionality of small loan laws generally has been already demonstrated in Chapter VIII of this volume. Laws regulating the assignment of wages, as well as those prohibiting in whole or in part the assignment of unearned wages, are sustained on the same grounds as the small loan laws. They are a valid exercise of the police power of the state; the legislature may adopt any means suitable in its judgment to regulate, curb, or cure this evil; and a law will not be held unconstitutional if certain assignments are excepted from the general operation thereof, providing the excepted transactions are those in which the evil occurs less often and less generally than it does in those governed thereby. This section will, therefore, refer only briefly to the specific decisions on the constitutionality of wage-assignment laws, and the reader is referred to Chapter VIII for a full discussion of the subject.

### Statutes Regulating Assignment of Wages in General

The leading case on the subject is undoubtedly Mutual Loan Co. *v.* Martel,[1] which case held constitutional the Massachusetts statute of 1908. That statute had required, for the validity of the assignment of wages to be earned in the future, acceptance by the employer, filing and recording of such acceptance as well as the

[1] 200 Mass. 482 (1909); affirmed, U. S. Sup. Ct., 222 U. S. 225.

assignment, and consent of the wife, but had excepted banks, building and loan companies, and associations established by special charters and placed under state supervision. Both the Supreme Judicial Court of Massachusetts and the Supreme Court of the United States held that this statute was a valid exercise of police power. As to the exceptions from the statute, the Massachusetts court said, "The Legislature may be supposed to have known the kind of business done and likely to be done by those corporations, and they may have believed rightly that the business done by them would not need regulation in the interest of employees or employers." And the United States Supreme Court said on the same point, " But even if some degree of evil which the statute was intended to prevent could be ascribed to loans made by the exempted institutions, their exception would not make the law unconstitutional. Legislation may recognize degrees of evil without being arbitrary, unreasonable, or in conflict with the equal protection provision of the Fourteenth Amendment to the Constitution of the United States."

In Re Home Discount Co.[1] the Alabama statute of 1901, requiring the details of the transaction to be placed in the instrument and requiring the recording thereof but excepting banks from the operation of the statute, was also held constitutional as a valid exercise of the police power. In Ex parte Alabama Brokerage Co.[2] the Supreme Court of Alabama expressly agreed with this holding. Bullard Investment Co. *v.* Ford[3] and Southern Finance Co. *v.* Casey[4] also held this act constitutional.

State *v.* Sherman[5] held constitutional the present Wyoming statute[6] regulating the rate of interest on assignments made to secure loans of less than $200 and requiring the consent of the wife thereto. In regard to the limitation of this statute to sums of $200 and less, the court held that since "the objectionable practice which was intended to be checked existed habitually if not exclusively in the case of the kind of loans described in the statute, and only occasionally if at all in the other cases," it was a proper classification within the discretion of the legislature.

[1] 147 Fed. 538 (1906).
[2] 208 Ala. 242 (1922).
[3] 18 Ala. App. 167 (1921).
[4] 19 Ala. App. 671 (1924).
[5] 18 Wyo. 169 (1909).
[6] See p. 217.

West *v.* Jefferson Woolen Mills[1] holds constitutional the present Tennessee act,[2] requiring the consent of the employer to the assignment of unearned wages or salary.

Thompson *v.* Erie Ry. Co.[3] holds constitutional the New York statute of 1911 requiring the filing with the employer of a copy of an assignment within three days after the making thereof, which provision exists in the present New York law. Thompson *v.* Gimbel[4] is another decision to the same effect.

In McCallum *v.* Simplex Electrical Co.[5] the court had under consideration the Massachusetts statute which limited the duration of an assignment to two years from the date of the assignment or of a power of attorney to execute the assignment. In December, 1904 the wage-earner executed a power of attorney, under which the attorney executed in February, 1906 an assignment from that date to April, 1907. It was held that this assignment was void. The court said, "There is no doubt as to the constitutionality of the statute."

And in Wight *v.* Baltimore & Ohio Ry. Co.[6] the Court of Appeals of Maryland held constitutional the Maryland Wage-Assignment Act.[7] This act declares that no assignment of wages or salary shall be valid unless such assignment be in writing, signed by the assignor and acknowledged by him in person before a justice of the peace for the city or county in which the assignor resides, and requires entry on the same day in the docket of said justice, service upon the employer within three days, and execution and acknowledgment by the spouse of the assignor. In this case the reasoning and conclusion of the Illinois court in Massie *v.* Cessna,[8] was rejected.

The only decisions that hold such laws unconstitutional are in Massie *v.* Cessna, Foster's Application,[9] and possibly Juhan *v.* State.[10]

In Massie *v.* Cessna the Supreme Court of Illinois had before it the Illinois statute of 1905, which was similar to the present Mary-

[1] 147 Tenn. 100 (1922). [2] See p. 216. [3] 207 N. Y. 171 (1912).
[4] 71 Misc. 126 (1911), affirmed, 145 App. Div. 436, affirmed, 207 N. Y. 659.
[5] 197 Mass. 388 (1908). [6] 146 Md. 66 (1924).
[7] See p. 213. [8] 239 Ill. 352 (1909).
[9] 23 Pa. Dist. 558 (1914). [10] 86 Texas Cr. 63 (1918).

land statute. The statute required the signature of the assignor, acknowledgment before a justice of the peace, entry in his docket, service of a copy of assignment on the employer within three days, and the consent of the spouse. It further provided that the assignment, if given for a usurious loan, should be void. Because the statute, however, covered assignments not only of wages but of salaries as well, the court held the statute unconstitutional. Many persons, it declared, who received salaries received very large compensation and did not need the protection of the statute; the statute was therefore too broad. It also held the statute unconstitutional on the ground that it made the assignment void if given for a usurious loan, since under the law of Illinois no other usurious instruments were void. The court in its opinion, however, intimated that it would sustain a statute that would correct wage-assignment evils, providing that it was properly directed to that purpose.

Though the Maryland statute sustained in Wight *v.* Baltimore & Ohio Ry. Co.[1] was similar to this Illinois statute, yet the Maryland court refused to follow Massie *v.* Cessna, saying, "That distinction between salaries and wages, however, is in our opinion too refined and delicate to justify us in recognizing it and it does not appear to have been followed elsewhere."

In People *v.* Stokes[2] the same court that decided Massie *v.* Cessna held constitutional the present small loan law of Illinois, which contains regulations as to assignments of salary and wages but which is limited in its application to assignments given to secure loans for $300 or less. West *v.* Jefferson Woolen Mills[3] in which, as has already been stated, the court upheld a regulation as to both unearned wages and salaries, called attention to the fact that while a salary of $20,000 a year might be a salary, it was improbable that a person earning that amount would assign his salary.

In Juhan *v.* State[4] the Texas statute not only required a licensee under an act regulating the business of taking wage assignments to file a bond but required that he consent that service on the county judge should be good service against him. Though it made no

[1] See p. 203.

[2] 281 Ill. 159 (1917).

[3] 147 Tenn. 100 (1922).

[4] 86 Texas Cr. 63 (1918).

provision for the licensee's receiving any notification from such county judge, the statute provided that any Texas judgment against the licensee could be collected out of the bond. The court held the statute void on account of these two provisions, but said, "We have no doubt the business of the appellant is one whose regulation is within the police power of the State, and that reasonable restriction thereof may be provided by the Legislature," thereby intimating that its objection to the law was not based on its regulation of wage assignments but on its provision that judgment could be obtained against an individual without proper service on him.

In Cleveland, C., C., & St. L. Ry. Co. *v.* Marshall[1] the Supreme Court of Indiana held constitutional the present Indiana law[2] which prohibits the assignment of all future wages, except those to be earned within thirty days after the assignment, and which contains regulations as to the assignment of earned wages, including the requirement that the wife must consent thereto. In this case though a part of the wages assigned was earned before the assignment and the action was in equity, nevertheless the court held that the regulation applied not only to unearned wages but to earned wages as well, saying,

> Our statute is different from the Massachusetts act in that it covers wages already earned as well as future earnings; and the wages here in controversy were in part earned before the execution of the assignment. We perceive no reason why the prohibiting statute may not be as well directed against assignments of wages already earned as against future earnings. Otherwise the beneficent purpose of the law-making body might be thwarted by repeated assignments of wages, executed as soon as the wages were earned but before their payment may become due.

## Statutes Regulating Assignment of Unearned Wages

International Text-Book Co. *v.* Weissinger[3] held constitutional, as a proper exercise of the police power, the Indiana statute of 1899 which prohibited assignments of future earnings of persons payable weekly under the Indiana law.

Heller *v.* Lutz[4] held constitutional the wage-assignment statute

[1] 182 Ind. 280 (1914).

[2] See p. 212.

[3] 160 Ind. 349 (1902).

[4] 254 Mo. 704 (1914).

of Missouri making null and void "all assignments of wages, salaries and earnings, not earned at the time the assignment is made."

In Foster's Application[1] an inferior court of Pennsylvania held invalid the Pennsylvania act of 1913[2] which regulated the charges on assignments of wages, on the ground that assignments of unearned wages were void and against public policy:

> After mature consideration we cannot resist the conclusion that there is no power of contract in the individual and no power of legislation in the general assembly to authorize a man to assign or pledge the wages of his future labor, and that the attempt of the legislature to exercise such power is a futile assault upon the very basis of our frame of government.

This decision purported to be founded upon the decision of Jermyn *v.* Moffitt[3] and Lehigh Valley Ry. Co. *v.* Woodring,[4] which held assignments of wages, when the contract of employment is not in existence at the time of the assignment, invalid at common law. Foster's Application went much farther, however. The Supreme Court of Pennsylvania has never held that wages to be earned under an existing contract of employment cannot be assigned. Commonwealth *v.* Puder[5] would seem to warrant the belief that the Supreme Court of Pennsylvania would hold that if such assignments have any validity they can be regulated, at least in so far as they are given for small loans.

Costello *v.* Great Falls Iron Works[6] enforces the present Montana statute as to wage assignments,[7] which in effect prohibits the assignment of unearned wages or salaries. The court, however, does not discuss the question of constitutionality, holding only that any person who makes advances or loans in consideration of a wage assignment subjects himself to the regulations of this act. In Bowen *v.* King Brothers[8] and Atlanta Finance Co. *v.* Southern Railway Co.[9] the Georgia court refused to enforce assignments of unearned wages to secure a loan under the Georgia act of 1904, which law is still in force except as to assignments governed by the small loan law.

[1] 23 Pa. Dist. 558 (1914).
[2] See pp. 74, 216.
[3] 75 Pa. St. 399 (1874).
[4] 116 Pa. St. 513 (1887).
[5] 261 Pa. St. 129 (1918).
[6] 59 Mont. 417 (1921).
[7] See pp. 77, 214.
[8] 14 Ga. App. 319 (1914).
[9] 15 Ga. App. 663 (1915).

Speilberger Bros. *v.* Brandes[1] held constitutional the present Alabama statute on wage assignments,[2] which makes void, with certain exceptions, the assignment of all salaries and wages to be earned in the future, but construed the act as applying to the assignments of wages.

Acts making invalid the assignment of wages or salaries to be earned in the future, except the wages earned within certain limited periods after the making of the assignments, have been held constitutional in Indiana, where the time limit was thirty days,[3] and in Minnesota, where the time limit was sixty days.[4]

On the other hand, in McGuigan *v.* Brown[5] a lower court in Ohio held that the Ohio statute, which prohibited assignment of such future wages as were payable semi-monthly, was unconstitutional on the ground that distinction between wages payable semi-monthly and wages payable at all other periods was an unfair, discriminatory, and arbitrary classification.[6] It is to be noted in connection with this case that when the Supreme Court of Ohio had under consideration the present personal property loan law of Ohio,[7] applying to all assignments of wages given to secure a loan, it held such act constitutional as a proper exercise of police power.[8] It had previously held constitutional an act giving municipalities power to regulate the business of taking wage assignments and a city ordinance passed thereunder.[9]

There would seem to be absolutely no question, therefore, as to the constitutionality of statutes regulating the assignments of wages, earned or unearned, provided the regulations are reasonably adapted to the correction of the evil which the legislature desires to correct. There would equally seem to be no question as to the power of the legislature to prohibit the assignment of future wages, either in whole or in part.

[1] 3 Ala. App. 590 (1912). [2] See p. 210.

[3] See Cleveland, C. C. & St. L. Ry. Co. *v.* Marshall, p. 205.

[4] Fay *v.* Bankers Surety Co., 125 Minn. 211 (1914).

[5] 17 Ohio N. P. (n.s.) 188 (1915).

[6] This decision seems *contra* to International Text-Book Co. *v.* Weissinger, p. 205.

[7] See pp. 68 f. [8] Wessell *v.* Timberlake, 95 Ohio St. 21 (1916).

[9] Sanning *v.* Cincinnati, 81 Ohio St. 142 (1909).

## Miscellaneous Decisions Under the Statutes

Restrictions contained in a statute regulating the business of taking wage assignments and requiring a license to engage therein apply to all persons whether licensed or not.[1]

Where a statute limits the time in which a copy of the assignment is to be served on the employer, this limitation will date from the time a power of attorney is given to execute an assignment and not from the time when the assignment is actually executed under this power.[2]

In Hall *v.* Boston Plate & Window Glass Co.[3] the Massachusetts Supreme Judicial Court held that when an assignment of wages was given but the statute was not followed, and a subsequent assignment was given to a different assignee who did follow the statute and notify the employer before he received his notification under the first assignment, the employer was protected in paying the second assignee, even after he had received proper notice of the first assignment.

The Ohio statute of 1911[4] provided that "all blank spaces shall be filled in with ink or typewritten with the proper names and figures"; violation of any provision of the act was punishable by a fine. In Andrews *v.* State[5] a lender made a loan of $35 but took an assignment of all wages for three years, amounting to $3,000. The charges allowed under that act were 8 per cent per annum plus "ten per cent of the principal," and the 10 per cent had been deducted in advance. A conviction for violation of the act was affirmed.

In Sheldon *v.* Padgett[6] the Supreme Court of Minnesota held that the general wage-assignment law of that state[7] did not repeal the special act in regard to the assignment of liens for labor on logs, cross-ties, poles, or other timber because such was not the legislative intent.

Most important of all the decisions under these later statutes, outside of the decisions on constitutionality, is the decision of the

[1] Costello *v.* Great Falls Iron Works, 59 Mont. 417 (1921).

[2] Thompson *v.* Erie Ry. Co., 207 N. Y. 171 (1912); Thompson *v.* Gimbel, 71 Misc. 126 (1911), affirmed, 145 App. Div. 436, affirmed, 207 N. Y. 659.

[3] 207 Mass. 328 (1911).

[4] Laws 1911, vol. 102, p. 469.

[5] 3 Ohio App. 436 (1914).

[6] 144 Minn. 141 (1919).

[7] See p. 214.

Supreme Judicial Court of Massachusetts in Gilman *v.* Raymond.[1] The court had under consideration a statute containing a prescribed form for assignments of unearned wages (other than those given to secure loans of less than $300), which form included an assignment of claims "against my present employer and against any person whose employ I shall hereafter enter." A further provision of the statute stated that "except as above provided, an assignment of wages made in accordance with the provisions with this act, shall bind all wages earned by the assignor within the period named in such assignment." The court held, "We think it was the intention of the Legislature to change the common law doctrine [that assignments of earnings under a contract of employment not in existence at the time of the assignment are invalid], and while limiting the assignments to a period of two years, to broaden their scope so as to cover wages earned from different employers during that period." These provisions are found in the present wage-assignment law not only of Massachusetts but also of Rhode Island. It would seem to follow that in Rhode Island as well as in Massachusetts the common law doctrine has been changed and that wages, under a future contract of employment, can now be assigned. The Massachusetts decision would seem to be applicable also to the Uniform Small Loan Law, Section 16, to be a precedent for holding that this act changes the common law, and though it limits the amount collectible under assignments to 10 per cent of each payment of wages, broadens its scope to cover assignments of wages, earned or unearned, under both present and prospective employment.

In general it can be said that the courts have shown a strong tendency to construe these statutes liberally and broadly, so as to carry out the evident purpose of the legislation to protect the assignor and his family,[2] and to uphold the power of the state to enact such regulations and prohibitions.

## EXISTING WAGE-ASSIGNMENT STATUTES IN 39 STATES

In 1931 there were statutes in 39 states regulating assignments of wages and salaries. The nine states which do not regulate wage

[1] 235 Mass. 284 (1920).

[2] See Snite *v.* Chicago and E. I. Ry. Co., 247 Ill. App. 118 (1927).

assignments apart from the general assignment and usury laws are Idaho, Kansas, Nevada, New Mexico, Oklahoma, North Dakota, South Carolina, South Dakota, Washington, and the District of Columbia. Several other states have no special law regulating wage assignments apart from the small loan law; they are Arizona, California, Florida, North Carolina, Oregon, Utah, Virginia, and West Virginia. If the law is a uniform enactment it is needless to recount the provisions concerning the assignment of wages; one may refer to the particular draft of the Uniform Act itself. Where the law is not a uniform enactment, however, the following summary will set forth the special provisions which concern assignments. Where wage assignments are regulated both by special statute and by the small loan law, the provisions of both will be set forth or referred to.

The citation preceding the statute-summary indicates the reference to the latest code or compilation available in 1931. The citation at the end of the summary is the session law or laws which enact the provisions.

### Alabama

Code 1928, secs. 9232, 9233. All assignments of salaries or wages to be earned in the future are absolutely void, except where the wages are to be earned within thirty days or the assignment is given to secure payment for groceries, clothing, house rent, insurance, and medical supplies and attendance (1911, p. 370).

### Arkansas

Digest of Statutes (Crawford and Moses) 1919, secs. 7133, 7134. No assignment of wages to be earned in the future to secure a loan of less than $200 shall be valid against the employer unless accepted by him in writing and filed with the county recorder and, if the assignor is married, unless consented to in writing by his wife (1909, p. 15).

### Colorado

Courtright's Mills Annotated Statutes 1930, secs. 7751–7762. Wage-brokers, those who lend money on wage assignments, must procure a license from the board of county commissioners. Assignments are valid only if in writing, only if applicable to wages to be earned within thirty days, only if the employer is notified within ten days, and if the wife formally consents thereto. Purchases of assignments are considered loans. On such loans the wage-broker may charge 2 per cent interest a month. (1909, p. 521.)

There is some question whether the small loan law, which applied specifically to wage-assignment loans, did not repeal these provisions as to loans of $300 or less.

## Connecticut

General Statutes 1930, sec. 4706. No assignment of future earnings as security for a loan shall be valid unless it sets forth the name of the employer, the amount of indebtedness, the term of the assignment, which shall expire not later than one year after execution, and unless it includes a certificate of acknowledgment of the assignor before a competent authority. The assignment will not transfer earnings unless it bears the date of actual execution, the earnings are due from the employer named, and a copy is left with the employer within one month from the date of execution. Assignments are not valid against an attaching creditor of the assignor unless recorded in the town clerk's office before attachment. For falsely dating an assignment or acknowledgment thereof, the penalty is $25. (1929, ch. 54.)

## Delaware

Revised Statutes 1915, struck out and re-enacted by Laws 1927, ch. 208. All assignments of wages or salaries, due or to be due, to secure a loan are unlawful, and the assignee is guilty of a misdemeanor, unless the employer consents in writing and unless the charge is no greater than 6 per cent per annum.

## Georgia

Code 1926, secs. 3446–3466. A license and bond are required to engage in the business of making loans on household goods, wearing apparel, or wages or salary, and subjects the licensee to regulation and supervision (1904, p. 79). The charges and provisions are discussed on pp. 36 f. and 40. The provisions of the act apply to "sales" as well as assignments of wages, and make void the assignment of unearned wages. On loans of less than $300 the assignments are subject to the small loan law as well.

### Illinois

Revised Statutes 1929, ch. 74, sec. 16. Assignments are valid only if in writing and if made to secure previously existing or simultaneously contracted debts. The licensee may collect 50 per cent of the amount due on an assignment of future wages. Consent of the spouse is not required. This is a modified enactment of the first draft of the Uniform Law. (1917, p. 553.)

*Ibid.*, ch. 32, secs. 348–360. Semi-philanthropic wage-loan corporations may be organized to lend money on wage assignments at a rate not exceeding 3 per cent a month, their annual dividends being limited to 6 per cent on their capital stock (1913, p. 199).

### Indiana

Burns' Annotated Statutes 1926, secs. 9352–9363. Assignment of future wages is prohibited under criminal penalty (1899, p. 193). Wages to be earned within thirty days may be assigned, when the wife consents and the employer is properly notified. The act includes so-called sales of wages. Interest is limited to 8 per cent per year, an overcharge causes nullity of the assignment and forfeiture of interest, and any violation of the act constitutes a misdemeanor. (1909, p. 76.)

### Kentucky

Carroll's Statutes 1930, secs. 4758a–1—4758a–6. Wages to be earned within ninety days may be assigned or "sold" in consideration of a sum of $200 or less if the assignment is in writing, states its terms and charges and the name and address of the assignee, is assented to by the employer in writing, and if a copy is given to the wage-earner on which receipt of payments is noted (1912, ch. 126, as amended by 1918, ch. 36).

### Louisiana

Marr's Revision of the Statutes of 1915, Annotated Supplement 1924, p. 1035. Persons lending money on wage assignments must be licensed by the state and, in their discretion, by the local authorities as well. Interest is limited to 18 per cent per annum. Assignments must be assented to in writing by the employer and consented to in writing by the wife of a married man, unless she has lived apart from him for five months preceding. Licensees must keep records of loans and receipts and must make a report to the state commissioner of labor and industrial statistics. Violation is punishable as a misdemeanor and by revocation of license. (1916, no. 102.)

### Maine

Revised Statutes 1930, ch. 57, sec. 154; ch. 123, sec. 9. Wage assignments are valid against third persons only if recorded with the town clerk and against the employer only if he has actual notice thereof (1876, ch. 93). Assignments given to secure loans under the small loan act are valid only if in writing signed by the borrower and spouse, and if securing debts contracted simultaneously therewith (1917, ch. 298, sec. 12).

### Maryland

Annotated Code 1924, art. 8, secs. 11–17. Assignments of wages, which term specifically includes "sales" of wages, must be made in writing, must be acknowledged before and docketed with a justice of the peace, must be consented to by the spouse and served on the employer within three days, may assign wages to be earned only within six months, and may bear interest no greater than 6 per cent per annum (1906, ch. 399). Assignments to secure loans less than $300 are governed by the small loan law (1918, ch. 88, sec. 17).

### Massachusetts

General Laws 1921, ch. 154. No assignment of future earnings to secure loans of less than $300 is to be valid against the employer until accepted by him in writing and recorded with the town clerk. The assignment must be in a prescribed form, must exempt $10 weekly, must be consented to by the wage-earner's wife, and will not be good beyond one year. The term "assignment" includes so-called sales of wages. (1906, ch. 390, sec. 3; 1908, ch. 605, secs. 7, 8; 1909, ch. 514, sec. 123; 1910, ch. 563; 1911, ch. 727, sec. 22; 1912, ch. 675, sec. 6.)

### Michigan

Compiled Laws 1929, secs. 12213, 12214, 12219–12224. Besides the provisions of the Uniform Law, fourth draft, regulating wage assignments, and specifically including wage sales, where made to secure loans not exceeding $300, as to loans over $300 the old personal property loan law remains in effect and includes regulation of wage assignments (1907, no. 337). For discussion see pp. 35, 72 of this book.

## Minnesota

Mason's Minnesota Statutes 1927, secs. 4137, 4138. Assignments of future wages are valid only if wages are to be earned within sixty days, if employer is served with assignment within three days and consents thereto, and, where made to secure loans of $200 or less, only if the employer's consent is recorded with the municipal clerk and the wife's consent is attached (1905, ch. 309; 1911, ch. 308).

## Mississippi

Code 1930, secs. 1952–1972. The assignment of wages to secure loans, including the sale of wages, is subject to the law governing loans on personal property. For discussion see pp. 36f., 122 of this book.

## Missouri

Revised Statutes 1919, sec. 2171. All assignments of unearned wages are void. Valid assignments must be in writing (1911, p. 143). See also provisions of Uniform Small Loan Law, fourth draft, pp. 95, 103 of this book.

## Montana

Revised Codes 1921, secs. 4173–4182. Persons lending money on the security of wage assignments must procure a license from the local authorities and give a bond. Assignments must relate to a definite part of wages already earned, must be consented to in writing by the wife, must be served upon the employer within one day after execution, and must be filed with the county clerk. "Purchases" of wages are considered loans. Interest is limited to 12 per cent per annum. Violation of the act constitutes a misdemeanor and makes the assignment void. (1911, ch. 56.)

## Nebraska

Compiled Statutes 1929, secs. 36–203. Assignments and sales of wages by the head of a family are void unless signed and acknowledged by both husband and wife in the same way as conveyances of real estate (1915, p. 354). Assignments are subject to the chattel loan law as well: see p. 70 of this book.

### New Hampshire

Public Laws 1926, ch. 327, secs. 3, 4. Assignments of future wages must be accepted by the employer and filed with the municipal clerk (1873, ch. 9; 1878, ch. 2).

### New Jersey

Compiled Statutes, vol. 3, p. 3048 (secs. 107–113, 107–114). Assignments or sales of wages are unlawful, and the assignee is guilty of a misdemeanor, if interest is charged over the legal rate (1884, p. 245). Assignments to secure loans not exceeding $300 are subject to the small loan law, discussed on pp. 67 f., 110 of this book.

### New York

Personal Property Law, sec. 42. Assignments of future wages must be made on the same day that the loans are made which they secure, must be served on the employer within three days, and must bear interest no higher than 18 per cent per annum. Persons engaged in the business of lending on wage assignments must register with the county clerk. Violation of these provisions is a misdemeanor. (1904, ch. 77; 1911, ch. 626.) Assignments to secure loans not exceeding $300 are subject to the small loan law, discussed on pp. 106, 111 of this book.

### Ohio

Throckmorton's Code 1929, secs. 6346–7, 6346–11, 6346–12, and Baldwin's Ohio Code Service. The small loan law provides that wage assignments must be in writing, consented to by the spouse and, to obtain priority, filed with the employer and recorded, and must secure a debt contracted simultaneously with the assignment. Assignments by married persons may transfer only 25 per cent of earnings, by unmarried persons 50 per cent. Transfers in consideration of sums under $300 are considered loans. (1929, pp. 43, 479.)

## Pennsylvania

Digest of Statute Law 1920, sec. 21507. Assignments of future wages payable semi-monthly are invalid (1891, no. 71). Assignments of future wages to secure a loan are invalid unless accepted by the employer and consented to by the wage-earner's wife (1913, p. 405). The act of 1913 and assignments of future wages have been declared unconstitutional by a lower court. See p. 206 of this book.

## Rhode Island

General Laws 1923, secs. 4420–4426. Assignments of future wages are valid only if they secure a debt contracted prior to or simultaneously therewith, if they are in writing in a prescribed form, if a copy is delivered to the assignor and another served upon the employer, if recorded within five days, and only for the period of one year. The term assignment includes any transfer of authority to collect future earnings.

## Tennessee

Annotated Code 1917, sec. 4341 a 1. To charge the employer with an assignment of wages he must have assented thereto in writing at the time of its execution (1903, chs. 21, 453). See also provisions of Uniform Small Loan Law, pp. 95, 102.

## Texas

Vernon's Annotated Revised Civil Statutes 1925, art. 6164; Cumulative Supplement 1930, art. 6165a. Assignments or sales of wages must be consented to by a wife in the same manner as the conveyance of the homestead.

## Utah

Compiled Statutes 1917, sec. 4385. The small loan law provides that assignments of wages, earned or to be earned, to secure loans of $300 or less, must be consented to by the wife unless assignor and wife have been separated for the preceding five months.

## Vermont

General Laws 1917, sec. 1946. Assignments of future wages are invalid against trustee process unless executed in writing and recorded with the town clerk and unless made to secure a debt contracted prior to or simultaneously with the assignment or a debt for necessities to be furnished thereafter (1906, no. 69).

### Wisconsin

Statutes 1929, sec. 241.09. Wages of a married man which would be exempt from garnishment may not be assigned unless they shall accrue within two months and unless the assignment shall be consented to by the wife, if she be a member of his family, whose consent shall be in writing and witnessed by two disinterested witnesses (1905, ch. 148; 1925, ch. 4). See also provisions of Uniform Small Loan Law, fourth draft, pp. 95, 103 of this book.

### Wyoming

Compiled Statutes 1920, secs. 4399–4351. Assignments of wages to be earned in the future to secure loans of less than $200 are valid only when accepted in writing by the employer, consented to by the wife, and recorded with the municipal clerk (1909, ch. 120).

# CHAPTER XI

## THE "PURCHASE" OF WAGES AS A LOAN OF MONEY

THE great evils that grew out of the unregulated lending of money in small sums have already been shown in Chapter IX and in the first part of this volume. Various expedients were tried to cure or eradicate these evils. Prohibition of small loans, except at the usual contract rate, was found ineffective because, being necessary, such loans were made in any event, and dubbing them unlawful only drove up the cost to the borrower to compensate for outlawry. Finally the method found most effective for treating this evil was to allow a rate of interest commercially profitable, which was necessarily higher than the general contract rate of the state, to inflict severe penalties for exceeding those rates, and to permit no one to receive such rate except those who were licensed by and bonded to the state and who, in addition, were under strict state supervision.

### THE LOAN SHARK'S SUBTERFUGE

Under such regulation the loan shark changed his method of doing business. He ceased to take notes secured by an assignment of wages; he took a document that on its face purported to be merely a transfer of a claim for wages that the employe had or might have against his employer. In most cases a clause was inserted specifically stating that the transaction was a sale, not a loan. This very statement, of course, showed the true nature of the transaction; if it were in fact a sale, the transaction would speak for itself. The unscrupulous lender claimed simply to have bought a chose in action, and therefore not to be subject to any loan laws. By calling his return discount instead of interest, he sought to get a return far beyond the legal maximum. And he could operate without license and supervision.

It seems absurd, of course, on its face that a state should limit the return on a certain transaction to, say, 42 per cent a year and provide elaborate means of supervision and correction, and yet by simply changing the form of an instrument and not the substance of the transaction, the extortioner can make the return anything he may desire and, by so doing, can be free of all supervision, correction, and punishment. The only difference in the transaction is that in the one case the lender holds the personal obligation of the assignor, in the other the so-called purchaser does not. But this is a difference in form only and not in substance. In both cases the individual who advances the money has the obligation of the employer, the permanent and responsible concern. It needs no discussion to show that the mere personal obligation of a wage-earner, who assigns his wages yet to be earned in the future, is of very little financial value. The effect upon the wage-earner is the same whether the transaction be called a loan secured by an assignment of wages or whether it be called a sale of wages. And the social effect is the same. A payment of 25 per cent a week or of 1300 per cent a year as return for the advance of money[1] means the same hardship on the wife and children of the laborer, whether it be called discount or interest.

In his opinion in Meacham *v.* State[2] Russell, J., said:

> So far as the writer is concerned, he does not look with favor upon the purchase of accounts for wages where the practical result is to afford a means by which one can be compelled to pay an exorbitant price for the use of money earned by his labor through a purchase of a part or all of his account at a reduction below its face value. . . . The practical effect is to extort a usurious rate of interest, whether that be the intention of the parties or not. Interest is nothing more than a charge or price for the use of one's money; and although there be an absolute sale of an account for wages or salary, yet where it appears that the sale is made solely for this purpose of realizing sooner than the account would ordinarily be paid, it is apparent that the seller loses the difference for the sole purpose of obtaining the use of his money earlier than he would otherwise have received it. . . . The writer cannot see any difference, in its practical effect upon the wage-earner, between paying a usurious rate of interest upon a loan and sacrificing a portion of the chose in action to be enabled to use the remainder.

[1] Willson *v.* Fisher, 75 Misc. (N. Y.) 383.

[2] 7 Ga. App. 713 (1910).

Such a change in method is only a subterfuge and should be dealt with as the courts deal with all subterfuges adopted in attempts to evade the usury law. "The transaction must be judged by its real character, rather than by the form and color which the parties have seen fit to give it. The shifts and devices of usurers to evade the statutes against usury, have taken every shape and form that the wit of man could devise, but none have been allowed to prevail."[1]

In Home Bond Co. *v.* McChesney,[2] the Supreme Court of the United States said: "In so far as the contracts in question here use words fit for a contract of purchase they are mere shams and devices to cover loans of money at usurious rates." "We must," Lord Mansfield said, "get at the nature and substance of the transaction; . . . where the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statute."[3]

"Therefore the only question in all cases like the present is, what is the real substance of the transaction, not what is the color and form."[4] The real substance of a purchase of wages being a loan, it should be treated as a loan and subjected to the law governing loans.

## LEGISLATIVE TREATMENT OF WAGE PURCHASES

More than 20 states have declared by legislative action that the so-called purchases of wages shall be treated as loans. The advent of the money-lender into this field was very soon marked by legislation designed to prevent his making a mockery of the usury laws. The first statute to be enacted on the subject of wage assignments, except for the recording acts of New England, was the New Jersey statute of 1884.[5] In substance it applied the usury law of the state, with added criminal penalties, to these so-called purchases of wage assignments.

Maryland in 1906 passed her present law regulating wage assignments, which provided that "the term 'assignment' as used in this act shall include every assignment, transfer, sale, pledge, mortgage or hypothecation, however made or attempted, of the

[1] Quackenbos *v.* Sayer, 62 N. Y. 344 (1875).

[2] 239 U. S. 568 (1916).

[3] Floyer *v.* Edwards, Cowp. 114 (1774).

[4] Rapelye *v.* Anderson, 4 Hill (N. Y.) 472 (1842).

[5] See pp. 18 f., 186.

wages or salary of any person, or of any interest therein." The Illinois statute of 1909 also contained this provision and, though it was held unconstitutional in Massie *v.* Cessna,[1] this particular provision was not even attacked.

In its act of 1904 Georgia provided, "Any sale or assignment of wages, or salary, whether made for the purpose of securing a debt in existence before said assignment is made, or for the purpose of procuring an advancement of money at the time the assignment is made, shall be governed in all respects by the provisions of this act; and the rate of discount on any sale or assignment of salary or wages shall not be greater than the rates and fees prescribed in sections 3458 and 3459 of this Article." The Indiana wage-assignment act provides that "Every purchase by a wage broker of an assignment of the wages or salary of any employee or wage-earner shall be held and considered to be a loan in the sum and of the amount actually paid in and received by such employee or wage-earner." Colorado and Montana have the same provision, but add thereto, "and shall be subject to all the provisions of this act."

Massachusetts, Rhode Island, and Vermont secure the same result by providing that no assignment of wages shall be valid unless made to secure a debt. The wage-assignment law of Kentucky regulates sales as well as loans, and the personal property loan laws[2] of Mississippi, Nebraska, Tennessee, and Texas apply to persons engaged in the business of "buying wages or salaries." The North Carolina act is similar.

Alabama's prohibition of assignment of unearned wages, except those earned within thirty days (if given to secure payment for certain necessities), Pennsylvania's prohibition of assignment of unearned wages (payable semi-monthly), and the absolute prohibition of Missouri of the assignment of unearned wages, all apply with equal force to so-called sales as well as loans.

The requirements as to recording, consent of employer, notice to employer, and consent of wife or spouse, found in the laws of Iowa, Minnesota, Nebraska, New Hampshire, Tennessee, and

[1] See pp. 40 f., 203 f.

[2] The former Ohio law has been held not to apply to these so-called purchases, but the decision is based on a construction of the particular act in question and does not affect properly framed legislation on the subject. State *v.* Mehaffey, 112 Ohio St. 330 (1925). This defect was cured in Ohio by Acts 1929, p. 43.

Wisconsin, are also so framed as to apply to these "sales" as well as to loans.

Finally, we have the fourth draft of the Uniform Small Loan Law declaring:

Section 16: The payment of three hundred dollars ($300) or less in money, credit, goods or things in action as a consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall be deemed a loan within the provisions of this act secured by such assignment; and the amount by which such assigned compensation exceeds such payment shall be deemed interest upon such loan from the date of such payment to the date such compensation is payable. Such loan and such assignment shall be governed by and subject to the provisions of this act.

This section is now law in Louisiana, Maryland, Michigan, Missouri, New York, New Jersey, Ohio, Oregon, Virginia, West Virginia, and Wisconsin, and the small loan law of Tennessee also applies to the business of purchasing or taking assignments of wages.[1]

These states have, therefore, by express law declared that giving to a wage assignment the form and color of a sale does not and shall not take the transaction out of the laws enacted to protect the wage-earner and his family.

### WAGE PURCHASES APART FROM STATUTE

Independent of statute, the so-called sales of wages should be held subject to the small loan laws. There are two bases for such a holding.

1. Wage-assignment statutes are remedial and should be construed so as to carry out the purpose of the legislature to curb or eradicate the evils aimed at.

2. Wage purchases are in substance loans and the form of a sale is a mere subterfuge.

It is a general legal principle that remedial acts should be so

[1] The Maryland Court of Appeals has recently held Section 16 to be a reasonable exercise of the police power and therefore constitutional: Palmore *v.* Baltimore and Ohio Ry. Co., 142 Atl. (Md.) 495 (1928). This decision was quoted at length by the Virginia Supreme Court in upholding the same provision in the Virginia law: Sweat *v.* Comm., 148 S. E. (Va.) 774 (1929). The constitutionality of the section has now been definitely established by Dunn *v.* State, 173 N. E. (Ohio) 22 (1930); affirmed, 172 N. E. 148; appeal dismissed for want of a federal question, U. S Sup. Ct., Oct. 1930, no. 443.

construed as to effectuate the purpose of the legislature. Judicial expressions of the principle are numerous.

> The purpose of the law is the ever insistent consideration in its interpretation.[1]
>
> The statute is to be interpreted in the light of the broad purpose to be accomplished under it.[2]
>
> But the rule, which appellant invokes is always in subordination to another and fundamental rule that requires every statute to be construed with reference to the object intended to be accomplished by it.[3]
>
> Another elementary rule is that remedial statutes are to be liberally construed in order to give effect to the humane purposes of the Legislature.[4]
>
> I think that a statute of this sort should be most liberally construed to carry out the evident purpose of the Legislature, and that it is our duty if possible in the interest of justice and humanity to affirm the conviction of the defendant.[5]
>
> While it is true as a general proposition that doubtful provisions of criminal statutes are liberally construed in favor of the person charged with a criminal offense, yet this doctrine should not be carried so far as to destroy the efficiency and permit evasions of the plain purposes of remedial acts.[6]

No discussion is needed to prove that the purpose of the small loan laws was to regulate the advancing of money in small sums and to protect the wage-earner from extortion. If, by merely giving such an advance the form of a purchase of wages instead of a loan secured by an assignment of wages, the loan shark can evade all regulation and mulct the wage-earner for extortionate charges, the purpose of the law is entirely frustrated. Hundreds of decisions hold that statutes, particularly remedial statutes, must be construed so as to accomplish the legislative purpose. Upon such authority there would seem to be no doubt that purchases of wages are subject to the small loan laws, where the amount of the advance is within the limits set.

[1] U. S. *v.* Antikamnia Chemical Co., 231 U. S. 654, 667 (1913).

[2] Boston *v.* Boston Elevated Ry. Co., 215 Mass. 41 (1913).

[3] Citizens Electric Co. *v.* Lack. & West Va. Ry. Co., 255 Pa. St. 176, 181 (1916).

[4] Camunas *v.* N. Y. & P. R. S. S. Co., 260 Fed. 40, 52 (1919).

[5] People *v.* Raport, 193 App. Div. (N. Y.) 135, 139 (1920).

[6] Andrews *v.* State, 3 Ohio App. 436 (1914).

The application of this rule of interpretation to statutes dealing specifically with small loans was expressed aptly by the Court of Appeals of the District of Columbia. "It is urged that this is a penal statute, and, as such, the somewhat obsolete rule of strict construction should be invoked. It is a remedial act, and should be liberally construed, with the view of giving force and effect to the intent of Congress."[1] Other courts have expressed themselves similarly. "Laws enacted to guard against unreasonable rates of interest are laws against oppression, and should be favorably regarded."[2] All the courts which have considered these statutes have construed them so as to carry out the evident purpose of the legislature to protect the wage-earner from extortion.

In seeking to give effect to the true purpose of a remedial enactment the courts will look through the form to the substance of the transaction. From an early period they have declared usurious contracts void no matter what attempt was made to obscure their true nature. Thus in the old Court of Errors and Appeals in New York, Justice Cowen made the following comments in a case of a guaranteed mortgage sold at a discount.

It is said, here is the purchase of a chose in action, which is not usury. . . . It is said there was not any loan by the appellant. There was an advance by him of $2600, and security taken for the repayment of that sum with more than $400 besides. What is a loan within the meaning of the statute of usury? An advance of money upon a contract that it shall be returned *in genere* is clearly so. . . . That the lender chooses to call it by another name does not change its nature. The result of the contract being a loan and an excess of compensation, no disguise, either by words or the form of the transaction, can change its character. . . . Any contrivance by which more than seven per cent. is obtained as a compensation for forbearance on an advance of money, is a fraud upon the statute. It is usury in itself by reason of the effect. . . .

It would, no doubt, have been much more in conformity with the spirit of the statute, had the courts held that in no case could a sum exceeding lawful interest be received by way of discount. The very practices now urged furnish the best argument against their validity. Every law should

[1] Reagan *v.* Dist. of Columbia, 41 App. D. C. 409, 412 (1914).

[2] Eaker *v.* Bryant, 24 Cal. App. 87, 94 (1914). See also Comm. *v.* Puder, 261 Pa. St. 129; In re Home Discount Company, 147 Fed. 538; Thompson *v.* Gimbel, 145 App. Div. 436, affirmed, 207 N. Y., 659; International Text-Book Company *v.* Weissinger, 160 Ind. 349; and State *v.* Ware, 79 Ore. 367.

be so construed as to prevent its evasion; a rule which the statute of usury carries upon its face. The reason why such an admonition was inserted is to be found in the history of the statute. At every step of that history, both the legislature and the courts were met by the protean devices of avarice, constantly moving with its hundred fangs through every region of society. . . .

Courts may, indeed, by a narrow and illiberal course of adjudication, by a fear of affixing proper names, or by referring things to the jury box which should be dealt with as questions of law, render the statute in question or any other statute weak and inefficient.

This is the too common fate of laws made for the suppression not only of usury but of fraud. No relief from individual hardship afforded by such courses can compensate for the disgrace which they bring upon the general administration of the law; and it would be better if the few cases which give them countenance were at once overruled.[1]

Judge Cowen's views were in fact voted down by the court largely on the ground that, as to a bond or other mercantile specialty, the unfortunate precedents referred to by him should not be disturbed. As regards the so-called sales of wage assignments we have a new question, unhampered by precedent.[2] It would seem, therefore, that Judge Cowen's reasoning should be applied to wage-sales. Courts have actually so decided in cases applying to so-called purchases of wages. In State *v.* Tennessee Finance Co.[3] the Supreme Court of Tennessee so held, saying:

On the merits it is insisted that the business conducted was that of dealing in securities only, and not loaning money, in that it consisted only of buying or acquiring by assignments claims of various customers, being mainly railroad employees, for wages. . . . The court looks through the form to the effect and substance of such transactions.

In the New York case of Wilmarth *v.* Heine,[4] "the plaintiff testified that at the time the defendant applied to him for a loan, 'I said you have no security to give me except your wages'. . . . He also testified that he told the defendant that if they could make a satis-

[1] Rapelye *v.* Anderson, 4 Hill (N. Y.) 472 (1842).

[2] The Tennessee case of Spicer *v.* King (136 Tenn. 408) simply decided an old Tennessee personal property loan statute to be unconstitutional for improper classification. The comments as to the difference between sales of and loans on wages are pure dicta.

[3] 152 Tenn. 40 (1924).

[4] 137 App. Div. 526 (1910).

factory arrangement he would buy his wages; that he bought $190 worth of wages and paid $125 for them; that by the terms of the agreement he was to pay $20 a month out of the wages. . . . 'He was to bring the whole of the wages and deliver them to me and I was to take $20 and give the wages back to him'."

Upon these facts the court said,

> The other question presented is whether there was a bona fide sale of the defendant's wages or a device to cover a usurious loan. I think it plain from the facts appearing in the record that the transaction was not an actual sale but a scheme by means of which the most flagrant extortion was intended to be practiced by the plaintiff upon the defendant. The written instruments taken in connection with the history of the transaction, as testified to by the plaintiff, shows a device contrived for the purpose of concealing a loan and enabling him to exact a greater profit than six per cent for the use of his money. The defendant made an application to the plaintiff for a loan of money. He had no security to give except his wages, and the plaintiff advanced the amount of money applied for upon the condition that the defendant should repay it, and sixty-five dollars in addition, out of the moneys to be received by him for services rendered. In this, as in every other case where the question of usury is raised, the transaction must be judged by its real character rather than by the form and color which the parties have seen fit to give it. There can be no doubt from all the facts and circumstances of this case that the substance and effect of the transaction was not a bona fide sale of wages but a borrowing on the one side and a lending on the other at a greater rate of interest than that allowed by law.

The court made this decision in the face of papers which were in form an absolute sale and which contained a power of attorney from the assignee to the assignor to collect said wages on condition they be turned over to the assignee on pay-day. Nevertheless, the transaction was judged by its real character; it was held to be a mere subterfuge to conceal a loan and therefore subject to the loan laws. It may be claimed that the court admits the possibility, however, of a bona fide sale of wages, that this decision is based on the facts that the wage-earner applied for a loan and that the advance, plus the charges, was repayable in instalments. When we come to consider certain Georgia cases which are supposed to support this distinction, we shall see that the distinction, if it exists, is of no practical importance.

In the case of In re Canfield[1] the Circuit Court of Appeals said,

> The appellant contends that no testimony should have been taken showing that the parties intended to enter into a usurious contract because the same contradicted the agreement of December 14th actually executed. We think that such testimony was admissible. The purpose of the usury law is to protect borrowers. . . . The debtor is always allowed to make this defense, notwithstanding that he thereby contradicts a written agreement, and so are his privies. Knickerbocker Insurance Co. *v.* Nelson, 78 N. Y. 137; Wilmarth *v.* Heine, 137 App. Div. 528; In re Kellogg, 121 Fed. 333; Mudgett *v.* Goler, 18 Hun 302; Rohan *v.* Hansen, 11 Cush. (Mass.) 44; 27 Am. & Eng. Cyc. of Law (2 Ed.) 540.

This case was affirmed under name of Houghton *v.* Burden.[2] The Supreme Court of the United States then said,[3]

> All of this evidence was excepted to as contradicting the written agreement and was admitted over objection. Where the inquiry is whether the contract is one forbidden by law, it is open to evidence dehors the agreement to show that though legal upon its face it was in fact an illegal agreement. Otherwise the very purpose of the law in forbidding the taking of usury under any cover or pretext would be defeated. The defense is one which the debtor may make even though it contradicts the agreement. Scott *v.* Lloyd, 9 Pet. 418.

The only decisions which can be cited as holding that the small loan act does not apply to purchases of wages are the Georgia cases of Tollison *v.* George[4] and Atlanta Joint Terminals *v.* Walton.[5] The opinion in the first of these cases contains the following language:[6]

> It is nowhere alleged in the affidavit that the transaction between the *applicant for the loan* and the accused was merely colorable, that it was only a pretended sale, but in fact an assignment of the choses in action for a loan; but the papers constituting the transaction are left to speak for themselves, and show, as said above, an absolute sale.

The position taken by the Georgia court that a purchase of wages does not *per se* come under the small loan law seems to be undermined by its own language when it speaks of "the applicant for the loan." If the assignor is an applicant for the loan, how can the assignee be not a lender but simply a vendee? But it is unnecessary

[1] 193 Fed. 934 (1912). [2] 228 U. S. 161 (1913). [3] P. 169.
[4] 153 Ga. 612 (1922). [5] 29 Ga. App. 225 (1922). [6] P. 617.

to dispute the decision. Its application is restricted. The court merely held that in cases where it is not charged in the accusation, indictment, or other pleading that the transaction which is in the form of a sale is merely colorable, the court will not, at least in the absence of evidence, hold the transaction to be otherwise than what it is labeled. The case of Atlanta Joint Terminals *v.* Walton is to the same effect. No evidence was presented to show that the transaction was a colorable one; the evidence tended to show rather the contrary.

In Jackson *v.* State,[1] where it was held that the general usury law of the state was not intended to cover a sale of wages, the court made clear this basis for its decision.

> It is not alleged that either transaction was a pretense or subterfuge to cover usury; and therefore, for the purpose of deciding the questions made by the demurrer, we treat the transaction described in the accusation as genuine transfers of the account.

And the two further Georgia cases of King *v.* State[2] and Ison *v.* Atlantic Coast Line Ry. Co.[3] were simply decisions that the general usury law of Georgia was not intended to apply to sales of wages, there being no pleading in either case to the effect that the transaction was colorable or a subterfuge.

The Georgia decisions, therefore, simply hold that when the pleading does not attack a purchase of wages as a subterfuge for usury, such assignment will not *per se* be held to be a loan. They do not hold that when such an attack has been made in a pleading or at a trial, the Georgia courts will not look through the color and form of the transaction and ascertain its real character. On the contrary, it is strongly intimated in the Tollison and Jackson cases that the Georgia courts will follow the universally accepted law and look through to the actual nature of the transaction.[4] Much less is there anything in these decisions on which to found a belief that the Georgia courts will not hold the transaction to be usurious when, as in Wilmarth *v.* Heine, the contract provided for

[1] 5 Ga. App. 177 (1908).

[2] 136 Ga. 709 (1911).

[3] 17 Ga. App. 459 (1916).

[4] In fact in Rogers *v.* Blouenstein, 124 Ga. 501 (1905) the Supreme Court of Georgia said it would do that very thing.

a repayment in instalments between the parties or a continuous series of wage assignments between the parties.[1]

Most states hold that an assignment of wages in consideration of an advance of a sum of money is a loan and, as such, is necessarily governed by the laws regulating loans. Georgia, however, holds that it is a question of fact, to be pleaded and proved, whether the transaction is a sale or a loan.

The ultimate result, however, will in practice be the same. Such assignments, from the very nature of the assigning wage-earner's position, are practically always renewed in such form as to enable the wage-earner to repay the advance in instalments. A wage-earner so needy as to require a loan could not spare out of his next wage payment enough to satisfy the loan. No wage-purchaser can therefore insist on payment of the entire amount of his advance out of the first wages due the assignor unless at the same time he makes another advance to the assignor. The debt must be paid in instalments or the assignment must be renewed. The giving of renewed assignments, as well as repayment of the advance in instalments, has invariably been held to demonstrate that the transaction is a loan.

## RENEWAL OR PAYMENT IN INSTALMENTS AS EVIDENCE OF LOAN

The actual practice is for the wage-earner to assign his wages in consideration of a sum of money, a less sum, of course, than the amount of the assigned wages. The assignee, the so-called purchaser, does not file the assignment, and the assignor therefore collects the wages. He calls on the assignee and pays him his fee, together with something on account of the debt, and executes and leaves with the assignee a new assignment of wages for the amount of the advance or the balance thereof. The form of paying the assignee all of the wages may or may not be gone through with.

[1] As far as Georgia is concerned the discussion of the text has become academic. In the case of In re McLamb *v.* Phillips, 34 Ga. App. 210 (1925), the Georgia Court of Appeals held that such wage assignments as were not governed by the Georgia small loan act of 1920 were governed by the personal property loan act of 1904 which specifically governs sales of wages as well as loans. In either event therefore all Georgia wage assignments, whether loans or so-called purchases, are regulated by statute. The Supreme Court of Fulton County, Atlanta, has also held to the same effect in Davis *v.* Trout, decided on Jan. 15th, 1926.

If it is, the assignee immediately turns back to the assignor the amount of the wages minus his charges and minus whatever payment on account has been agreed upon. The process is repeated until the advance plus the charges are repaid.

Every court that has had occasion to pass on such a transaction has held it to constitute a loan of money. The New York case of Willson *v.* Fisher[1] furnishes a complete picture of the *modus operandi* of this so-called purchase. Judge Hazard said,

On the 14th day of November, 1910, the defendant came to the plaintiff's place of business . . . and obtained from him fifteen dollars. Thereupon he signed a paper, . . . the purport of which was to assign wages alleged to be due, in reality to be earned, from defendant's employer to the amount of eighteen dollars and seventy-five cents. At the end of the week and on the 19th of November, 1910, defendant again called upon plaintiff and paid him at least eight dollars and seventy-five cents and gave him defendant's exhibit 2, . . . reciting a consideration of ten dollars and assigning defendant's wages to the amount of twelve dollars and fifty cents. The following week, on November twenty-sixth, the defendant again called upon plaintiff, gave him at least two dollars and fifty cents and signed another paper, . . . purporting in consideration of ten dollars to assign twelve dollars and fifty cents of defendant's wages. The week following another payment of at least two dollars and fifty cents was made by defendant, and defendant's exhibit 4 . . . was given. It is in the same form as the prior exhibits and in consideration of ten dollars assigns twelve dollars and fifty cents of defendant's wages to plaintiff. The week following and on December 10, 1910 defendant again called upon plaintiff, paid him at least two dollars and fifty cents and signed . . . a paper in the same form as the preceding exhibits, reciting a consideration of ten dollars and assigning twelve dollars and fifty cents of defendant's wages to plaintiff. . . .

Accepting either the plaintiff's or the defendant's version, it does not seem right as a matter of simple justice that plaintiff should have, out of this original advancement of fifteen dollars received back sixteen dollars and twenty-five cents, . . . and still hold an assignment of fifteen dollars against the defendant's wages, and on top of all that, have a judgment for twelve dollars and fifty cents and costs; yet that is exactly the situation as it exists here. . . .

However, even if we are bound to assume that, for purposes which are apparent, this plaintiff went through the form of requiring defendant to

[1] 75 Misc. 382 (1912), affirmed, 155 App. Div. 877.

bring in and turn over to him the amount of his earnings each week, it seems to me that it was a matter of form only, and a mere subterfuge to enable this plaintiff to extort from the defendant three dollars and seventy-five cents for what amounted to a loan of fifteen dollars for one week, and two dollars and fifty cents on at least three occasions for what amounted to a loan of ten dollars for one week. . . . His attorney urges, with great plausibility, that his client has discovered a way to defeat the usury laws; and, if his contentions are to be sustained, his client has indeed discovered a way to defeat not only the usury laws, but justice as well. It is his contention that in fact the court cannot look beyond any one of these instruments, or any one of these transactions; and, because a certain form has been gone through with, and a certain pretense carried out, that the court has not either the sense or the power to look at the transaction as a whole and determine whether they are really part and parcel of the same deal. I do not believe that the law, or the administration of the law, is so futile and impotent. . . .

If we are to decide that this judgment is to stand, it then becomes possible, by the simple subterfuge of taking a new assignment of wages each week, for a man to loan another fifteen dollars, collect at least sixteen dollars and twenty-five cents, and then get a judgment for within two dollars and fifty cents of his original advancement, to say nothing of holding an assignment of wages for the same amount as his original advancement. The whole transaction irresistibly appears to me to be one and the same deal. . . . I do not see how anyone can look at this transaction as a whole and escape from the conclusion that it is not only usurious, but that plaintiff has been fully paid, and more.

Tennessee Finance Company *v.* Thompson[1] is a decision of the Circuit Court of Appeals to the same effect.

One wishing to obtain money made an application in writing on a printed form, which purported to be an application to sell his wages to such company; the applicant, on another printed form, consented to assign to such company a stipulated amount of his earned wages, and instructed his employer to pay to such company the amount set out in the assignment. . . . The companies charged one dollar for the use of ten dollars, and two dollars where the wages amounted to twenty dollars, and a similar rate for sums above that amount. The Terminals Company [employer] paid off twice a month. The almost invariable practice was for the bankrupt [borrower] to draw the money and himself pay his debts to the brokerage companies. Should the bankrupt refuse or fail to pay his

[1] 278 Fed. 597 (1922).

debt after drawing his pay, the Terminal Company was notified not to pay him his next pay check, and the same would be tied up until the controversy was settled. It was a common custom for the bankrupt to make a new contract at the time of paying his then existing debt.

The District Judge held the controlling question to be one of fact, viz., whether the assignments of wages were in fact absolute sales as purported on their face, or whether they were loans, and the assignment a device to cover up loans at usurious interest rates. . . .

In our opinion, the conclusion that the transaction was usurious and that the form of sale was adopted merely to evade the usury laws, should be sustained.

McWhite *v.* State[1] is a decision of the Supreme Court of Tennessee on practically the same facts.

We think this is clearly an extension of credit, an advance, or loan, to the employee, with the assignment held over the employee as a sort of club or collateral security. . . .

If the written assignment had represented the entire transaction, the brokerage company would naturally have filed it with the railroad company, drawn the money assigned, and the matter would have been closed. The brokerage company, however, . . . rarely attempted to enforce its rights as assignee, but, on the contrary, in nearly all the cases, permitted the employee to disregard the assignment and trusted to him to return the money advanced. . . .

It is well settled by our courts that in all transactions of this character, the court will disregard the form of the matter and will look at its real substance.

Upon similar facts the Texas court[2] held that the nature of the transaction was a question of fact for the jury, and the verdict of the jury that the transactions constituted a loan and were subject to the usury laws was sustained.

Brandt *v.* Hall,[3] another case on practically the same facts, held that

The undisputed facts and the evidence above set out cover all the material evidence given in the cause, and from which but one conclusion must follow, and that is, the transaction was a loan of money for which appellant was paying at the rate of ten per cent a month, and the buying of time

[1] 143 Tenn. 222 (1920).

[2] Cotton *v.* Cooper, 160 S. W. 597 (1913), affirmed, 209 S. W. 135.

[3] 40 Ind. App. 651 (1907).

claimed by appellees was a mere subterfuge to hide the usurious charge, and, this being true, this court is not bound by the decision of the trial court.

Willson *v.* Fisher, Tennessee Finance Co. *v.* Thompson, and McWhite *v.* State all seem to indicate that, although the question of whether these renewed assignments constitute a loan is, under general usury laws, a question of fact, it is nevertheless such a question of fact as the court can allow to be decided only in one way. The court must find that it is a loan. The court should, therefore, direct a verdict; if it does not, its action will be reversed by the appellate court.[1]

The advance of a sum of money to an employe to be repaid out of his earnings is in substance a loan. Since this method of doing business was adopted to evade the usury and small loan laws, such advances should, as a matter of law, be considered as mere subterfuges and held to be subject to those laws.[2] This is particularly true in view of the fact that the small loan laws were remedial measures adopted to regulate all advances of small sums of money and that such a construction is necessary to carry out the purposes of the legislatures in enacting them. Even when the courts insist that it is a question of fact, however, whether a transaction in form, a sale is in reality a loan, then any one of several facts suffices to show this reality. If the advance is not to be paid back as a whole but in instalments, if the assignments are renewed, or if the employer is not notified and the assignor is allowed to draw his wages, this is sufficient, according to the great weight of authority, to justify and require a directed verdict that the transaction is a loan.

[1] Brandt *v.* Hall, preceding paragraph.

[2] This is the exact holding in the case of Rosenbusch *v.* Fry, 136 Atl. (N. J.) 711 (1927).

# APPENDIX

## FIFTH DRAFT

## GENERAL FORM OF UNIFORM SMALL LOAN LAW (AS REVISED JANUARY 1, 1932)

**Title**

*A Bill for an Act to define, license, and regulate the business of making loans or advancements in the amount or of the value of three hundred dollars ($300) or less, secured or unsecured, at a greater rate of interest than____ per cent (____%) per annum [Note 1],[1] prescribing the rates of interest and charges therefor and penalties for the violation thereof, regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of three hundred dollars ($300) or less, providing for the administration of this Act, authorizing the making of examinations and investigations and the publication of reports thereof, providing for a review of decisions and findings of the [Note 2] under this Act [Note 3] and to repeal [Note 4] and to repeal all Acts and parts of Acts inconsistent with the provisions of this Act [Note 5].*

**License**

*Section 1.* No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of three hundred dollars ($300) or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than —— per cent (——%) per annum [Note 1] except as authorized by this Act and without first obtaining a license from the [Note 2], hereinafter called the Commissioner. [Note 6]

**Application and fee**

*Section 2.* Application for such license shall be in writing, under oath, and in the form prescribed by the Commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the Commissioner may require. Such applicant at the time of making such application shall pay to the Commissioner the sum of fifty dollars ($50)

[1] See notes at end of text.

as a fee for investigating the application and the additional sum of one hundred dollars ($100) as an annual license fee [Note 7] for a period terminating on the last day of the current calendar year; provided, that if the application is filed after June thirtieth in any year such additional sum shall be only fifty dollars ($50). [Note 7d] In addition to the said annual license fee every licensee hereunder shall pay to the Commissioner the actual costs of each examination as provided for in Section 10 of this Act.

Every applicant shall also prove, in form satisfactory to the Commissioner, that he or it has available for the operation of such business, at the location specified in the application, liquid assets of at least twenty-five thousand dollars ($25,000).

**Bond**

*Section 3.* The applicant shall also at the same time file with the Commissioner a bond to be approved by him in which the applicant shall be the obligor, in the sum of one thousand dollars ($1,000) with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. The said bond shall run to the State for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act.

**Requirements for license**

*Section 4.* Upon the filing of such application and the payment of such fees and the approval of such bond, if the Commissioner shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and if the Commissioner shall find that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and if the Commissioner shall find that the applicant has available for the operation of such business at the specified location liquid assets of at least twenty-five thousand dollars ($25,000), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find, he shall not issue such license, and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the fifty dollars ($50) investigation fee to cover the costs of investigating the application. The Commissioner shall approve or deny every application for license hereunder within sixty days from the filing thereof with the said fees and the said approved bond.

**License to issue**

**Denial of application and right of review**

If the application is denied, the Commissioner shall within twenty days thereafter file with the Department of [Note 8] a written decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof, which decision and findings may be reviewed by a writ of certiorari or writ of mandamus within thirty days after the filing thereof. [Note 9]

**Posting of license**

*Section 5.* Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

**Additional bond**

*Section 6.* If the Commissioner shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties and of the character specified in Section 3 of this Act, in the sum of not more than one thousand dollars ($1,000), shall be filed by the licensee within ten days after written demand upon the licensee by the Commissioner.

**Minimum assets**

Every licensee shall maintain at all times assets of at least twenty-five thousand dollars ($25,000) either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

**Place of business, etc.**

*Section 7.* Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license.

**Removal**

Whenever a licensee shall change his place of business to another location within the same [Note 10], he shall at once give written notice thereof to the Commissioner, who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. No change in the place of business of a licensee to a location outside of the original [Note 10] shall be permitted under the same license.

*Section 8.* Every licensee shall, on or before the twentieth day of each December, pay to the Commissioner the sum of one hundred dollars ($100) as an annual license fee for the next succeeding calendar year and shall at the same time file with the Commissioner a bond in the same amount and of the same character as required by Section 3 of this Act. **Payment of license fee**

*Section 9.* The Commissioner shall, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that: **Revocation of license**

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this Act or to comply with any demand, ruling, or requirement of the Commissioner lawfully made pursuant to and within the authority of this Act;

(b) The licensee has violated any provision of this Act or any rule or regulation lawfully made by the Commissioner under and within the authority of this Act;

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

The Commissioner may, without notice or hearing, suspend any license for a period not exceeding thirty days, pending investigation. **Suspension of license**

The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender. **Surrender of license**

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this Act, but the Commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this Act. **Reinstatement of license**

**Filing reasons for revocation, etc.**

Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file with the Department of [Note 8] a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be reviewed by a writ of certiorari or writ of mandamus within thirty days after the filing thereof. [Note 9]

**Examinations**

*Section 10.* For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, co-partnership, association, and corporation who or which shall be engaged in the business described in Section 1 of this Act, whether such person, co-partnership, association, or corporation shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Commissioner and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons, co-partnerships, associations, and corporations. The Commissioner and all persons duly designated by him shall have authority to require the attendance of [Note 11] and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business.

**Annual examination**

The Commissioner shall make such an examination of the affairs, business, office, and records of each licensee at least once each year. [Note 7e] The actual cost of every examination shall be paid to the Commissioner by every licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

**Books and records**

*Section 11.* The licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this Act and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

**Annual reports**

Each licensee shall annually on or before the fifteenth day of March file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

*Section 12.* No licensee or other person, co-partnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of three hundred dollars ($300) or less, which is false, misleading, or deceptive. [Note 12] **Advertising**

The Commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

No licensee shall take a lien upon real estate as security for any loan under the provisions of this Act, except such lien as is created by law upon the recording of a judgment. [Note 13] **Liens on real estate**

No licensee shall conduct the business of making loans under the provisions of this Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the Commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this Act or of the rules and regulations lawfully made hereunder. **Other business in same office**

No licensee shall transact such business or make any loan provided for by this Act under any other name or at any other place of business than that named in the license.

No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blanks are left to be filled in after execution. **No confessions of judgment, etc.**

*Section 13.* Every licensee hereunder may lend any sum of money not exceeding three hundred dollars ($300) in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three and one-half per cent (3½%) per month. [Note 14] **Rate of charge**

No amount whatsoever shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances.

In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, service, brokerage, commission, **No further charges** expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received. If any interest, consideration or charges in excess of those permitted by this Act are charged, contracted for, or received, the contract of loan shall be void, and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

**Requirements for making and payment of loans**

*Section 14.* Every licensee shall:

Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of Section 13 of this Act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan.

Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest in full at the agreed rate up to the date of such payment.

Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower.

Display prominently in each licensed place of business a full and accurate schedule, to be approved by the Commissioner, of the charges to be made and the method of computing the same.

Include in all advertising a statement of the rate of charges to be made, expressed on an annual basis, as nearly as such rates will permit.

**Prohibition**

*Section 15.* No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than ——— per cent (——%) per annum [Note 1] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars ($300). The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than three hundred dollars ($300) for principal.

**Wage assignments**

*Section 16.* The payment of three hundred dollars ($300) or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of this Act be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this Act.

**Validity and payment of assignments**

*Section 17.* No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this Act, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien.

**Amount collectible under assignments**

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under this Act, a sum not to exceed ten per cent (10%) of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

**Prohibition**

*Section 18.* No person, co-partnership, association, or corporation, except as authorized by this Act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than —— per cent (——%) per annum [Note 1] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of three hundred dollars ($300) or less.

The foregoing prohibition shall apply to any person, co-partnership, association, or corporation who or which, by any device, subterfuge, or pretense whatsoever, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this Act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of three hundred dollars ($300) or less for which a greater rate of interest, consideration, or charges than is permitted by this Act has been charged, contracted for, or received, wherever made, shall be enforced in this State, and every person in anywise participating therein in this State shall be subject to the provisions of this Act, provided that the foregoing shall not apply to loans legally made in any State which then has in effect a regulatory small loan law similar in principle to this Act.

**Penalties**

*Section 19.* Any person, co-partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of Sections 1, 11, 12, 13, 14, or 18 of this Act, shall be guilty of a misdemeanor. [Note 15]

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this Section, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

**Excepted lenders**

*Section 20.* This Act shall not apply to any person, co-partnership, association, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or licensed pawnbrokers.

**Regulations**

*Section 21.* [Note 16] is hereby authorized and empowered to make such general rules and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this Act, in addition hereto and not inconsistent herewith.

**Pre-existing contracts**

*Section 22.* This Act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

**Status of pre-existing licenses**

*Section 23.* Any person, co-partnership, association, or corporation having a license under [Note 17], in force when this Act becomes effective, shall notwithstanding the repeal of the said [Note 17], be deemed to have a license under this Act for a period expiring six months after the said effective date, if not sooner revoked, provided that such person, co-partnership, association, or corporation shall have paid or shall pay to the Commissioner as a license fee for such six months' period the sum of fifty dollars ($50) [Note 7b] and shall keep on file with the Commissioner during such six months' period the bond required either by this Act or by the said [Note 17]. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six months' period as provided in Section 9 of this Act except that it may not be revoked during such six months' period either upon the ground that such licensee has not the minimum amount of assets required in Section 6 of this Act or upon the ground that the convenience and advantage of such community will not be promoted by the operation therein of such business.

*Section 24.* . . . [Note 18]. . . .

**Repeal**

*Section 25.* . . . [Note 4] . . . and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed.

**Status of pre-existing obligations**

Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee under the said [Note 17] and any borrower which was lawfully entered into prior to the effective date of this Act.

**Decisions affect adjudicated sections only**

*Section 26.* If any clause, sentence, section, provision, or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect, or invalidate the remainder of this Act, which shall remain in full force and effect thereafter.

*Section 27.* This Act shall take effect immediately. [Note 19]

## NOTES

*Note 1.* Here insert the maximum legal contract rate if it is the only interest statute except those statutes that apply to the special institutions named in the exemption section hereof (Sec. 20). If there is more than one interest maximum fixed by a statute of general application, then the following language may be here inserted: "Than the lender would be permitted by law to charge if he were not a licensee hereunder."

The same situation exists in Sections 1, 15, and 18.

*Note 2.* Here insert title of licensing official.

*Note 3.* If a separate department or supervising official is created, there should be added to the title of the bill descriptive language covering the creation of such department or office, the duties thereof, the raising and disbursing of revenues, and other special provisions incident to such creation. It is recommended that a subdivision of the Banking Department be created in charge of a special deputy to supervise the small loan business and administer this Act, such department to be designated as the Bureau of Personal Finance. See Note 16, Section 21.

*Note 4.* Here insert titles of acts to be specifically repealed in whole or in part.

*Note 5.* Here insert enacting clause.

*Note 6.* The title "Commissioner" is used throughout this form of Act for convenience, but local usage should fix this title and it should then be substituted for "Commissioner" throughout the Act. "The licensing official" may be used in lieu of a specific title.

*Note 7.* It is thought that $100 a year from each office will return enough revenue to cover the cost of necessary general supervision, including the preparation, analysis, and tabulation of the annual report.

If the fiscal policy of the state or other considerations make it advisable to collect the full costs of individual examinations from each office in a stated annual fee, $200 or $250 should provide sufficient funds for this purpose. In such an event

(a) the greater amount should be substituted in Section 2,
(b) one-half thereof should be inserted in Section 23,
(c) at (Note 7) should be inserted "and in full payment of all expenses for examinations under and for administration of this Act,"
(d) the sentence following (Note 7d) should be eliminated, and
(e) the sentence following (Note 7e) should be eliminated.

See also Note 16, Section 21, regarding disposition of revenues under this Act.

*Note 8.* Here insert the name of the department charged with the duty of administering the Act. If a subdivision of a larger department administers the Act, the principal department should be named here.

*Note 9.* The provisions for judicial review of the determinations, rulings, findings, and similar discretionary acts of the licensing official will necessarily vary widely with the codes of judicial procedure of the several states and the constitutional and statutory provisions relating thereto. If satisfactory general provisions exist and apply to this situation, the specific provisions hereof may be eliminated. In states which have a sufficiently flexible judicial code, a direct action to review the Commissioner's acts is the best procedure. See also similar material in Sections 9 and 24 and Note 18.

*Note 10.* Here insert a description of the municipality according to the system of nomenclature employed within the state, for example, "municipality," or "city, town, or village." The political subdivisions used should be those which best reflect an integral urban unit or community.

*Note 11.* Special treatment will be required in order effectually to authorize the Commissioner to require the attendance of witnesses. In some states such power cannot be so delegated. See Note 15.

*Note 12.* The following words may be added at this point: "or, in the case of a licensee, which refers to the supervision of such business by the State of ———— or any department or official thereof."

*Note 13.* This paragraph is not intended to prevent licensees from taking and recording valid judgments and must be so drawn as to prevent such a result. The exception must therefore be drafted in such language as the local law requires in order to accomplish this result.

*Note 14.* The following sentence is suggested as a substitute for the first paragraph of Section 13, if it is deemed necessary to provide an exact method of computing fractional months: "Every licensee hereunder may lend any sum of money not exceeding $300 in amount and may charge, contract and receive thereon interest at a rate of not exceeding 1/365th of 42 per cent a day."

*Note 15.* Local considerations may require changes in or elaboration of the nature of the crime and/or its penalties. It may also be necessary to add a paragraph attaching a criminal penalty for failure of the licensee (or others) to submit to subpoena, produce documents, make reports, etc. See Note 11.

*Note 16.* Here insert full title of the licensing official. In this section insert the appropriate paragraphs if it is desired to create a new department or subdivision or official, providing for revenues and disbursements, defining new duties, etc. See Note 3. All general rules and regulations and all denials, revocations, and suspensions of licenses should be required to have the written approval of the head of the principal department if a subdepartment administers this Act.

In this section should also appear provisions for the disposition of license fees, investigation fees, and any other revenue, if the fiscal policy or statutory requirements of the state make such special provisions necessary or desirable; if so, the title of the Act should contain the words "providing for the disposition of revenues received hereunder." It is recommended that all revenues go direct to the supervising department for the expenses of administering the Act, if such is possible.

*Note 17.* Here cite any existing regulatory small loan law similar in principles to this Act.

*Note 18.* This section should prescribe the procedure for judicial review of all discretionary acts of the Commissioner which might be open to the construction that they are exercises of judicial powers, including all findings, decisions, and determinations and the application of all rules and regulations by demands or requirements made upon licensees. In Sections 4 and 9 general provisions are made for the right of review in the specific cases covered by such sections. In Section 24 corresponding provisions should be made to cover all other cases. In addition, if required in any State, the specific procedure for all cases should be provided for in appropriate detail. The last paragraphs of Sections 4 and 9 may have to be redrafted to bring them into accord with Section 24 as to procedure. Where the judicial code does not specifically so provide, provision should be made that review is by the state court of general, original jurisdiction.

*Note 19.* If a greater number of affirmative votes is required to pass an act effective immediately, this section should be changed or eliminated depending on local requirements.

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