CHAPTER II

HISTORICAL DEVELOPMENT OF PAWNBROKING AND MONEYLENDING IN MALAYSIA

A. Background: Pawnbroking History

In China the trade of pawnbroker existed there two thousand to three thousand years ago\(^1\) and although the pawnbroking institution in Malaysia today originated from China in the eighteenth century or earlier, yet the law here governing it is based on English law. Therefore, it is only appropriate to look into the history of pawnbroking in the west, especially to know why the practice there eventually gave rise to the present law here which Malaysia has followed. The English law on pawnbroking was considerably being influenced by Continental law of the European countries with regard to the subject in the very early stages.\(^2\) The Malaysian Pawnbrokers Act 1972 is derived from the English law.

Pawnbroking in the West traces its origin to

\(^1\)Encyclopaedia Brittanica Vol. 17 page 405  
\(^2\)Supra: Encyclopaedia Brittanica
three different institutions which existed in the middle ages: private pawnbrokers, public pawnshops and Montes Pictatis. In Britain, the specialised pawnbroker as opposed to the trader in other goods taking pawns as a secondary trade or in lieu of cash first became important in the late sixteenth century.

1. Private Pawnbrokers

The first person to satisfy the needs of his contemporaries for small consumption loans was the private pawnbroker. Usury laws in most countries prohibited the taking of interest. Pawnbroking was therefore carried on chiefly by classes exempt from these laws by religion, regulation or custom; for example like the Jews everywhere and Lombards in England. In these transactions, the pledge represented legal evidence of debt, as is known from an Augsburg municipal law of 1276 regulating the trade of Jewish pawnbrokers. In the twelfth and fourteenth century, pawnbroking increased considerably due to the expansion of economic activity. Not only the poor and needy but also the well-to-do made use of pawnshops and were ready to pay rates of interest ranging up to eighty-six per cent a year. Such rates were stigmatized as exorbitant exploitation and gave rise to periodic riots and violence against Jewish and other pawnbrokers. Attempts were made by public authorities to limit rates of interest. Florence in 1415 laid down a maximum rate
of fifteen per cent but found control of transactions at that level impossible and had to raise it to twenty per cent five years later.

In another determined attempt, the Florentine authorities in 1469 refused to renew the licences of moneylenders of any kind but this merely drove intending borrowers to seek accommodation outside the town at rates of thirty per cent or more. By this time, the church was adapting its law to the realities of the secular world. While maintaining its prohibition against pure interest it condoned remuneration given to lenders for damage suffered or profit foregone.³

2. Public Pawnshops

Much as public authorities deprecated the practices of private pawnbrokers, they realized the social need to which the pawnshops ministered. Exploitation could only be effectively prevented by provision of alternative facilities for obtaining consumption loans. In 1198, Freising, a town in Bavaria set up a municipal bank which accepted pledges and made loans against moderate interest charges. Michael of Northburg, bishop of

³A Brief History of Pawnbroking: (London 1892)
A. Hardaker. Chap. II
London established a similar institution in 1361 followed by other continental countries. They enjoyed only a short existence because their moderate charges did not cover the risk incurred in this type of business.  

3. Montes Pietatis

The Friars Minor in Italy were the first to establish Montes Pietatis which were charitable funds deriving from gifts and bequests to grant interest-free loans, secured by pledges to the poor. Later economic difficulties frustrated this charitable scheme and the church was compelled to charge interest and to auction off forfeited pledges.

In the eighteenth and nineteenth centuries, many states including England reverted to public pawnshops as a means of preventing exploitation of the poor. However, they suffered a decline towards the late eighteenth century due to the liberal thought of the period limitation of interest represented restriction and the use of public funds stood for state monopoly. Thus it was thought trade would be prevented from finding its own level through the operation of free competition.

4 Supra: note 3
However, at midtwentieth century, the public pawnshop predominated in the majority of countries on the European continent, sometimes alone and sometimes side by side with the private pawnbrokers. 5

In Britain, the trade of pawnbroking first made its presence felt in the late sixteenth century. The first legislation in England to cover pawnbroking was an Act of 1603, stating in its preamble that it was aimed at controlling the increasing number of pawnbrokers in London. It was mainly concerned with the fraudulent sale of pledges before redemption. As the Act refers to jewellery and plate as well as common articles used, it can be assumed that a certain part of the trade was involved with loans for the rich to spend on luxuries. 6

Later there had been plans which got as far as the drafting of a Bill, to set up state-financed pawnshops loaning at low interest to prevent exploitation of the poor by private pawnshops; but the scheme fizzled away. In England, unlike many continental countries, pawnbroking has been predominantly a private trade. It was closely linked to the clothing trade. The eighteenth century poor were clothed mainly in secondhand clothes and clothing was the chief item pawned and much of the second-

5Monte de Piete and Pawnbroking
A. Keason Chp. I. (London 1854)
6Supra: note 3
hand clothing sold was in fact forfeited pawns.

In the eighteenth century many pawnbroking statutes were enacted to prevent pawnbrokers fraudulently selling pledges and acting as receivers of stolen goods and to regulate in relation to small loans, the rates of interest charged by pawnbrokers. Subsequently, a temporary Act of 1796 and a permanent Act of 1800 came into existence resulting in a comprehensive control of pawnbroking, the overriding aim was to prevent the borrower from exploitation. Prescribed detailed regulations for taking pledges like when they could be sold; the rate of interest to be charged; records to be kept; kind of receipts to be issued and others.

Despite, rising standards of living and emergence of some philanthropic institutions like Peabody Trust, a great number of Victorian working class still depended on the pawnshops. In 1846, 1856, 1859 and in 1860, Parliament amended the law on pawnbroking a number of times. Eventually, in 1872, a comprehensive statute was passed incorporating all previous law. In 1922 and 1960, minor amendments were made mainly to keep in line with the changes in the value of money, but basically, the law remain today in England as it was set out in 1872.7

7Consumer Credit Report of the Committee Chairman Lord Crothter. Vol.1, 2, 7. 15 (London 1892)
B. Emergence of Pawning Activities in West Malaysia

The advent of the British colonization of the country resulted in Penang, the first territory in Peninsular Malaysia to be acquired by the British in 1786. The introduction by the British of a system of government and the introduction of English law in the country through the three Charters of Justice of 1807, 1826 and in 1855 subsequently gave rise to some form of law and order hitherto unknown in the early Malaysian society. ³ With the emergence of a stable society as a result of a legal system and an efficient administration by the British Colonial officers, trading activities originally began to flourish throughout the Straits Settlements of Singapore, Malacca and Penang first and gradually throughout the rest of the country. Due to a small population then, a shortage of manpower and labour eventually made the British authorities encouraged enterprising Chinese immigrants from China to settle down in this country around the eighteenth century. The number of such Chinese immigrants subsequently swelled especially with the expansion of economic activity like the rubber and tin industries later on. Apart from this fact, the eventual emergence of a monetized society where people needed money to buy goods and services was to pave the

³ The Malaysian Legal System. Chp. I: Wu Min Aun
way for the advent of pawnbroking activities in the
country, originally among the Chinese communities first.
Thus, the pawnbroking establishment is an ancient one in
Malaysia with its roots traced to the immigration of the
Chinese from China to this country.

The development of pawnbroking law has not been
uniform throughout Malaysia and this is attributed to the
fact that Malaysia component states have not always
existed as a single Federation but groups of separate
states at different times. In the Straits Settlements
State of Penang then, the first confirmed trace of pawn-
broking activities having been carrying on for sometime
even before any legislation was enacted to cover their
activities came into light when a Pawnbrokers Bill meant
for governing pawnbrokers in the region for the first
time was sought to be passed in 1870. But this Bill was
rejected by the Colonial Legislature of the Straits
Settlement. However, the following year, the Pawnbrokers
Ordinance of 1871 was passed eventually, thus setting up
the first formal pawnbroking institution in the country.\(^9\)
Nevertheless, it was repealed by the Pawnbrokers Ordinance
of 1872.\(^8\)

\(^9\) Ministry of Housing and Local Government notes on pawn-
broking.
\(^8\) No VII of 1872
This ordinance was in force for sometime until it was abrogated by the Pawnbrokers Ordinance of 1898. Under it the number of pawnshop licences to be issued in the town districts was to be fixed by the Governor in Council and exclusive right was to be offered for sale by public tender. With some minor amendments this was again repealed by the Pawnbrokers Act of 1972 of today.

Looking at these legislations then being passed by the Colonial Legislature of the Straits Settlements, it can be assumed that pawnbroking activity had already begun to establish its roots in the country.

It appears that the beginning of pawnbroking in the mainland first took place in the Iarut district of the then Federated Malay State of Perak. The discovery of tin there saw the Chinese immigrants flocking to that district which had then become a hive of business activity and striking it rich from the tin mines, many of them reinvested their savings by moneylending. Later on this gave rise to the pawnbroking trade. (Even today, Perak still has the largest number of pawnshops in the country and the revenue derive from the pawnshops in the State rank the most when compared with the same in the other states.) From here, the pawnbroking trade later on spread to the other states in the country.

Note IV of 1898
Heads of Kong Chu\textsuperscript{12} settlements were conferred sole rights of operating, \textit{inter alia}, pawnbroking farms such farms were mentioned in the book "Chinese in South East Asia" by Victor Purcell.

These revenue farms gave exclusive rights of collecting duty on certain products or of manufacturing and selling or licensing others to sell certain products. They also included a particular activity which were farmed out and vested on individuals known as farmers. To a certain extent, pawnbroking activity had been going on for some time even before any law was enacted to control such activity. Eventually an Order in Council 1890\textsuperscript{13} was provided for Gambling, Spirit and Pawnbroking Farms. The following year, an Order in Council 1891\textsuperscript{14} allowed the setting up of farms of exclusive rights, among other things, trading as a pawnbroker. Such farms were for the whole state or confined to certain districts. At this juncture, the law laid down was then mainly concerned with the payment of fees by such farmers and penalties for flouting the law; but no provisions were passed to check the pawnbroking trade yet.

\textsuperscript{12}A scheme permitting Chinese agricultural workers to form settlements by the banks of certain Malayan rivers for the purpose of cultivating pepper and gambier. It was abolished in 1917.

\textsuperscript{13}Order in Council 16 of 1890

\textsuperscript{14}Order in Council 5 of 1891
Later, the Order in Council 1891 was abrogated to make way for the Revenue Farms Enactment 1902.\textsuperscript{15} The 1902 Enactment was in turn repealed by the Revenue Farms Enactment 1902, Amendment Act 1903.\textsuperscript{16} The latter had more comprehensive provisions concerning the pawnbroking trade.

The British Resident in this Federated Malay State was conferred the sole rights to authorise a farmer to carry on a pawnbroking trade. The latter was also given the right of licensing others to do the same on condition that the government's permission must first be secured and no pawnshop was to be operated within one hundred yards of any public gaming house.

In turn, the Resident with leave of the Resident General himself was empowered to make rules and regulations to control the farms. The former appointed a Superintendent of Revenue Farms, a magistrate or a police officer not below the rank of a sergeant to supervise the running of the farms, and to see chiefly that the rules were obeyed.

\textsuperscript{15} Enactment No 17 of 1902
\textsuperscript{16} Revenue Farm Enactment 1902, Amendment Enactment 1903
Subsequently, detailed rules like stating the maximum profit a pawnbroker could make, recording such transactions, issuing pawnticket and prohibiting a pawnbroker from entertaining a pawner under 16 years of age, were made aiming to control the pawnbroking trade. Eventually, the Pawnbrokers Enactment was enacted in 1908 solely to govern the pawnbroking activity which had by then started to multiply.

In Selangor, it seems that the earliest legislation concerning pawnbrokers was the Revenue Farms Regulations 1895, nevertheless it may be assumed that such activity had been going on in this state prior to this law, the argument being that if not, there would not have been a need to pass these regulations. They were later repealed by the Revenue Farms Enactment 1904 which was substantially same as the Revenue Farms Enactment 1902, Amendment 1903 of Perak. In 1908, the Pawnbrokers Enactment was passed amending the law relating to this trade.

In Negri Sembilan, the legislation which appears to be the earliest to cover pawnbroking activities was the Sungei Ujong and Jelebu Pawnbroking Farm Regulations of 1895 and Enactment No. 11 of 1904 of Selangor.
1894. The sole right of pawnbroking in a particular district was farmed out to individuals and the regulations set out the maximum charges a pawnbroker could levy on loans. It was repealed in 1897. It was again repealed by the Revenue Farms Enactment 1903 and in 1908, the Pawnbrokers enactment was passed to amend the law on pawnbrokers.

Meanwhile in Pahang, the first official Pawnbrokers Enactment 1909 seems to be one of the earliest legislations enacted to provide for pawnbroking.

As regards to these Federated Malay States, the F.M.S. Cap. 85 was passed in 1914 to repeal and re-enact the Pawnbrokers Enactment 1908 of the four states. Its provisions are mainly same as those enactments it repealed. The enactment dealt with licensing, pawning, charges, redemption, prevention of unlawful dealings, trial procedures, penalties, forfeitures and general matters.

In the Unfederated Malay States, Johore appears to have the earliest legislation on the matter in the Pawnbrokers Enactment 1917. Redah had the Pawnbrokers Enactment No. XVIII of 1903 of Negri Sembilan and No. 10 of 1917 of Johore.
Enactment Kedah No. 71 almost similar as the F.A.C. Cap. 85, Trengganu had the Pawnbrokers Enactment No. 42 of 1937 also modelled on the Cap. 85. Perlis first official Pawnbrokers Enactment was passed in 1946 and Kelantan's Pawnbroking Enactment of 1910 repealed all previous legislations in the state itself.

Finally, the Pawnbrokers Act 1972 was passed to repeal all existing legislations and to bring the pawnbrokers under one Uniform Act.

It appears that the primary reason for the growth of the pawnbroking establishment in Malaysia can be attributed to the emergence of a monetized society which replaced the primitive bartering society. People wanted money for commanding goods and services and the pawnbrokers fulfilled this need by dishing out mainly small consumption loans on the security of articles pledged with them.

Originally the Cantonese dominated the pawnbroking trade but only later to be replaced by the Thai Poh khek or Hakka clan. Many of the early twentieth century pawnshops in the country were actually off springs from their parent pawnshops in China. They were opened by the Chinese clans mentioned above. Today, virtually all the pawnshops in the country are run by the Chinese with the exception of a mere handful of non-Chinese, who are
usually sleeping partners in the trade; and out of the 222 licences issued out to pawnshop-holders, 85.6 per cent of the holders belong to the Hakka clan of the Chinese race.  

C. Background: Moneylending History

Historically speaking, lending and borrowing go back to the beginnings of the human society and some of the oldest records that have survived from early civilizations of Mesopotamia are of credit transactions. Even as far back as the sixteenth century in England, Francis Bacon in his work "Usurie Essays" (1625) XII noted, "Since there must be borrowing and lending and men are so hard of heart, as they will not lend freely, usury must be permitted."  

Professional moneylending in the seventeenth and eighteenth centuries in England catered chiefly to needy gentlemen although a great deal of casual unsecured moneylending occurred among the working classes, usually between neighbours. Most of the references in the literature of the day seem to concern the gentry or middle class; for instance, the actor dramatist and wit,  

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21 Notes on Fawnbroking: Ministry of Housing and Local Government  
22 Consumer Credit Vol. I. 2.1.1.  
23 Report of the Committee, Chairman Lord Crowther  
24 Defence of Usury (1787): Jeremy Bentham
Samuel Foote refers in his play, "The Commissary" staged in 1765 to "cousening, moneylending, matchmaking and pawnbroking."

It can be assumed that he regards these as things parasitical on the rich rather the poor. That is why the authorities of the day did not pay much attention to the moneylending trade. Many transactions involved loans to expectant heirs on the security of post-oblige bonds, the borrower's obligation to repay with interest, being deferred until after the death which was to produce the legacy.

Nevertheless, one aspect of the moneylending trade that did attract the attention of the Victorian legislators, namely the use of bills of sale as security for loans. The Bills of Sale Act 1854, amended in 1866, required bills of sale to be registered in the High Court. It was later substituted by a consolidating enactment in 1878 aiming to protect creditors who advanced money or allowed credit to a borrower on the strength of his apparent ownership of goods, only to discover that he had executed a secret transfer of the commodities in order to avoid the creditor's reach. In the next few years there was a very dramatic increase in the number of registered bills. Soon it was obvious that such bills of sale were being used to exploit the
needy borrowers.

In 1882, an amending Act was passed designed not to shelter the creditors but to provide safeguards for the borrowers executing bills of sale. Detailed formal requirements were imposed and the legislation succeeded in its target that it became very difficult for a lender to ensure that he had complied with all the technicalities.

The Bills of Sale Act 1882 had dealt with some aspects of the exploitation of the weak and poor by moneylenders and the Betting and Loan (Infants) Act 1892 (which forbade sending documents to an infant, soliciting him to borrow money) dealt with another. But the general subject of moneylending remained one of increasing concern and a select Committee of the House of Commons was formed in 1897 to review it. Much of the evidence given to the Committee and to its successor appointed in 1898 was concerned with such victims of the rapacious moneylenders.

The 1898 Committee took a wide and human view of its task and in its report expressed grave concern as the harmful social consequences of moneylending by professional moneylenders at high rates of interest. The Committee drew attention to the frequent abuses —
including extortionate rates of interest, concealment of
the terms of the contract from the borrower and ruthless
enforcement measures and recommended large-scale
reforms. This finding resulted in the Moneylending Act
1900 which was the first enactment specifically regulating
the business of moneylending otherwise than by pledge.

The remedies of the 1900 Act introduced were
threefold. First, it became compulsory for all money
lenders to register and this involved restriction on
their freedom to trade (for example, they were permitted
only one business name and had to register each business
address separately). Secondly, it established some
criminal offences which applied only to moneylenders.
Thirdly, and the most significant, it empowered the courts
to undo and remake on different terms, contracts charg-
ing high interest thus resulting in a harsh and unconscionable transaction.

The Act of 1900 excluded a list of bodies from
the definition of a moneylender and thus they were
exempted from provisions of the Act.

(i) Pawnbrokers (they were already controlled by their
own Act)
(ii) The various categories of self-help organizations (friendly societies, loan societies, building societies etc) which were already governed by other legislations.

(iii) Statutory lending corporations empowered to loan money by a special Act of Parliament

(iv) Those bona fide carrying on the business of banking or insurance or any business not having as its main object the lending of money in the course of which and for the purposes whereof they lend money.

(v) Any body corporate exempted by order of the Board of Trade.

In 1900, the chief providers of commercial credit were banks, insurance and traders. Thus, the legislator clearly wished to demarcate between private lending which it intended to control and ordinary business credit with which it did not intend to interfere.

In the period 1900-1927, exemptions were granted on the simple subjective test of whether the company was the sort of moneylender the Select Committee and Parliament had in mind when the Act was passed. If it did not fit within the common sense idea of "moneylender", 
an unconditional exemption was given. The Moneylenders Act 1900 was amended by an Act of 1911 which laid down that the invalidity of a moneylending contract should not affect innocent assignees or persons taking a transfer of money or property in reliance on the contract. The Act also prohibited moneylenders from calling themselves bankers.

In 1920s, a report privately commissioned by social service organizations which exposed some of the evils of moneylending, mainly by unregistered moneylenders on Merseyside, led first to a Joint Select Committee which reported in 1925 and then to a further Act. This was initially introduced as a Private Members' Bill in 1925 and after the report of the Joint Select Committee was passed in 1927 with government support.

The Moneylenders Act 1927 replaced licensing for registration; imposed numerous detailed requirements and restrictions affecting the conduct of a moneylending business and provided that where interest was more than 48 per cent, the interest was to be presumed excessive and the transaction harsh and unconscionable unless the was proved.24

24 Consumer Credit 2.1.19
Report of the Committee: Chairman Lord Gowerther.
The present Malaysian Moneylenders Ordinance 1951 is substantially a duplicate of the first English Moneylenders Acts of 1900 and 1927 when briefly, in 1854 in England then many usury laws were abolished thus leaving no limits on the rates of interest a lender could demand and inevitably, lenders began to abuse their freedom to charge what the market would stand. To counteract the abuse, as earlier gathered from the above background, courts of equity began to set aside contracts in which individuals had undertaken to pay an excessive rates of interest and to reopen oppressive credit bargains. Such power of the judges was finally given statutory authority by the above mentioned first Moneylenders Acts of 1900 and 1927 towards the end of Queen Victoria's reign.\textsuperscript{25}

A look into the historical development of the moneylending trade in early England is relevant to understand the Malaysian Moneylenders Ordinance 1951 better since the Ordinance of 1951 is mainly based on the first English Moneylenders Acts of 1900 and 1927. The provisions embodied in the latter (in which the Malaysian law is in pari materia) came into existence as a result of the background events that had then happened in England.

\textsuperscript{25}An Outline of the Law of Product Liability and Consumer Protection: Ronald Irving pages 228-229
at that time. On close observation, it cannot be denied that the types of malpractices being practised by money-lenders during those historical days in England, are still being practised by the present generation of moneylenders in this country. The only logical conclusion to be drawn is that such abuses in the trade can only be minimised by effective remedial measures and cannot be eradicated completely. History has shown that the flaws in the moneylending system have mainly arisen from human failings.

D. Emergence of Moneylending Activities in West Malaysia

As in the case of pawnbroking history, the British colonization of Malaysia in the eighteenth century was to result in a more orderly society brought about by the British system of administration and their legal-system. With law and order being established in the society, such an atmosphere was naturally conducive for doing business. Inevitably, trading activities began to flourish under the British rule; more so with the growing of the tin and rubber industries which saw an influx of both Chinese immigrants from China and India to the country. Originally, the Chinese flocked to work in the tin business although later on they branched out to other fields of trade. Next the growing
rubber industry experienced an acute shortage of labourers in many of its large rubber plantations then being owned by the colonial masters. A system called the Kangani System was formed to recruit the required rubber tappers from India. As a result of this, thousands of poor Indians came from India to work in the rubber plantations. Therefore, it can probably be assumed that the very first moneylenders who came down to this peninsula, while still being new to their environment, catered to this group of poor rubber tappers before ranching out their moneylending activities to greener pastures later on.

The next main group of clients which the pioneer moneylenders presumably catered to apart from their fellow countrymen were the rural peasants who depended on them heavily due to the nature of their work being seasonal and subject to the whims of the weather.

According to Dr. Lim Teck Chee, Senior Research Officer, Centre for Policies Research, Universiti Sains Malaysia, Penang, the chettiers or chetties, the main moneylending groups in the then Federated Malay States of Perak, Selangor, Pahang and Negri Sembilan in the eighteenth century were professional moneylenders from Northern India who had followed the British Colonial expansion into Ceylon, Hong Kong, Burma and Malaya, among other places. They had practised this trade for several
generations and had acquired a widespread reputation for being able to "lay a finger on the pulse of any man's business should they care to lay it."\(^{26}\)

On the other hand, Professor Sinappah Arasaratnam, a former lecturer in history in the University of Malaya (now Professor of History in the University of New England) wrote\(^{27}\) that Chettiar, a Tamil caste of businessmen and financiers with a long historic tradition in such activities must have moved into the Straits Settlements, then comprising of the States of Penang, Malacca and Singapore by the middle of the nineteenth century through agencies if not through the main Chettiar houses. The subgroup of the Chettiar caste important in immigration to Malaya was the Nattu Kotai Chettiar. They were the most distinct of the Chettiar groups and most prosperous. By the end of the nineteenth century, they had already extended their operations to the Malay States and appeared to provide credit to Sultans, nobles and peasants. Later on, they organized themselves into Chambers of Commerce on a regional basis in all places where they were concentrated with a central Chamber for the

\(^{26}\) Report and Proceedings of the Committee appointed by the Chief Secretary of the Federated Malay States to consider why the system of small loans to native agriculturists had failed in Perak July 1911

\(^{27}\) Indians in Malaysia and Singapore: Sinnappah Arasaratnam
entire Federated Malay States in Kuala Lumpur.

Ever since the arrival of the moneylenders in the Peninsula, throughout history, they appeared to be notorious for charging exorbitant interests. This fact can be illustrated by an incident way back in 1907 when one W.H. Lee Wainer, a government official suggested an agricultural Loan Banker to lessen the impact of the moneylenders who had fleeced the native landholders by charging them excessive interests. He said: "This would kill out the pest of Krian Chetties who loan out at 24 per cent to 36 per cent and thus ruin the Bangerese (Sic)." Again in connection with this matter, the following year in 1908, a Krian District Officer then reported that "The native landholder is practically never out of the clutches of the chetties." The situation was so bad that in the same year, a government study posed the question: "Do we protect the Malays or the Chetties? The author of the report replied that..." Chetties, they can find out what the law is, the Malays can't.\(^{28}\)

Later on, the problem of the unscrupulous moneylenders was considered in the Straits Settlements

\(^{28}\) The Chettiar and the Yeoman: K.H. Paul (1975) Institute of South East Asian Studies, Singapore

\(^{29}\) Report: Straits Settlements Legislative Council Paper 18 of 1932. (Chairman: Charles Wilson)
when a Committee \textsuperscript{29} was appointed on Monday 4th April, 1932 to prepare a report on their activities in the States of Penang, Malacca and Singapore. This move was under the instruction of the Colonial Secretary of the Straits Settlements who was then based in Singapore. The objective was to report on the desirability of legislation to control moneylenders in the Colony and to advise on what lines such legislation, if any should be framed. The scope of the Committee was only to look at the problem as it affected the urban population since the reports of the debates in the Legislature Council voiced that this was the aspect which was causing anxiety then. The report noted that the lending of money to peasants on the security of their land presented quite a different problems from that of loans to the clerical and artisan classes, who had no property which could be given as security. The Secretariat papers at the disposal of the Committee showed that this subject had been discussed at length twice during the past ten years. In 1923 the question was referred by the then Attorney-General to the judges of the Supreme Court whose opinion was that no case had been made out for legislation.

In 1929, when the subject was again raised, the Under Secretary, one Mr. Hemmant took the opinion of the District judges. Five different officers wrote reports, in some cases supported by figures and were unanimously
of opinion that action was necessary. The Committee considered that the District Judges were, by the conditions of their work and previous experience, in a better position to give an opinion on the necessity for legislative action than the judges of the Supreme Court who were not brought into the same contact with the victims affected. In studying the problem, the Committee examined the figures relating to the Provident Fund of a certain firm and concluded that these figures showed the seriousness of the situation. The Chairman of the Committee, one Mr. C. Wilson who had seen the problem as head of fair-sized offices, had also been President of the Singapore Government Servants' Thrift and Loan Society had gained valuable knowledge both of the extent of the problem and of the reaction to it not only of the victims but also of the whole community affected by attending the committee meetings of the society. The Committee also obtained from one Assistant District Judge, figures which he took on the bench of the place of employment of the men who appeared before him either as defendants in moneylenders' cases or in judgement debtor summonses. Such figures showed that the indebtedness was not confined to the employees of Government or of quasi Government Bodies.

In preparing the report, the Committee met a number of representatives from the Nadukottai Chetties to hear
their views on the problem. The Committee concluded that undoubtedly, the problem of indebtedness of the clerical and artisan classes was one of great and growing seriousness. They were of the view that a man might be said to be in debt to a serious extent if his indebtedness amounted to more than three months salary. They estimated that at the lowest figure, 75 per cent of the clerks and similar employees in the Government service were in debt to this extent. This meant the community affected had become so accustomed to indebtedness that it did not look upon indebtedness as abnormal or disgraceful. There was no public opinion against reckless borrowing and the Committee considered this was the most important factor in the moneylending problem. The Committee noted that primarily social and religious duties imposed on the wage earning male members of the family in its widest ramifications made the necessity to recourse to moneylenders greater. They also considered that the public should be educated to realise that legislation was only one step towards improvement in the general social condition of the urban population. Eventually, the Committee proposed a number of legislative measures to deal with the situation; mainly in the form of a draft bill based substantially on the English Moneylenders Acts of 1900 and 1927.

In short, the advent of the moneylending insti-
tution in Malaysia began when in the late eighteenth and early nineteenth centuries saw "the influx of an enterprising class of wealthy, thrifty and shrewd moneylenders into the country from India." 30

In the Federated Malay States of Perak, Selangor, Pahang and Negri Sembilan a Committee was also appointed by the Chief Secretary of the Federated Malay States to consider why the system of small loans given to the native agriculturists by the authorities had failed in the state of Perak.31 This was in 1911. The feedback of the report showed the indebtedness of the peasants to the moneylenders who exploited them by lending money at exorbitant interests. When the harvesting season was over or when the crops were damaged, the peasants relied heavily on the chetties. Loans were given out only on the security of the farmer's lands. In certain cases, the peasants were compelled to sell their lands in order to settle their indebtedness. Social obligations like marriages, births and funerals also made them recouped to the chetties. The Committee then suggested mainly remedial measures of a legal nature to counteract the problem.

30. Wettakottai Chettiar in Malaya 1958. 24 M.I.J. XIV
31. Report and Proceedings of the Committee appointed by the Chief Secretary of the F.M.S. to study why the system of small loans to native agriculturists had failed in Perak. July 1911
Today, contrary to the popular belief, moneylending is not confined to the chettiar alone but the Chinese and Sikh moneylenders are equally flourishing in this trade, thus adding more abuses to the trade.