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SMALL LOANS UNDER GEORGIA LAWS

By GEORGE E. SALIBA*

Contrary to the legislative intent suggested by the title to Chapter 25-3[1] of the Code, virtually all small loans ($300 or less) in Georgia are made under other laws. What was intended to be a statute providing real protection to members of the working class — generally those who, because of limited education and insecure economic circumstances, are the most likely victims of unconscionable money lenders — has induced legitimate lenders to operate under less stringent laws.

Interest rates and practices which are strictly prohibited and which carry severe penalities, *e.g.*, forfeiture of both principal and interest, and in some cases, even fine and imprisonment, under Chapter 25-3, are either allowed or carry only a comparatively light penalty, *e.g.*, forfeiture of interest only, under the other Code provisions. The less scrupulous lenders—competitors for the small loan business—can thus profitably operate under the collateral laws, and it is not easy, to say the least, for the average borrower to distinguish between the best and the worst among the merchants of small loans.

Since the Georgia Small Loan Law[2] is practically inoperative at present, and for the reasons stated above, the discussion which follows will not be confined to Code Chapter 25-3, but will attempt to consider the effect of the collateral Code chapters under which small loans are now purportedly made. These are:[3]

1. Chapter 25-2—Loans on Personal Property or of Bnying Wages or Salaries in General.
2. Chapters 16-1, 16-2, 16-4—Building and Loan Associations.
3. Chapter 25-1—Credit Unions.
4. Chapter 12-6—Pledges and Pawns (Pawnbrokers).

I. THE GENERAL INTEREST AND USURY STATUTE

The Code chapters referred to above provide what may be called the allowable exceptions to the limitations prescribed by Chapter 57-1, which is the statute governing interest rates and practices the violation of which constitutes usury. It is therefore not only fitting and logical that we first examine the general provisions found in Code Chapter 57-1 and some of the de-

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1. Small Loan Business.
2. GA. CODE c. 25-3 (1933).
3. See accompanying chart (FIG. I) prepared to give in condensed form the main provisions of the Code chapters herein treated.

FIG. I.

COMPARATIVE CHART SHOWING INTEREST & OTHER CHARGES ALLOWED ON LOANS & PENALTIES FOR VIOLATIONS UNDER GEORGIA STATUTES

		General Statute Code c. 57-1	Small Loan Business (Loans not over $300) Code c. 25-3	Loan on Personal Property & Salary Buying Code c. 25-2	Building & Loan & Like Assns. Code c. 16-1 et seq.	Credit Unions Code c. 25-1	Pawnbrokers Code c. 12-6
1	Highest Authorized rate of interest.	7% per annum; 8% if contracted for in writing. Sec 57-101. Where repayment to be made in installments, 6% per annum for entire period of loan. Sec. 57-116.	1½% per month on unpaid balances. Interest not payable in advance and may not be compounded. Sec. 25-313.	8% per annum when specified in writing. Secs. 25-215; 57-101.	8% per annum for entire period of loan; but loans to non-member borrowers secured by personal property only, may not exceed 12 months. Sec. 16-101;	Not in excess of 1% per month to members thereof. Sec. 25-116. Note: Lending powers appear to be limited to members. See Code Sec. 25-105 (3).	Not in excess of 2% per month with minimum charge on any loan of 50 cents per month. Sec. 12-612.
2	Other charges allowed.	Attorney fees for examining title to security — 118 Ga. 522(3). Attorney fees for collection when contracted for — Sec. 20-506. Commissions to third party & premium to surety on loan. Sec. 57-104.	Only filing or recording fees for papers securing the loan, if actually paid by the lender. Sec. 25-313.	If agreed in writing at time loan is made, lender may charge for investigating the security at maximum rates stated in Sec. 25-213; but on loans of $60 or more, borrower may pay for examining title an amount not to exceed 6% of the loan. Sec. 25-214.	Amount paid for investigating credit of borrower. 44 Ga. App. 512. B.&L. Assns. may charge members fines, dues, & premiums. Sec. 16-210. Interest at same rates as above on purchase price of interest bearing certificates sold on installment plan to borrower. Sec. 16-101.	Code makes no express provision but Sec. 25-110 states that dues & fines imposed upon members of unpaid loans constitute a lien on shares of the owner-member, and credit union may charge entrance fee as provided in by-laws.	25 cents for storage of property when property is first taken possession of for storage by lender. Sec. 57-117.
3	Penalties for Violations	Forfeiture of interest only. Sec. 57-112. Note: If interest charged in excess of 5% per month, punishable as misdemeanor. Secs. 57-117, 57-9901.	Contract void, neither principal nor interest being recoverable. Sec. 25-313. Also punishable as misdemeanor with fine of not more than $500, or imprisonment of not more than 6 months or both. Sec. 25-9902.	Forfeiture of interest only. Sec. 25-215. But where lender engages in business of wage or salary buying without license under Chapter 25-2, contract is void, both principal and interest being uncollectible. Sec. 25-208; see **McLamb v. Phillips**, 34 Ga. App. 210, 129 S.E. 570 (1925).	Forfeiture of interest only. See **Keeler v. Peoples Loan & Sav. Co.**, 64 Ga. App. 463, 13 S.E.2d 590 (1941).	No express provision found in Code for violation of maximum interest provision, nor has any decision been found concerning same. Probably would require forfeiture of interest only. For unlawful use of words "Credit Union" in title under which business conducted, punishable as a misdemeanor. Sec. 25-9901.	Excess over lawful charge uncollectible and pawn or pledge shall be void. Sec. 12-612.

cisions thereunder,[4] but such an examination seems necessary to a proper understanding of the several pertinent Code chapters as they relate to and affect each other.

By Code Section 57-101 the legal rate of interest is fixed at seven per cent per annum, where the rate is not named in the contract, and any higher rate must be specified in writing, but it forbids any person to "reserve, charge or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money any rate of interest greater than eight per centum per annum, either directly or indirectly by way of commission for advances, or exchange, or by any contract or contrivance or device whatever."

It is now well settled that interest taken in advance at the highest legal rate, whether the loan be short or long-term, is usurious,[5] although some earlier decisions indicated that a contract in which there is taken in advance the highest legal rate of interest on short-term loans is not usurious.[6] But all interest reserved in advance is not wrongful for it is expressly provided in the same chapter[7] that interest at the rate of "six per cent. per annum or less for the entire period of the loan, aggregating the principal and interest for the entire period of the loan, and dividing the same into monthly, quarterly or yearly installments" shall be valid and "such contract shall not be held usurious." The section so providing, however, being in derogation of Section 57-101, is strictly construed.[8] It has accordingly been held that Section 57-116

> . . . applies only to "*lending money*"; and the provisions for the computation of interest are not applicable where realty is purchased, the purchaser is given a warranty deed and simultaneously executes notes and a security deed to the seller.[9] (Italics supplied.)

And where a single loan was made and no agreement had that it be divided into two loans, the lender was not entitled to the benefits of Section 57-116 when he added to a portion of the principal interest at the rate of six per cent per annum for the

4. For an excellent history of interest and usury laws in Georgia, written by Mr. Justice Cobb, see Union Savings Bank & Trust Co. v. Dottenheim, 107 Ga. 606, 34 S.E. 217 (1899).
5. Kent v. Hibernia Savings, Building & Loan Assn., 193 Ga. 546, 19 S.E.2d 264 (1942); Kent v. Hibernia Savings, Building & Loan Assn., 190 Ga. 764, 10 S.E.2d 759 (1940).
6. MacKenzie v. Flannery, 90 Ga. 590, 16 S.E. 710 (1892); McCall v. Herring, 116 Ga. 235, 42 S.E. 468 (1902). See also Union Savings Bank & Trust Co. v. Dottenheim, *supra* note 4, at 614-615, where the same is declared *Obiter*.
7. At § 57-116 (Supp. 1951).
8. Garner v. Sisson Properties, Inc., 198 Ga. 203, 31 S.E.2d 400 (1944); National Bondholders Corp. v. Kelly, 185 Ga. 788, 196 S.E. 411 (1938).
9. Graham v. Lynch, 206 Ga. 301, 303, 57 S.E.2d 86, 88 (1950).

entire period of the loan, that portion being repayable in installments, and adding to said installments interest at eight per cent per annum accruing on the other portion of the loan, the principal of the other portion falling due on the maturity date of the last installment of the first portion of the loan; such transaction being held infected with usury.[10]

A contract is not rendered usurious, under Chapter 57-1, by a provision for payment of attorney's fees in addition to maximum interest.[11] It has also been held in a number of decisions that the payment of commissions by the borrower to a third party for negotiating the loan is not violative of Section 57-101 where such third party was not agent of the lender, and where the lender did not authorize, ratify nor share in the commissions so paid;[12] otherwise where the lender is beneficiary of all or part of the commissions if, when added to the interest on the loan, the total charges exceed the legal rate of interest.[13] Such questions, however, are generally ones of fact.[14]

Code Section 57-117 prohibits the exaction of interest at a rate in excess of five per cent per month "either directly or indirectly, by way of commission for advances, discount, exchange, the purchase of salary or wages, by notarial or other fees, or by any contract, contrivance, or device whatever"; and Section 57-9901 provides that violation of Section 57-117 shall be a misdemeanor. The writer knows of no other provision in the Gerogia statutes, except that found in Code Section 25-9902, which imposes a criminal penalty for the exaction of usury. Nor does the writer know of any circumstances where a rate of interest of as much as five per cent per month would be permitted under Georgia law. Therefore the purpose of Code Section 57-117, as implemented by Section 57-9901, appears to be to specify the point beyond which usury will be treated as criminal in character. Drastic as Section 57-9901 may appear, it has been held that it does not affect the right to charge a greater rate of discount than five per cent on a sale of salary or wages, the earned salary or wages being looked upon as a "chose in action arising *ex contractu*."[15] But it has been held that the section is

10. National Bondholders Corp. v. Kelly, *supra* note 8.
11. Kirkpatrick v. Faw, 184 Ga. 170, 190 S.E. 566 (1937); McCall v. Herrin, 118 Ga. 522, 45 S.E. 442 (1903). See GA. CODE ANN. § 20-506 (Supp. 1951), for ten days notice to defendant required before suit is brought.
12. Wacasie v. Radford, 142 Ga. 113, 82 S.E. 442 (1914); Harvard v. Davis, 145 Ga. 580 (4), 89 S.E. 740 (1916). See also GA. CODE ANN. § 57-104 (1935) and annotations thereunder.
13. Harrison v. Stiles, 95 Ga. 264, 22 S.E. 536 (1894); Clarke v. Havard, 111 Ga. 242, 36 S.E. 837 (1900).
14. MacKenzie v. Flannery, 90 Ga. 590, 16 S.E. 710 (1892); Williams v. Forman, 18 Ga. App. 242, 89 S.E. 459 (1916).
15. Ison Co. v. Atlantic Coast Line R. Co., 17 Ga. App. 459, 87 S.E. 754 (1915).

violated where the purported assignment of salary or wages was given the lender, but the lender failed to give thereof to the borrower's employer.[16]

The Code[17] defines usury as "the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest." In *Bank of Lumpkin v. Farmers State Bank*[18] the court enumerates four elements of usury:

(1) A loan or forbearance of money, either express or implied;

(2) Upon an understanding that the principal shall or may be returned;

(3) That for such loan or forbearance a greater profit than is authorized by law shall be paid or is agreed to be paid; and

(4) That the contract was made with an *intent* to violate the law.

Intention, at the time of execution of the contract, to exact more than the lawful rate of interest being a necessary element to constitute usury,[19] courts will for that reason examine closely a contract, writing, or other device which appears to be a cover for usury.[20]

Thus, where the plaintiff sought to recover alleged overpayment of a debt represented by notes, the defendant having taken a deed to the land for which the plaintiff had bargained, and causing the plaintiff to execute a lease contract and "rental notes," upon the payment of which the land was to be conveyed to the plaintiff, it was held that the arrangement "was simply a device to cover an agreement to pay usurious interest."[21]

Convictions under four indictments alleging violation of Code Section 57-117 were affirmed in *Southern Loan & Investment Co. v. State*,[22] where the borrowers named in the indictments obtained small sums of money ($10 to $25) and were required by the defendant to sign a separate contract for the purchase of preferred stock of the defendant corporation at one dollar per share — separate notes being executed in each instance for

16. Portwood v. Bennett Trading Co., 184 Ga. 617, 192 S.E. 217 (1937); Hanes v. Henderson, 58 Ga. App. 475, 199 S.E. 59 (1938); Franklin Finance Corp. v. Head, 58 Ga. App. 475, 199 S.E. 59 (1938).
17. Section 57-102 (1933).
18. 161 Ga. 801, 810, 132 S.E. 221, 225 (1925).
19. Loganville Banking Co. v. Forrester, 143 Ga. 302, 84 S.E. 961 (1915).
20. Pope v. Marshall, 78 Ga. 635, 4 S.E. 116 (1887); McGeehee v. Petree, 165 Ga. 492, 141 S.E. 206 (1927); McDaniel v. Bank of Bethlehem, 22 Ga. App. 223, 233, 95 S.E. 724, 729 (1918); Bank of Lumpkin v. Farmers State Bank, 161 Ga. 801, 132 S.E. 221 (1925); Gunnels v. Atlanta Bar Assn., 191 Ga. 366, 381, 12 S.E.2d 602, 610 (1940).
21. Kennedy v. Baggarley, 15 Ga. App. 811, 84 S.E. 211 (1914).
22. 68 Ga. App. 75, 22 S.E. 108 (1942).

the sum loaned and for the amount of stock. The Court held that the jury was authorized to find

> . . . that the borrower was being charged a rate of interest greater than five per centum per month, . . . *that the contract for purchasing the stock was a mere scheme or device of the defendant to evade the usury laws.* (Italics are the Court's.)

In the *Southern Loan* case the court stressed the fact, among others, that the borrowers were "working people of limited means, and were not of the stock-buying class."

A renewal of a note for the same debt or any part thereof, where the original transaction was infected with usury will not be deemed a rebirth entitled to the law's blessing if the usury was never purged.[23]

The present statute in this state provides, as a penalty for violation of Code Section 57-101, the forfeiture of the entire interest "charged or taken or contracted to be reserved, charged or taken. No further penalty or forfeiture shall be occasioned, suffered or allowed."[24] Earlier statutes relating to forfeitures for usury have provided otherwise. Mr. Justice Cobb, in *Union Savings Bank & Trust Co. v. Trust Co. v. Dottenheim,*[25] gives a historical summary of the statutes on usury and forfeitures in Georgia, from the Act of 1755 " 'enacted by the Governor Council and Assembly' of the province of Georgia" to and including the Act of 1879, which appeared in the Code of 1895 and of force when the opinion was written. The following tabulation with reference to the several acts will suffice for our present purpose:

Act of	*Highest rate of interest allowed per annum*	*Penalty or forfeiture*
1755	10%	None provided.
1759	8%	Contract void and forfeiture of treble value of the debt.
1822	8%	Forfeiture of interest only.
1845	7%	Contract void, but allowed recovery of principal due thereon and no more.
1857	7% discount rate	Prohibiting banks—contract "utterly void."
1863	7%	Contract void, but principal sum recoverable with legal interest; also voids all titles to property made as part of usurious contract.

23. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440 (1942); Winecoff v. Atlanta Title & Trust Co., 184 Ga. 488, 495, 192 S.E. 29 (1937).
24. GA. CODE § 57-112 (1933).
25. 107 Ga. 606, 609-614, 34 S.E. 217, 219-220 (1899).

1871	7%; 10% by contract in writing.	Forfeiture only of interest exacted above legal rates provided; suit for recovery of excess required to be instituted within six months.
Feb. 14, 1873	Same—giving banks same privileges and immunities as individuals.	Same.
Feb. 19, 1873	7%; but any higher rate allowable if agreed in writing.	Same.
1875	7%; 12% if agreed in writing.	Forfeiture of interest in excess of legal rate.
1879	7%; 8% if agreed in writing.	All interest forfeited; payments went in reduction of principal.
1881	Same (Amends Act of 1879).	Forfeiture of only excess of interest over lawful rate.

"The Code of 1882 contained the Act of 1879 as amended by the Act of 1881, as well as those provisions of the Act of 1875 which were still of force, and also that provision taken from the usury laws of force before the Act of 1873, providing that all titles made in pursuance of any usurious contract should be void."[26]

The Code of 1910 also declared void all titles to property made as part of an usurious contract.[27] This provision was repealed by the Act of 1916.[28]

Under the present law the interest forfeited "may be pleaded (by the defendant) as a set-off in any action for the recovery of the principal";[29] and no "plea or suit for the recovery of such forfeiture shall be barred by lapse of time shorter than one year."[30] The latter provision has been construed as not to bar the application of all payments by the debtor as credits against the principal sum regardless of when the payments were made, if the creditor charged an illegal rate of interest.[31]

Apropos the plea of usury, it should be pointed out that the Code[32] expressly declares the plea of usury to be personal, although it modifies this by the further declaration that a "creditor may not collect usurious interest from an insolvent debtor to the prejudice of other creditors." Accordingly, it has been held

26. *Id.* at 613.
27. Section 3442.
28. Ga. Laws 1916, p. 48.
29. GA. CODE § 57-113 (1933).
30. GA. CODE § 57-115 (1933). See also Feeney Hay Co. v. Suggs, 60 Ga. App. 42, 2 S.E.2d 806 (1939).
31. Reconstruction Finance Corp. v. Puckett, 181 Ga. 288, 181 S.E. 861 (1935).
32. Section 57-103 (1933).

that where a contract of assignment of wages is sued upon, the employer may not plead usury against the assignee;[33] but the assignee of a bond for title can attack in equity a conveyance to one who had advanced money to complete the purchase for usury.[34]

II. SMALL LOAN BUSINESS

As has been stated above, the statute commonly referred to as the Small Loan Law[35] is virtually inoperative at present. It became so shortly after the 1935 amendment[36] to the statute originally enacted in 1920.[37] The 1935 amendment reduced the highest allowable rate of interest from 3½ per cent to 1½ per cent per month on the unpaid balances of loans.[38] Licensing of and supervisory powers over persons engaged in the "business of making loans . . . in the amount of $300 or less" is vested in the Superintendent of Banks.[39]

The effect of the 1935 amendment in inducing lenders to operate under laws other than Chapter 25-3 is readily perceived from an examination of the number of companies licensed by the Superintendent of Banks in each of the years 1921 to 1951, inclusive, the figures below having been furnished by him.[40]

1921—15	1929—54	1937—13	1945— 4
1922—18	1930—71	1938— 9	1946— 5
1923—21	1931—78	1939— 7	1947— 7
1924—19	1932—72	1940— 7	1948— 8
1925—25	1933—64	1941— 7	1949— 4
1926—25	1934—66	1942— 5	1950— 2
1927—41	1935—57	1943— 4	1951— 1
1928—49	1936—20	1944— 4	

In respect of the provisions other than the highest allowable rate of interest prescribed by the Georgia Small Loan Law, it follows rather closely the pattern set in the Uniform Small Loan Act recommended by the Russell Sage Foundation.[41] Experience, according to studies made by the Foundation, tends to show that legitimate lenders in the small loan business cannot prof-

33. Western Union Tel. Co. v. Ryan, 126 Ga. 191 (3), 55 S.E. 22 (1906).
34. First Nat. Bank of Quitman v. Rambo, 143 Ga. 665, 85 S.E. 840 (1915). The defense of usury is available to trustee in bankruptcy. Logansville Banking Co. v. Forrester, 19 Ga. App. 394, 91 S.E. 490 (1916); *In re* Miller, 118 Fed. 360 Am. B.R. 274 (1901).
35. GA. CODE, c. 25-3 (1933) (Small Loan Business).
36. Ga. Laws 1935, p. 394, GA. CODE ANN. § 25-313 (1935).
37. Ga. Laws 1920, p. 215, GA. CODE § 25-313 (1933).
38. GA. CODE ANN. § 25-313 (1935).
39. GA. CODE §§ 25-301, 25-306, 25-310 (1933).
40. Letter to the writer, dated Feb. 18, 1952.
41. Sixth Revision—see HUBACHEK, ANNOTATIONS ON SMALL LOAN LAWS (1938).

itably operate at interest rates of less than two per cent per month on unpaid balances.[42] This is so because of the higher degree of risk and the necessarily high overhead involved in loans of the type contemplated. In the few states where the small loan laws so limit the interest rate as does the Georgia statute, the trend has been to become licensed and to operate under more flexible laws.[43] Certainly that has been the case in Georgia. The reasons are plain, as will be seen from a review of the main provisions of the Georgia act which is a fair representative of the small loan laws (except as to interest rate). First, the Small Loan Law is rigid in its requirements; and second, it is equipped with sharp teeth for its enforcement.

Licensing, Bonding and Supervision. — (a) A license must be obtained annually from the Superintendent of Banks for each location where business is conducted, the annual license being $100.[44]

(b) Bond in the sum of $1,000, with one or more sureties, subject to approval by the Superintendent of Banks, must accompany application for license, the bond to be "conditioned that the obligor will conform to and abide by" the provisions of the Chapter and will pay to the state and any persons money that may become due by virtue of the provisions of the Chapter.[45] Additional bond of not more than $1,000 may be required within ten days if the first bond shall at any time appear to be insecure or doubtful.[46]

(c) Code Section 25-310 provides that investigations may be made by the Superintendent of Banks, or by any person designated by him, "at any time and as often as he may desire" of "the loans and business of every license and every person, partnership and corporation by whom or which any such loan shall be made whether such person . . . *shall act, or claim to act,* as principal, agent or broker *or under or without* the authority of this Chapter . . . "[47] (Italics supplied.)

The following inquiry, *inter alia,* was made by the writer to the Superintendent of Banks while compiling material for this article:

> 3. Does the Department of Banking, as a matter of policy, regard licensees doing business under other Code chapters (*e.g.* Chapter 16-1, Building and Loan Associations; Chapter 25-2, Business of Making Loans on Personal Property or of Buying Wages

42. *Id.* at 206.
43. *Id.* at 206-207 and append. E.
44. GA. CODE § 25-301 to 25-304, 25-307 to 25-309 (1933).
45. *Id.* § 25-303.
46. *Id.* § 25-305.
47. The constitutional provisions against unreasonable searches and seizures (U.S. CONST. AMEND. IV; GA. CONST. Art. I, § 1, ¶ 16, GA. CODE § 2-116 (1948 Rev.) are not violated by the section. Badger v. State, 154 Ga. 443, 114 S.E. 635 (1922).

> or Salaries; etc.) as being exempt from the penalties imposed by Chapter 25-3 of the Code even though they are in fact violating the provisions of Chapter 25-3?

Mr. A. P. Persons, State Superintendent of Banks, answered:[48]

> In reply to your third question, we do not consider loan companies operating in this state as being exempt from the penalties imposed by Chapter 25-3 of the Code, but there is nothing this Department can do as such companies are not under our supervision.

The authority here in question does not appear to have been exposed to any judicial determination so far as the writer has been able to find, and the view of the Superintendent of Banks as to supervisory powers is not entirely without basis because, as will be found in the discussion *infra,* supervisory powers over licensees operating under other Code chapters are vested in other state officials or in local authorities. But if it is to be accepted that only licensees under Chapter 25-3 are subject to such supervision and penalties (to be hereinafter discussed) as that chapter provides, then it follows that one who does not even obtain a license may conceivably be guilty of practices which are in fact more reprehensible than the violations committed by a licensee and yet enjoy complete freedom from supervision except such, if any, as may be provided by local authorities under other laws, while the licensee is being subjected to the efficient and thorough supervision and regulation provided for in the chapter. For example, a non-licensee under Chapter 25-3, but purporting to be doing business under Chapter 16-1 (building and loan associations and like associations) may be guilty of charging a rate of interest exceeding that allowed by either of the two chapters mentioned, yet on a plea of usury by the borrower, the lender forfeits the interest only and suffers no other penalty.[49] But a licensee under Chapter 25-3, guilty of the same type violation, would suffer the loss of both principal and interest, and might even be punished by fine and imprisonment, as provided by Code Section 25-9902. For this reason the writer is of the opion that the italicized words in the above quoted portion of Code Section 25-310 are intended to give the Superintendent of Banks at least investigatory powers over nonlicensees as well as those licensed under Chapter 25-3.

Other Positive Requirements.—The licensee is required to

48. Letter to writer, dated Feb. 18, 1952.
49. One of the distinguishing features of loans under Chapter 25-3 is that the unit of time for the computation of interest is the month. Jobson v. Masters, 32 Ga. App. 60, 122 S.E. 724 (1924). But Section 25-301 contemplates that violations may occur where a lender charges "a greater rate of interest *per annum* therefor, except as authorized

keep such books and records as will enable the Superintendent of Banks to determine whether the requirements of Chapter 25-3 are being complied with. Such records must be kept for a period of at least two years after the making of any loan recorded therein.[50] An additional duty to be observed by the licensee is provided in Section 25-314, which requires that he "deliver to the borrower at the time the loan is made" a statement clearly and distinctly showing the "amount and rate of the loan and of its maturity, the nature of the security, if any . . . the name and address of the borrower and of the licensee, and the rate of interest charged." The section also imposes on the licensee the duty to see that the statement so furnished shall have printed thereon in English a copy of Section 25-313;[51] and it further requires that all payments be evidenced by a "plain and complete" receipt given to the borrower, and that upon payment of the loan in full, every paper signed by the borrower be indelibly marked "paid" or "cancelled" and surrendered to him.

While no penalty appears to have been provided for violation of Section 25-314,[52] it has nevertheless been held that in order to recover, the lender must show compliance with its provisions;[53] and it would seem that the power to revoke licenses, given the Superintendent of Banks in Section 25-306, is sufficiently broad to embrace such violation.

Prohibitions and Penalties.—It is unlawful for the licensee to print, publish or distribute any false statement calculated to deceive with regard to the rates, terms and conditions relative to "the lending of money, credit, goods, or things in action in

by this Chapter, and without first obtaining a license from the Superintendent of Banks." (Italics supplied.)

50. GA. CODE § 25-311 (1933).

51. The section reads: "25-313. Amount of Loans. Interest and charges.—Every person, partnership and corporation licensed hereunder may loan any sum of money not exceeding in amount the sum of $300 and may charge, contract for and receive thereon interest at a rate not to exceed one and one-half per centum per month. 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 charges, 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. If any interest or charges in excess of those permitted by this Chapter shall be charged, contracted for or received, the contract of loan shall be null and void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever. No person shall owe any licensee, as such, at any time more than $300 principal."

52. Williams v. Yarbrough, 34 Ga. App. 500, 130 S.E. 361 (1925).

53. Jobson v. Masters, 32 Ga. App. 60, 122 S.E. 724 (1924).

amounts of $300 or less."[54] Violation of this provision is punishable as a misdemeanor under Section 25-9902. In *Brooks v. Hartsfield Co.*,[55] it was held that the lender was not guilty of giving any notice calculated to deceive where the written contract of loan of $240 provided that the loan was repayable in a stated sum on the tenth day of each month following date of the note, "with interest from the date of actual consummation of the loan of 3½ per cent per month . . . on the unpaid balance of principal" and that if all installments are paid on or before due date "and if the receipt card is presented with each and every payment of principal or interest, or part thereof, no interest in excess of $60 will be charged." Nor was the ruling affected by the inclusion in the contract of an acceleration clause with the further provision that none of the stipulations, whether taken singly or collectively, should be construed as constituting "any agreement or contract for the payment of interest or charges" not authorized by the Small Loan Act.[56]

Another prohibition is that at no time shall a borrower owe "any licensee, *as such*," more than $300 principal.[57] (Italics supplied.) The same section, as amended by the Act of 1935, limits the rate of interest to 1½ per cent per month,[58] the same to be computed on unpaid balances of principal,[59] and it prohibits the payment in advance or compounding of interest.[60] No other charge, commission or fee is allowed, "directly or indirectly," except the amount actually and necessarily paid for "filing or recording in any public office any instrument securing the

54. GA. CODE § 25-312 (1933).
55. 56 Ga. App. 184, 192 S.E. 459 (1937).
56. *Id.* at 186, 192 S.E. at 461.
57. GA. CODE § 25-313 (1933). In a case where a borrower's liability was increased beyond $300 by becoming a surety, his original obligation became void. Hartsfield v. Robertson, 48 Ga. App. 173 S.E. 201 (1934).
58. The unit is one month. "Collection of interest on ten-months' loan in excess of 3½ per cent (rate in force prior to 1935 amendment) for some months rendered contract void although entire charge for whole period did not exceed rate of 3½ per cent per month." Hartsfield Co. v. Fulwiler, 59 Ga. App. 194, 200 S.E. 309 (1938).
59. Lanier v. Consolidated Loan & Finance Co., 47 Ga. App. 148, 170 S.E. 99 (1933).
60. This provision is not violated where the loan note stipulates that any judgment rendered thereon shall bear interest at the same rate as the note. Southern Loan Co. v. McDaniel, 50 Ga. App. 285, 177 S.E. 834 (1934); and where contract of loan was executed several days before date of actual consummation of the loan, the section is not violated where it did not appear that the lender actually collected interest from date of the contract, Brooks v. Hartsfield Co., 56 Ga. App. 184, 192 S.E. 459 (1937). Taking a new note for unpaid interest as well as principal constitutes compounding, Frazier v. City Investment Co., 42 Ga. App. 585, 157 S.E. 102 (1930); Lanier v. Consolidated Loan & Finance Co., 47 Ga. App. 148, 170 S.E. 99 (1933).

loan."[61] Such provisions, it must be conceded, go far towards eliminating the opportunities for coloring of transactions as a subterfuge for usury which exist under other laws. Not only will a violation under Section 25-313 render the contract null and void so as to preclude collection of principal as well as interest, but such violation is punishable as a misdemeanor under Section 25-9902.

The efficacy of design of the Small Loan Law is further enhanced by the following additional restrictions upon licensees, found in Section 25-315:

> . . . 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.[62]

Section 25-316 purportedly authorizes the purchase of salaries or wages, provided that the loan is contracted simultaneously with the assignment of salary or wages, the assignment is in writing and signed in person by the borrower and, if he is married, by his wife. The last sentence of the section reads:

> . . . Under any such assignment or order for the payment of *future* salary or wages given as security for a loan made under this Chapter, a sum equal to 10 per centum of the borrower's salary or wages shall be collectible therefrom by the licensee at the time of each payment of salary or wages from the time that a copy of such assignment, verified by oath of the licensee or his agent, together with a verified statement of the amount upon such loan is served upon the employer.[63] (Italics supplied.)

Provisions of an earlier act[64] regulating salary buying were not repealed by implication by Section 25-315.[65] In *Zink v. Davis*

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61. GA. CODE § 25-313. Seaboard Security Co. v. Jones, 40 Ga. App. 710, 151 S.E. 412 (1930) (agreement to pay attorney's fees rendered contract void and uncollectible); Southern Loan Co. v. McDaniel, 50 Ga. App. 285, 177 S.E. 834 (1934) (stipulation for payment of court costs, if any, held to invalidate note).
62. Southern Loan Co. v. McDaniel, *supra* note 61 (power of attorney taken, contract void although power not exercised). It is notable that Section 25-315 does not expressly invalidate contracts containing a power of attorney, and later decisions has held *contra* to the Southern Loan case: Snider v. Industrial Finance Corp., 54 Ga. App. 676, 188 S.E. 917 (1936) (forfeiture of all interest only); to same effect, Denson v. Peoples Bank, 58 Ga. App. 518, 199 S.E. 324 (1938). See also Citizens Mutual Investment Assn. v. Glass, 59 Ga. App. 359, 1 S.E.2d 50 (1939) (note not stating the amount loaned was not in conformity with Section 25-315 and third-person obligors were not liable).
63. Section 25-319 supplements Section 25-316 by requiring the assignee to give notice, together with a copy of the assignment, to the employer within five days from the time of its execution. National Finance Co. v. Citizens Loan & Savings Co., 184 Ga. 619, 192 S.E. 717 (1937); Southern Ry. Co. v. Symons, 54 Ga. App. 308, 187 S.E. 702 (1936).
64. Ga. Laws 1904, p. 79, GA. CODE c. 25-2 (1933).
65. McLamb v. Phillips, 34 Ga. App. 210, 213, 129 S.E. 570, 572 (1925).

Finance Co.,[66] it is said that the section is not applicable where a written assignment of salary was made for a consideration actually received—as distinguished from an assignment made as security for a loan. The word "future," appearing in the quoted portion of Section 25-316, apparently has reference to unearned salary or wages, although it is in direct conflict with the Act of 1904, as codified in Section 25-220.[67]

Section 25-317 reiterates the prohibition against contracting for or receiving, except as authorized by Chapter 25-3, any interest greater than "eight 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 $300 or less"; and it embraces within the scope of the prohibition a pretended purchase of property or other device, the purpose of which seeks to obtain a greater rate of interest than is authorized.[68]

The Small Loan Law is expressly made inapplicable to banks, trust companies, licensed pawnbrokers and building and loan associations.[69] However, the courts have gone further and have tended to construe the statute strictly, in favor of the lender, by allowing recovery of the principal and declaring only the interest forfeited in those cases where it did not affirmatively appear that the plaintiff was engaged in the "business of making small loans."[70] There appears to be some justification for this because it has often been said, as well in other jurisdictions as in Georgia, that the object of the small loan laws is not to limit "profits of lenders" or merely to "regulate the rate of interest," but rather to regulate the business of making

66. 61 Ga. App. 39, 5 S.E.2d 588 (1939).
67. Which declares void an assignment or pledge of unearned salary or wages.
68. Criminal penalties are provided by Section 25-9902 for violation of the provisions of Section 25-317, and since none but licensees are authorized to charge interest in excess of eight per cent per annum, as set forth in the Small Loan Law, it is difficult to understand how non-licensees who do in fact violate its provisions can be held to enjoy an immunity from its penalties—both civil and criminal.
69. GA. CODE § 25-318 (1933).
70. Ellis v. Williams, 56 Ga. App. 181, 192 S.E. 491 (1937); Craddock v. Woods, 60 Ga. App. 377, 3 S.E.2d 924 (1939). *Cf.* the dissenting opinions in the two cited cases. See also Kent v. Citizens Mutual Investment Assn., 186 Ga. 91, 196 S.E. 770 (1938), where the Supreme Court declared sufficient to render void a note and bill of sale the facts alleged in the petition, namely, that the lender, though not licensed, engaged in the business of making loans of $300 or less, and that in the instant case he did deduct eight per cent interest in advance—the loan being made repayable in monthly installments extending over a period of one year. It was not necessary that the borrower's petition affirmatively allege that the lender did not come within the class of business exempted by Code Section 25-318 (banks, trust companies, etc.).

small loans; that isolated instances of violations by persons not engaged in such "business" are not within the purview of the small loan laws.[71]

III. BUSINESS OF MAKING LOANS ON PERSONAL PROPERTY OR OF BUYING WAGES OR SALARIES IN GENERAL

The provisions of Chapter 25-2, which are a codification of the Act of 1904,[72] represent an earlier legislative purpose and attempt to protect small borrowers from unconscionable lenders,[73] it being evident that members of the working class when in need of money are at a decided disadvantage as to bargaining position. That Act antedated the Small Loan Law[74] by sixteen years. Both laws are of force at present, although as pointed out above, the Small Loan Law, as it now stands, is considered anathema by those engaged in the business of making loans.

Unlike the Small Loan Law, as amended in 1935, Chapter 25-2 provides no criminal penalties for violations thereunder. And although violation by a licensee of any of the provisions of Chapter 25-2 is declared to cause the license under which the business is conducted to become "ipso facto void,"[75] such avoidance does not render null and unenforceable contracts as to principal balances due thereon — interest only being forfeited.[76]

Chapter 25-2 does, moreover, allow the collection of fees for investigating the security or title, if agreed to in writing at the time the loan is made and at the rates fixed in Section 25-213.[77] It is significant, however, that Chapter 25-2 makes

71. Davis Loan Co. v. Blanchard, 14 La. App. 671, 129 So. 413 (1930); People v. Stokes, 281 Ill. 159,174, 118 N.E. 87, 92 (1917); Ellis v. Williams, 56 Ga. App. 181, 192 S.E. 491 (1937).
72. Ga. Laws 1904, p. 79.
73. McLamb v. Phillips, 34 Ga. App. 210, 129 S.E. 570 (1925).
74. Ga. Laws 1920, p. 215, GA. CODE c. 25-3 (1933).
75. GA. CODE § 25-218 (1933).
76. *Id.* §§ 25-215, 25-217. United Purchasing Co. v. Souther, 49 Ga. App. 131, 174 S.E. 367 (1934). But see McLamb v. Phillips, 34 Ga. App. 210, 129 S.E. 570 (1925), which held that no license actually having been issued, the lender was not a "licensee" and that the forfeiture was governed by the general statute then in force (GA. CIVIL CODE § 3438 (1910)), which caused a forfeiture of both principal and interest, rather than by § 3462 (§ 25-217 of the Code of 1933), which rendered unenforceable the collection of any interest.
77.

Fee of not more than	*Where the amount borrowed is*
$0.50	$5 or less
0.70	more than $ 5 and less than $10
1.00	more than $10 and less than $20
1.50	more than $20 and less than $35
2.00	more than $35 and less than $60

No fee being allowed on any renewal or extension within thirty days from time of making the loan or last renewal; and the charge allowed on any renewal made after four months from date of the original loan to be at a fee not exceeding one-half the above rates. See Section 25-214 for prohibition on splitting of loans in order to increase fees allowed.

no provision in favor of licensees thereunder for a special rate of interest exceeding the maximum prescribed by Code Section 57-101, as does Section 25-313 (1½ per cent per month on unpaid balances) in favor of licensees under Chapter 25-3.

Other charges apparently allowed under Chapter 25-2 include premium for fire insurance on any article of personal property pledged as security for the loan and fee for recording of papers connected therewith, if the corresponding amounts are actually paid out by the licensee-lender.[78] Further examination discloses that special provision is made in Section 25-214 to allow, on loans of $60 or more, fair and reasonable fees as compensation "for services actually rendered by the lender in examining the title or the property pledged as security," such amount in no event to exceed six per cent of the amount loaned, nor is such fee allowed on a renewal of the loan. A reasonable implication of the special provision referred to is that it is not requisite that the lender must have actually paid out, or incurred as expense payable to a third party, the amount charged to the borrower. However, no decision construing the provision in question has come to the attention of the writer.

Stembridge v. Family Finance Co.[79] held that Chapter 25-3 (the Small Loan Law) regulates the making of loans on household goods to the exclusion of Chapter 25-2. A careful reading of the opinion indicates that the court meant nothing more than to say that with respect to loans made on household goods, and presumably other personalty, if made in compliance with the provisions of Chapter 25-3, are valid and enforceable even though such compliance did not also meet fully the requirements of Chapter 25-2. If that be true, then none of the provisions of Chapter 25-2 with respect to loans on such personalty appear to be affected by the later enactment, so far as licensees under the earlier law are concerned.

As suggested in the discussion above (at notes 64 to 66), a distinction is recognized in the matter of salary and wage assignments under Chapter 25-3 as compared with applicable provisions under Chapter 25-2.[80] To amplify, Code Section 25-316, which requires, *inter alia*, the signature of the borrower's wife to the written assignment, applies only to salary and wage assignments when made as security for a loan, and not when made for consideration actually received (bona fide sale of salary or wages).[81] Section 25-208, however, has been held to apply to

78. GA. CODE § 25-216 (1933).
79. 49 Ga. App. 353, 175 S.E. 663 (1934).
80. GA. CODE § 25-208 (1933).
81. Zink v. Davis Finance Co., 61 Ga. App. 39, 5 S.E.2d 588 (1939); McLamb v. Phillips, 34 Ga. App. 210,213, 129 S.E. 570,571 (1925).

salary or wage assignments whether made to secure a loan or as an absolute sale, if the lender is engaged in the business of buying wages or salaries but is not duly licensed (thus rendering the contract void),[82] but it does not apply to a bona fide purchase of salary or wages by one duly licensed.[83] Also, it is immaterial under Section 25-208 whether the debt which the assignment is intended to secure is created simultaneously with the assignment or whether it is a pre-existent one.[84] But in express terms under Section 25-316, the loan must be contracted at the time of execution of the assignment. The same limitations on rates of interest and allowable fees prescribed by Chapter 25-2[85] govern when applying rate of discount on salary or wage assignments.

As was pointed out above, licensing and supervision under the Small Loan Law are centralized in the State Superintendent of Banks.[86] Such controls are not so centralized under Chapter 25-2, which declares that licenses, to engage in the business of making loans on personal property or of buying wages or salaries, shall be issued by the officer whose duty it is to issue licenses, if the business is to be conducted within an incorporated city or town, and by the ordinary of the county, if without the limits of an incorporated city or town.[87] It is doubtful that most cities or towns provide the competent personnel and machinery necessary to a proper inspection of the books and records and supervision[88] over the general operations of licensees to determine whether the provisions of Chapter 25-2 are being complied with.[89] At best, the degree of supervision and enforcement in such cases cannot be uniform throughout the state, but

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82. Spurlock v. Garner, 38 Ga. App. 614(8), 144 S.E. 819 (1928) (license requirement of persons engaged in the business held not applicable to one who makes an isolated purchase of wages or salaries); McLamb v. Phillips, 34 Ga. App. 210(1), 129 S.E. 570 (1925), where the court says: " . . . The general rule of law is that where the license required by the statute is not imposed only for revenue purposes, but requires registration or licensing primarily for the purpose of protecting the public from acts *mala in se*, or detrimental to good morals, or from improper, incompetent, or irresponsible persons, as in the case of unregistered or unlicensed druggists or physicians, their imposition amounts to a positive prohibition of a contract made without a compliance with and in violation of the statute, and by implication renders such a contract void and unenforceable."
83. Zink v. Davis, 61 Ga. App. 39, 5 S.E.2d 588 (1939).
84. Spurlock v. Garner, 38 Ga. App. 614, 144 S.E. 819 (1928).
85. GA. CODE §§ 25-213, 25-214 (1933).
86. *Id.* §§ 25-301 to 25-311.
87. *Id.* §§ 25-202.
88. See GA. CODE §§ 25-211, 25-212 (1933).
89. At this point it is deemed appropriate to invite the reader's attention to the case of Gunnels v. Atlanta Bar Assn., 191 Ga. 366, 12 S.E.2d 602 (1940), wherein the Supreme Court affirmed denial of a petition for an injunction to restrain the Atlanta Bar Association from con-

must vary according to each municipality's budgetary allotment and personnel available to the office charged with the responsibility, not to mention the possible degrees of variation in policy adopted by the different local authorities as to standard of enforcement. The importance of such supervision and regulation, carrying with them the power of license revocation,[90] should not be lightly regarded in view of the decision in *State ex rel. Boykin v. Ball Investment Co.*[91]

Code Section 25-209 requires every licensee under Chapter 25-2 to keep, at the place where the business is conducted, a book, recording therein name and address of each borrower and all essential details of the loan, including a full description of the security. A duplicate statement, numbered to correspond with that in the book and signed by the licensee, must be given the borrower. It has been observed that the Small Loan Law incorporates similar requirements in Code Sections 25-311 and 25-314.

Two other features are worthy of mention in a comparison of Chapters 25-2 and 25-3. The latter chapter (the Small Loan Law) applies to loans of $300 or less principal amount.[92] There is no limitation in amount specified under Chapter 25-2. The second feature relates to bonding provisions. Bond required of the licensee under Chapter 25-2 must be in the penal sum of $500 and made payable to the mayor of the city or town or with the ordinary of the county, as the case may be;[93] whereas the corresponding provision in Chapter 25-3 prescribes the penal sum of $1,000, payable to the state and any persons who may become entitled by virtue of the provisions of the chapter.[94]

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tinuing an active campaign against usurious salary buyers by means of "'newspapers, radio and possibly letters' . . . soliciting, encouraging, counseling and advising customers of salary buyers 'to repudiate their contracts,' and to institute suits against salary buyers for the recovery of money and informing them . . . that the lawyers on said committee will represent them free of charge." Chief Justice Reid, referring to the Bar Association's campaign and conduct, said: "For all this they should be commended rather than condemned." He also observed, at page 382: "It is not wrongful to induce a repudiation of an illegal contract."

But in a suit brought in the name of the State on the relation of the Solicitor General of Fulton County "to restrain the defendants from continuing their practice of making small loans and collecting usury thereon," it being alleged that the practice was a continuing nuisance, the court held that the practice complained of "did not amount to such a public nuisance as may be abated . . . in the name of the State, on the relation of the solicitor general under § 72-202." The court did not decide whether such a suit by direction of the Governor would be entertained. State *ex rel.* Boykin v. Ball Investment Co., 191 Ga. 382, 12 S.E.2d 574 (1940).

90. GA. CODE §§ 25-218, 25-306 (1933)
91. 191 Ga. 382, 12 S.E.2d 574 (1940).
92. GA. CODE §§ 25-301, 21-313 (1933).
93. *Id.* § 25-204.
94. *Id.* § 25-305.

IV. Building and Loan Associations

Ordinarily, loans made by building and loan associations, pursuant to the true purposes for which such associations are organized, would not be included within the scope of a discussion of small loan laws. Indeed, specific provision is made for the exemption of building and loan associations from the application of Chapter 25-3 of the Code.[95]

Our interest in an examination in this article of the building and loan associations statute[96] of Georgia arises principally from the inclusion of "other like associations" in the entitlement to the privileges and immunities given by Code Section 16-101.[97] In order to better understand the meaning of "other like associations," the definition of a building and loan association, or a savings and loan association, as appearing in Code Section 16-402, is here given:

> . . . A building and loan association, or a savings and loan association, hereinafter in this Chapter referred to as a State chartered association, shall be defined as a local mutual institution chartered under the laws of the State of Georgia, without capital stock, which does not receive deposits, but which derives the greater portion of its capital from the sale of its shares and which lends the gerater portion of its invested funds on the security of first liens on homes and on the security of first liens on its shares.[98]

95. Section 25-318 (1933). The classes of businesses exempted from the provisions of Chapter 25-2 are found in Section 25-221, but building and loan associations are not expressly mentioned. It would seem, however, that since "true" building and loan associations, as distinguished from other "like" associations (see Code Section 16-101), are, by Section 16-210, permitted to charge premiums or fines, such associations do enjoy some exemptions from the provisions of Chapter 25-2 by necessary implication. See Gore v. Industrial Loan & Savings Co., 52 Ga. App. 401, 183 S.E. 401 (1935).
96. Ga. Code Ann., Title 16 (1935 and Supp. 1951).
97. The section reads: "16-101 . . . Loans to persons not members; rate of interest.—All building and loan associations, and other like associations doing business in this State (and the term 'other like associations' shall include a corporation or a partnership organized to do a general savings and loan business, and among other things, lending its funds to members of the industrial and working classes, or others, and secured in whole or in part by personal indorsements and its own fully paid or installment stock, or its own fully paid or installment certificates of indebtedness, or other personal property), are authorized to lend money to persons not members thereof, nor shareholders therein, at eight per cent. or less, and to aggregate the principal and interest at the date of the loan for the entire period of the loan, and to divide the sum of the principal and the interest for the entire period of the loan into monthly or other installments, and to take security by mortgage with waiver of exemption or title, or both, upon and to real estate situated in the county in which such building and loan association or partnership may be located; and such building and loan association shall be construed to be located in any county wherein it has an office, agent, or resident correspondent: Provided, however, the associations shall not be compelled to lend their funds exclusively in the manner hereinbefore specified, but also shall have authority to make loans to members of the industrial and working classes and all other persons, due at fixed intervals not exceeding 12 months, and secured in whole

The nature and purpose of building and loan associations generally is perhaps better explained by the following descriptive, but not all inclusive, definition found in *United States v. Cambridge Loan & Building Co.*:[99]

> The rudimentary form of such associations is supposed to be a society raising by subscription of its members a fund for making advances to members in order to enable them to build or buy houses of their own. A member is entitled to borrow on sufficient security an amount equal to his subscription for shares and when the shares are paid up by installment payments required and the profits of the company his indebtedness is canceled.

An inquiry further into the organization, operations of and regulation over building and loan associations is clearly not within the scope of this writing. We shall therefore confine our attention to the loan and related provisions governing building and loan associations and "other like associations." Under Section 16-210 "no fines, interest, or premiums paid on loans in any building and loan association shall be deemed usurious, and the same may be collected as debts of like amount are now collected by law, and according to the terms and stipulations of the agreement between the association and the borrower."

The principle which forms the basis of Section 16-210 is that dues, premiums, and fines collected from borrowing members go into the common fund and are applied so as to aid in the maturity of the stock on which the loan is made.[100] Attempts to have the section declared unconstitutional as violating the prohibition against seeking by special law to enact certain things for which provision has been made by an existing general law[101] (the general usury statute), have not been successful; the court, in

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or in part by personal indorsements and by its own fully paid stock or stock payable on the installment plan, or both indorsements or such securities, or other personal security and choses in action, and on such loans so made and secured as aforesaid, it shall be lawful to deduct interest in advance, but not to exceed eight per cent. discount, and the installments payments, if any, made on such hypothecated stock or certificates of indebtedness, during the time the loan is of force may or may not bear interest, at the option of the association, and the taking of said installment payments on said hypothecated stock, certificates of indebtedness, choses in action, or other evidences shall not be deemed usurious."

98. See also Code §§ 16-403 to 16-405.1 for provisions amplifying the definition contained in § 16-402, including the status of savings and loan associations operating under federal charter.

99. 278 U.S. 55, 49 S.Ct. 39, 73 L. Ed. 180 (1928). See also Cook v. Equitable Bldg. & Loan Assn., 104 Ga. 814, 30 S.E. 911 (1898); 9 AM. JUR., *Building and Loan Associations* §§ 3 - 5.

100. Cook v. Equitable Bldg. & Loan Assn., 104 Ga. 814, 30 S.E. 911 (1898); Burns v. Equitable Bldg. & Loan Assn., 108 Ga. 181, 33 S.E. 85 (1899).

101. GA. CONST. Art. I, § 4, ¶ 1, GA. CODE ANN. § 2-401 (1948 Rev.).

Cook v. Equitable Building & Loan Assn.,[102] saying:

> Even if the act in question be considered as special legislation, it contains nothing for which provision has been made by an existing general law.

That Section 16-210 applies only to true building and loan associations and not to other "like" associations is supported by *Gore v. Industrial Loan & Savings Co.*[103]

The only other Code section with which we are vitally concerned under this division of the article is 16-101, alluded to *supra,* and quoted in full at footnote 97. A careful reading of that section is urged at this point.

Undoubtedly its most significant provision, from the viewpoint of this article, is that which allows building and loan associations *and other like associations*[104] to do a general savings and loan business — allowing such associations to lend money to persons who are not members nor shareholders therein and to charge interest at the rate of eight per cent per annum at the date of the loan *"for the entire period of the loan and to divide the sum of the principal and interest for the entire period of the loan into monthly or other installments."* Where a loan so made is secured by personal property only, the maturity thereof may not exceed *twelve months.* Such is the construction placed upon the proviso following the words "or resident correspondent": in the section.[105] That part of the section preceding the proviso "deals exclusively with loans where real estate is taken as security."[106] Thus, where a note was made for $250, secured by a bill of sale to certain household furniture, and made payable in monthly installments of $12.50 each over a period of *twenty months,* the court below was authorized to find that the following deductions, made in addition to the rate of interest allowed in proper cases by Section 16-101, constituted "a part of the consideration of the loan itself . . . and the arrangement

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102. 104 Ga. 814,827, 30 S.E. 911,917 (1898); Union Savings Bank & Trust Co. v. Dottenheim, 107 Ga. 606,624, 34 S.E. 217,224 (1899).
103. 52 Ga. App. 401,405, 183 S.E. 499,500 (1935).
104. In Gore v. Industrial Loan & Savings Co., 52 Ga. App. 401,403, 183 S.E. 499,500 (1935), the Court construed "other like associations" to apply to "all savings institutions which pay interest to depositors. and whose deposits are not subject to check."
105. Peoples Bank v. Mayo, 61 Ga. App. 877, 8 S.E.2d 405 (1940). But it has been held that even though the loan be made on the security of personal property only, the twelve months limitation did not apply where there was added to the note interest at rate of eight per cent per annum for twenty-four months, the note maturing at the end of that time and it not providing for payment in installments. Ewing v. Mechanics Loan & Savings Co., 61 Ga. App. 808,820, 7 S.E.2d 583,588 (1940).
106. Peoples Bank v. Mayo, 61 Ga. App. 877, 8 S.9.2d 405 (1940).

for the payment of these additional sums was a mere scheme or device to evade the statute against usury." All the amounts so deducted were therefore improperly charged and should have been applied in reduction of the principal.[107]

Amount of note		$250.00
Interest deducted	$32.50	
Investigating fee	5.00	
Expense in making the loan	11.50	
Insurance on life of maker	5.00	
Recording fee	.75	
Unexplained (discrepancy)	1.00	
Total deductions		55.75
Net amount actually received by borrower		$194.25

The element of time—that is, the number of months over which the repayment of the loan is to extend, may also have serious consequences for the lender where the number of months is less than twelve. In *Keeler v. Peoples Loan & Savings Co.*,[108] the plaintiff lender was held entitled to collect principal only — all interest being forfeited — where $24 discount was taken on a $300 loan payable in installments over a period of *ten months*, whereas the maximum interest allowed to be taken in advance under Section 16-101 is limited to eight per cent *per annum*.

Next in importance among the provisions of Section 16-101 is that (contained in the proviso) giving to the associations, both building and loan and other like associations, "authority to make loans to members of the working classes and all other persons, due at fixed intervals not exceeding 12 months, and secured in whole or in part by personal indorsements and by its own fully paid stock or stock payable on the installment plan, *certificates of indebtedness, fully paid, or payable on the installment plan* . . . to deduct interest in advance, but not to exceed eight per cent discount . . . " [Italics supplied.]

The authorization with respect to accepting as security for loans certificates of indebtedness issued by the lender, whether fully paid or payable in installments, appears to be cast in an innocuous setting. However, it has in fact been productive of a practice which might properly be described as usury under color of legal right. For example, under Section 16-101 "other like associations" as well as building and loan associations, if otherwise qualified (by charter and license from the Secretary of State) to issue interest-bearing certificates, may do so and they may, as a condition precedent to making a loan, require the borrower to purchase the lender's interest-bearing certificates,

107. *Id.* at 879-881, 8 S.E.2d at ....
108. 64 Ga. App. 463, 13 S.E.2d 590 (1941).

executing promissory notes payable in installments for the purchase of the same, the lender being entitled to charge eight per cent interest in advance for the entire period; such interest being additional to the interest similarly computed on the actual loan of money.[109] The legality of the collateral transaction is not affected by the fact that it is stipulated that the three or four per cent interest bearing certificate which the borrower so obligates himself to purchase shall bear no interest until it is fully paid for, although the borrower must pay eight per cent interest on the full purchase price from the date of the note.[110]

It is said that "no scheme or device has yet been invented, the substantial effect of which is to violate the usury laws of the State, that courts have not condemned as such."[111] But a transaction which Judge Felton, dissenting, described as a "complicated framework to camouflage the charge of 20 to 30 per cent interest" was sustained as valid under Code Section 16-101 in *Ewing v. Mechanics Loan & Savings Co.*[112] To simplify the complicated statement of facts there, E applied for a loan of $1,200 and executed his promissory note in the sum of $1,392 ($1,200 plus interest at eight per cent per annum), the note to mature in twenty-four months. Before any money was advanced to E he was required to purchase a four per cent installment certificate at a price of $1,392, for which amount E executed a second note payable in twenty-four installments, including total interest in a sum certain of $78 in any event, but in case of default, the note to bear interest at eight per cent per annum from its date. To secure the certificate note E was required to transfer back to the lender the four per cent installment certificate (which contained a stipulation that no interest thereon could be earned until fully paid for). He also executed a bill of sale to other personal property to secure both notes. Five guarantors (the defendants) endorsed the certificate note upon which the suit was brought, the loan note not then having matured.

The decision in the *Ewing* case upholding the validity of the transaction described above can be justified if the situation be viewed as one where (1) each note does represent bona fide a separate transaction; and (2) the sale of the installment certificate at a price equal to the amount of the loan note (after adding thereon interest at the highest rate for the twenty-four months) was not a planned device to exact the full allowable

109. Ewing v. Mechanics Loan & Savings Co., 61 Ga. App. 808, 7 S.E.2d 583 (1940); Gore v. Industrial Loan & Savings Co., 52 Ga. App. 401, 183 S.E. 499 (1935).

110. Ewing v. Mechanics Loan & Savings Co., 61 Ga. App. 808, 7 S.E.2d 583 (1940).

111. Gunnels v. Atlanta Bar Assn., 191 Ga. 366,381, 12 S.E.2d 602,610 (1940); Public Finance Corp. v. State, 67 Ga. App. 635 (2), 21 S.E.2d 476 (1942).

112. 61 Ga. App. 808, 7 S.E.2d 583 (1940).

rate of interest for twenty-four months by incorporating such amount into and making it a part of the purchase price of the installment certificate and then having the purchaser-borrower execute a promissory note bearing interest at eight per cent on the full amount so arrived at.

Here indeed is an example where the spirit of the law has been flagrantly violated, although, according to the plaintiff, safely within its letter. As was well stated in the dissenting opinion of Judge Felton:[113]

> It will be seen here that going no further, a charge of more than 8 per cent. has been made, because the borrower has been forced to pay the certificate note to which has been added the 8 per cent. interest *on the amount of the loan for two years and which note itself bears interest at the rate of 8 per cent. from date* in the case of a default in even the last installment, and $78 interest if the installments are paid as they become due. But this transaction goes further. The company does not treat the giving of the note for the purchase of the certificate as payment, but treats each installment as being a payment thereon, and in this way deprives the borrower of the interest on his certificate at the rate of 4 per cent. for two years. A little simple calculation shows us that in this way *interest in excess of 20 per cent.* can very easily be charged in the transaction. . . . I can ascribe to the legislature no intention to permit what was done in this case. (Italics supplied.)

It is conceded that $1,200, the sum loaned in the *Ewing* case, could hardly be regarded as a small loan so as to merit the space allotted to its discussion in this article, but loans of small amounts can and are being subjected to similar devious methods by lenders purportedly operating under Section 16-101.[114] It is to be noted that the section specifies neither a minimum nor a maximum as to amount of any loan thereunder.

In *Ratliffe v. Hartsfield Co.*,[115] the question to be decided was whether investment certificates issued by building and loan associations and like associations were within the purview of the "blue sky laws,"[116] which require application to and license by the Secretary of State to issue Class C and Class D securities as defined in Code Sections 97-304 and 97-305. The defendants contended that a four per cent certificate issued by the plaintiff and the note given by the purchaser-borrower therefor were void, as provided in Section 97-104, because of the plaintiff's failure to qualify with the Secretary of State. Reversing a judgment of the Court of Appeals,[117] the Supreme Court held that the investment certificate was well within the Code definitions of

113. *Id.* at 824, 7 S.E.2d at 590.
114. Gore v. Industrial Loan & Savings Co., 52 Ga. App. 401, 183 S.E. 499 (1935) (loan of $200); Keeler v. Peoples Loan & Savings Co., 64 Ga. App. 463, 13 S.E.2d 590 (1941) (company made loans from $50 up to $5,000).
115. 181 Ga. 663, 184 S.E. 324 (1935).
116. GA. CODE ANN., Title 97 (1935 and Supp. 1951).
117. Ratliffe v. Hartsfield Co., 49 Ga. App. 598, 176 S.E. 151 (1934).

Class C and Class D securities and as such was not excepted from the provisions of the "blue sky laws." The fact of the loan feature being originally attached to the purchaser of the certificate was not sufficient to take it out of the operation of the securities law.

Code Section 16-420 prohibits the use of the words "saving and loan" and "building and loan" in the title or name under which business is transacted by any organization except those operating pursuant to the provisions of Chapter 16-4 of the Code or under the provisions of the Home Owners' Loan Act of 1933 (federal savings and loan associations).

Where the name indicates that the organization is a building and loan association, it will be prima facie treated as such on demurrer, there being no allegation to the contrary.[118] It was held in *Atlanta Savings Bank v. Spencer*[119] that the transaction, which the defendant's plea alleged was infected with usury, could not be upheld where the record did not disclose that the plaintiff was operating under the provisions of Code Section 16-101 *et seq.* (then Section 2388 *et seq.* of the Civil Code).

V. Other Types of Operation

The remaining types of businesses under which small loans are made and which are regulated by specific chapters of the Code appear to be pawnbrokers[120] and credit unions.[121] With respect to the last named type, no discussion herein is deemed necessary except to mention that a credit union may make loans to its members at rates of interest not exceeding one per cent per month upon such security as the by-laws may provide.[122] The abuses which the legislature sought to guard against by such statutes as Chapters 25-2 and 25-3 are hardly to be looked for among credit unions.

Maximum interest chargeable by pawnbrokers is two per cent per month with a minimum charge on any loan of fifty cents per month. This maximum is prescribed by Code Section 12-612, which further provides that "any charge directly or indirectly made, contracted for, or received in excess of the amounts permitted by this section shall be uncollectible, and the pawn or pledge shall be void."[123]

118. Swofford v. First Nat. Bldg. & Loan Assn., 184 Ga. 312, 191 S.E. 103 (1937).
119. 107 Ga. 629 (2), 33 S.E. 878 (1899); Robinson v. Morris Plan Co., 47 Ga. App. 737, 171 S.E. 394 (1933) (provisions of the Code to apply, must be pleaded).
120. Ga. Code c. 12-6 (1933).
121. *Id.* c. 25-1.
122. Ga. Code § 25-117 (1933).
123. In Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430 (1941), the Supreme

Authority to license, regulate and supervise the operations of pawnbrokers may be exercised by cities,[124] but it does not follow that a city may by ordinance authorize a rate of interest which the general law condemns as usurious.[125] And where a city ordinance declared punishable as a misdemeanor failure of a pawnbroker to "furnish to the chief of police . . . a full and complete list each day of every article taken in pawn . . .," a mere clerk who was neither proprietor nor manager of the business could not be found guilty thereunder even though he may have participated in the transaction of taking the pawn.[126] Whether a similar ruling would apply if the participation had been in an usurious transaction punishable under Code Section 57-9901 for charging interest at a greater rate than five per cent per month, seems yet to be decided.

Under Section 12-609 the pawnee may sell the pledged property after the due date of the debt, if unpaid, but it is requisite, unless otherwise provided by contract, that he give notice for thirty days to the pawner of his intention to sell,[127] and the sale "must be in public, fairly conducted, and to the highest bidder."

While delivery of the property intended as security is essential to constitute a pledge or pawn, the definition given in Section 12-601 includes within its embrace paper symbols of property — that is, promissory notes, bills of lading, warehouse receipts, etc. Delivery of a title deed, however, creates no pledge.[128]

It will thus be seen that while Chapter 12-6 of the Code does govern pawnbrokers, its scope is much wider and applies as well to persons who ordinarily engage in transactions involving substantial amounts, as distinguished from the comparatively small loans customarily sought by patrons of pawnbrokers.[129]

VI. Conclusion

Though courts be ever so vigilant in their efforts to expose and condemn usurious transactions which are skillfully camou-

Court answered in the negative the following question certified to it by the Court of Appeals: In view of Code Sections 57-101 and 57-117, "is a regular licensed pawnbroker, who advances money on personal property which is taken into his actual possession and stored by him, authorized by law to charge interest on the money so advanced or lent, at a rate of five per centum per month?"

124. GA. CODE § 12-611 (1933).
125. Lockwood v. Muhlberg, 124 Ga. 660, 53 S.E. 92 (1905).
126. Schane v. City of Atlanta, 127 Ga. 36, 56 S.E. 91 (1906).
127. Davitte v. Rockmart Bank, 62 Ga. App. 705, 9 S.E.2d 712 (1940); Thornton v. Martin, 116 Ga. 115, 42 S.E. 348 (1902); Campbell v. Redwine Bros., 22 Ga. App. 455, 96 S.E. 347 (1918).
128. Davis v. Davis, 88 Ga. 191, 14 S.E. 194 (1891); Atlanta Trust & Banking Co. v. Nelms, 115 Ga. 53, 41 S.E. 247 (1902).
129. GA. CODE § 12-605 (1933).

flaged, the ingenious minds of the unconscionable type of money lenders are no less zealously at work to cover the wolf with a fleecy coat of wool. To say that the number and variety of Georgia laws, any one of which may well apply in making small loans, are confusing, is but a half truth. It is believed to be no exaggeration to say that they invite and encourage the utilization of virtually all the known devices for color and cover up of sharp practices perpetrated upon a class of borrowers who lack the education necessary to comprehend fully the intricacies of the transactions, and who, when in need of a loan, are in no position to resist even if they did understand the transaction.

In a table of cases involving small loan laws by states, appearing in Hubachek, *Annotations on Small Loan Laws*,[130] the number of Georgia cases listed exceeds that of any other state, there being 46. Its nearest rival for the dubious honor is New Jersey with 24, followed by Louisiana 19, Tennessee 18, New York 15, and others with lesser figures. It is not contended that these figures conclusively prove that Georgia's small loan laws tend to hatch a comparatively larger number of bad loan eggs than do the laws of all other states, since it is not known how complete Mr. Hubachek's compilation of cases was intended to be. On the other hand, they are strongly indicative of the fact that the bad boys among Georgia's money lenders have done and are doing, a flourishing business under the laws discussed above.

From the foregoing analysis, though not exhaustive, of the pertinent Georgia laws on small loans three changes suggest themselves which, in the opinion of the writer, should tend materially to improve the situation in this state: (1) Amend Code Section 25-313 so as to increase the highest allowable rate of interest from 1½ per cent to 2½ per cent per month on unpaid balances, in order to encourage profitable operation thereunder by legitimate lenders since no other charges, except recording fees, are allowed under Chapter 25-3. (2) Licensing, regulation and supervision of loan businesses operating under Chapter 25-2 should be administered by the same authority as administers the provisions of Chapter 25-3, namely, the State Superintendent of Banks. (3) Amend Code Section 16-101 so as to prohibit the practice of requiring the purchase of so-called interest-bearing certificates as a prerequisite to qualifying for a loan, except where the lender is a true building and loan association.

130. At pp. lvii - lxv (1938).