CHAPTER – III

MODES OF SECURING ADVANCES
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➤ **Securing Advances:**

In the employment of fund a banker generally attaches great significance to the consideration of security. There is a wide range of securities to cover bank loans and the major are goods and commodities, life policies, shares and stocks, title deeds of immovable properties and guarantees. Section 5 (n) of the Banking Regulation Act, 1949, provided that “a ‘secured loan or advance’ means a loan or advance made on the security of assets and market value of which is not less than the amount of such loan or advance; and ‘unsecured loan or advance’ means an advance not so secured”. In case of secured advances, a charge is created over the assets of the borrower in favor of the banker. On the failure of the customer to pay back the loan or advance, the banker may, therefore, recover his dues from the customer out of the sale proceeds of the assets charged to him.

➤ **Types of Securities:**

There are different methods of creating a charge:

1. Banker’s Lien;
2. Pledge;
3. Hypothecation; and
4. Mortgage

In each of thee cases the banker does not become absolute owner of the property; but has certain rights over the property until the debt due to him is repaid.

➤ **Banker’s Lien:**

A lien is the right of a creditor in possession of goods, securities or any other assets belonging to the debtor to retain them until the debt is repaid, provided that there is no contract, express or implied, to the contrary. It is a right to retain possession of specific goods or securities or other movable of which the ownership vests in some other person and
the possession can be retained till the owner discharges the debtor obligation to the possessor.

So far the Indian Law is concerned there are no provisions in the Contract Act relating to lien and English law is to be applied on grounds of justice, equity and good conscience. A lien may be possessory, equitable or maritime.\textsuperscript{1} Here we will focus our discussion on the possessory lien. Possessory lien may be either: (i) particular, or (ii) general.

**Particular Lien**

Particular lien arises from and is limited in its operation to, particular transaction in connection with the property subject to the lien. For example, we can say that the finder of a lost article has a right of lien on it until the owner compensates him for his trouble and expense of preserving it and for finding out the true owner. It this regard reference can also be made to section 168 of the Contract Act. Similarly, a jeweler entrusted with a diamond to cut the polish it has a right to retain it until the owner pays him for his services.\textsuperscript{2} An unpaid seller of goods has a lien on them until the owner pays the price.\textsuperscript{3} A particular lien is also called special lien. If I give my watch for repair, the repairer has the right to retain the watch till his charges are paid such type of lien exists only as a security for the particular debts incurred in respect of the watch itself. This type of right is generally enjoyed by the bailers, finder of goods, unpaid vendor, etc. on the other hand, if I give my cloth to the tailor for making a shirt for me, the tailor has a general lien on the cloth until his charges are paid.

**General Lien**

In a general lien the right to retain the goods will be available not only for the discharges overdue debt or liability incurred in connection with them, but also for a general balance of account arising out of similar transaction between the parties. For example a solicitor in possession of the title deeds of his client may retain it till his dues not only in respect of the deed itself but also with regard to the professional services rendered by him are paid.

In Alliance Bank of Shimla Ltd.,\textsuperscript{4} the court held that general lien confers only on holder the right to retain the goods until the payment is made.

\textsuperscript{1} Devendra Kumar v. Lal Chand, Gulab singh Nekhe Sing, AIR 1946 Nag. 114.
\textsuperscript{2} The Indian Contract Act, Section 170.
\textsuperscript{3} The Sales of Goods Act, Section 47.
\textsuperscript{4} Alliance Bank of Shimla Ltd. v. Ghamandi Lal Gaini Lah. AIR 1927 Lah. 48
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out but it does not carry with it the right of sale to secure the debt or indemnity. It is merely a right to retain goods or chattel and does not create right as in favor of a pledge. However, this is not the exhaustive definition of lien.

A general lien thus arises from a particular transaction and also relates to other and prior transaction of similar nature between the two parties and gives the creditor the right to retain against general balance of account, any goods bailed to him as a security. It is necessary that the goods or property subject to lien be owned by the debtor but the property in such goods or securities is not transferred to the creditor by lien. A general lien empowers the possessor to retain possession until the while one can say that a lien does not require any special agreement, written or oral, but it arises only by operation of law subject to the condition that the following requirements are fulfilled:

(i) that the creditor is in possession of the goods, securities, etc., and has come in possession thereof in the ordinary course of business;
(ii) that the owner of the goods, securities, etc., has a lawful debt to pay to the person in possession thereof; and
(iii) that there is no contract, express or implied, to the contrary.

A banker’s lien is a general lien over a borrowing customer’s property which has come into the banker’s hand in the ordinary course of business. The general lien is conferred on the bankers under Section 171 of the Indian Contract Act, 1872 which provides:

“Bankers, factors, where fingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contract, retain, as a security for general balance of account, any goods bailed to them: but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect”.

Under the above provision, no agreement is necessary to create a banker’s line as such an agreement is implied so long as the same is not excluded expressly a banker’s lien is more than a general lien. A general lien does not, as a rule, carry with it a right to dispose of the property. The general lien of a banker has been described as an implied pledge and for this reason he is generally regarded as having power to sell securities over which he has a lien. The power to sell can only be exercised by the

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banker when a customer has reasonable notice of the banker’s intentions.\textsuperscript{6}

As the general lien of the bank is recognized statutorily, no separate contract or agreement is required for this purpose. As a precautionary measure, however, banks obtain 'letter of lien' from their customers, stating that goods and securities are entrusted to the banker as security for the existing and future advances and authorizing the bank to sell them in case of default on the part of the customer. The letter spells out the object of the entrustment of the goods and securities to the banker so that the same may not deny by the customer later on.

\textbf{Negative Lien:}

Under the negative line, the borrower gives a declaration to the banker that his assets mentioned therein are free from any charge or encumbrance and that he will not create any charge or dispose them of without the permission of the banker. The banker does not get the right to retain any assets of the borrower and cannot realize his dues from the said assets. His interests are, therefore, partly protected by a negative lien.

The banker’s right of lien is not barred by the law of limitation. The effect of the Limitation Act is only to bar the remedy and not to discharge the debt. Consequently, it does not affect the property over which the banker has a lien. In Bombay Dying and Manufacturing Company,\textsuperscript{7} the court held that when a creditor has a lien for obtaining satisfaction of the debt, this right is not affected by limitation even though an action thereon is barred by limitation.

\textbf{Pledge:}

Section 172 of the Indian Contract, 1872, defines a pledge or a Pawn, as "the bailment of goods as security for the payment of a debt or performance of promise". The bailor is known as the "Pawner" or "Pledger" and the bailee as the "Pawnee" or "Pledge".

In Lallan Prasad’s case,\textsuperscript{8} the court held that there are two ingredients of a bond or a pledge namely: (i) that it is essential to contract of Pawn that the property pledged should be actually or constructively delivered to the Pawnee, and (ii) a Pawnee has only a special property in the pledge but

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\item \textsuperscript{6} Krishnan Kishore v. United Commercial Bank, AIR 1982 Ca. 62
\item \textsuperscript{7} 1968, SCJ 620. Quoted in Gupta, p. 452.
\item \textsuperscript{8} Lallan Prashad v. Rehmat Ali, AIR 1967 SC 1322.
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the general property therein remains in the Pawner and wholly reverts to him on discharge of the debt.

Section 148 of the Act defines bailment as “the delivery of goods from one person to another for some purpose upon the contract that the goods be returned when the purpose is accomplished or otherwise disposed of according to the instructions of the bailer”. Thus, delivery of goods and return of goods are two essential requisites of a bailment. In Shatzabi Begum Saheba and others, the Andhra Pradesh High Court had stated the three essential features of a “Pledge” are: (i) there must be a bailment of goods, i.e., delivery of goods, (ii) the bailment must be by way of security, and (iii) the security must be for payment of a debt or a performance of a promise.

Delivery of goods may be physical delivery or constructive delivery. The bailer putting his own lock on the door of the go down storing the goods pledged or even handing over the key of the lock will amount to transfer of the possession of the goods. Similarly, handing over the documents of the title to goods like bill of lading or railway receipt, duly endorsed, will also mean delivery of the goods. In short, pledge is the delivery of goods or documents of title to goods, to the creditor by the debtor as security for a debt, or for any other obligation.

Section 176 of the Act further provides, that if the Pawner makes a default in payment of the debt or performance of the promise at the stipulated time, in respect of which the goods were pledged, the Pawnee may bring a suit against the Pawner upon the debtor promise, and retain the goods pledged as collateral security or he may sell the goods pledged on giving the Pawner reasonable notice of sale. The section further lies down that if the proceeds of sale are less than the amount due in respect of the debt or promise, the Pawner is still liable to pay the balance. If the proceeds of sale are grater than the amount so due, the Pawnee shall pay over the surplus to the Pawner.

Upon a default being made by the Pawner in the payment of the debt or performance of the promise, the pledge gets two distinct rights under Sec 176 of the Act. Firstly, the pledge may sue upon the debt and retain the goods as a collateral security. Secondly, he may sell the goods after reasonable notice of the intended sale to the Pawner.

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To constitute a contract of a bailment it is essential that the bile should return the same goods to the bailer or dispose them of according to his instructions after the purpose for which the goods were delivered is fulfilled. The deposits of money in a bank account is not bailment because: (i) 'money' is not 'goods', and (ii) the banker is under no obligation to return the same currency notes and coins which are handed over to him at the time of making a deposit.

Letter of Pledge

From a law point of view, there is not necessity for any written evidence of a pledge. In practice, however, a banker usually obtains his customer's signature to a document, sometimes called a letter of pledge. Some banks require their customers to sign a document of this nature in respect of each transaction, in which case the documents of title to the goods are listed in a schedule thereto; other banks obtain the customer's signature to a document which covers all transactions. The clauses contained in both types of document are, of course, very similar. A document of the second type-sometimes called a general letter of pledge-commonly includes the following provisions:

(a) The customer agrees that the bank is to have a pledge upon all goods delivered by the customer or by his agents into the possession of the bank or of its agents and upon all bills of lading and other documents of title deposited by the customer or by his agents, with the bank or with its agents.

(b) The customer agrees that the goods and document of title are pledged as a continuing security for the payment of all sums owed by the customer, either solely or jointly with any other person or persons whether on balance of account or on guarantees or in respect of bills of exchange, and including interest with half-yearly rests and other banking charges.

(c) The customer agrees that in case of default in repayment of such sum or sums on demand, the bank may sell the goods or any part thereof.

(d) The customer agrees to keep the good fully insured in such office as the bank may approve.

(e) The customer undertakes to pay all rent and other expenses of and incidental to the warehousing of the goods.

(f) The customer agrees that the bank is not to be responsible for the default of any broker employed to sell the goods.
Hypothecation:

In case of hypothecation, a mere charge is given on the goods for the amount of the debt but the hypothecated goods remain in the actual physical possession of the borrower, and neither possession nor ownership passes to the bank, or other lenders. The instrument which creates such a charge is known as a letter of hypothecation which states that the goods are at the order and disposition of the ledger until the debt is cleared. As the hypothecated goods remain with the borrower and there is often considerable scope for fraud, this facility is granted to parties of unquestionable integrity and honesty. Hypothecation is, by nature, a weak security. In hypothecation goods remain in the possession of the borrower, who binds himself, under an agreement, to give the possession of the goods to the banker, wherever the latter requires him to do so. The charge of hypothecation is thus converted into that of a pledge and the banker or the hypothecate enjoys the powers and rights of a pledge. In M/secured Gopal Singh, Hira Singh’s case, the court observed that in case of hypothecation, “the borrower is in actual physical possession but the constructive possession is still of the bank because, according to the deed of hypothecation, the borrower holds the actual physical possession not in his own rights as the owner of the goods but as the agent of the bank”. The High Court, therefore, concluded that in law there was no difference between pledge and hypothecation with regard to the legal possession of the banks—the hypothecated goods are also not only constructively but actually in the possession of the bank. But to enforce its claim it is essential for the bank to take possession of the hypothecated goods are also not only is essential for the bank to take possession of the hypothecated property on its own or through the court. The bank can enforce the security by filing a suit to this effect. If the banker fails to do so, and chooses to seek a simple money decree, the bank would be deemed to have waived its right as hypothecate.

Precautions to be taken by Banker

The position of the banker under hypothecation is not as safe as under a pledge. If the borrower fails to give possession of the goods of hypothecated, or sells the entire stock or borrows from another banker on the security of the same goods, the banker shall have to resort to legal proceedings in a court of law for the recovery of the amount lent. The

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advances on hypothecation basis are as risky as clean advances. The banker should, therefore, take the following precautions to safeguard his own position:

1. The facility of loans on the basis of hypothecation of goods should be sanctioned only to persons or business houses of high reputation and sound financial standing.

2. The banker should periodically inspect the hypothecated goods and the account books of the borrower should be checked to ascertain the position of stocks under hypothecation. Care should be taken to see that the unsaleable stocks are not being maintained by the borrower.

3. The borrower should be asked to submit a statement of stocks periodically giving correct position about the stocks and its valuation and declaration that the borrowers possess clear title to the same.

4. Stocks should be fully insured against fire and other risks.

5. A nameplate of the bank, mentioning that the stocks are hypothecated to it, must be displayed at a prominent place in the business premises of the borrower for public notice. This is essential to avoid the risk of a second charge being created on the same stocks.

6. In case the borrowing concern is a joint stock company, the charge of hypothecation must be registered with the Registrar of Companies under Section 125 of the Companies Act, 1956 within a period of 30 days from its creation.\textsuperscript{15}

\textgreater \textbf{Mortgage:}

When a customer offers immovable property like land and building as security for a loan, charge thereon is created by means of mortgage. A mortgage is the conveyance of a legal or equitable interest in real or personal property as security for the debt. Real property is freehold land. Everything else (including leasehold land) is personal property. Deeds are mortgaged (real property) and so are share certificate (personal property). The subject of mortgages of immovable property is dealt within the Transfer of Property Act, 1882. Section 58 of the Transfer of Property Act defines a mortgage as "the transfer of interest in specific immovable property for the purpose of securing the payment of money

\textsuperscript{15} P.N. Varshney, banking Law and Practice, (1977), p.4.50.
advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. The person transferring the interest is called the mortgagor; the person to whom the interest is so transferred is called the mortgagee; the principal money and interest thereon, the payment of which is secured, are called the mortgage money and the instrument, if any, by which the transfer is effect is called a mortgage deed. The transaction itself is called a mortgage or a mortgage transaction. The main characteristics of a mortgage transaction are:

1. The mortgagor does not transfer the ownership of the property to the mortgagee. He transfers only some of his rights as an owner, e.g., he cannot now sell the property without the consent of the mortgagee.

2. Mortgage relates only to immovable properties. Properties mortgaged should be specified by the mortgagee in the mortgage deed. Such specification can be done by mentioning the name, location or size of the properties.

3. The object of mortgaging the property is to give security for the loan to be taken or already taken for performance of an engagement giving rise to the pecuniary liability. Transfer of property for any other purpose, e.g., in satisfaction of a loan, will not amount to mortgage.

4. The mortgagee need not be always given the actual possession of the property.

5. The mortgagor gets back all his rights regarding the mortgaged property on repayment of loan, with interest due thereon.

In case of co-owners of a property, each co-owner has a right to mortgage his share in the property.\[Debi Singh v. Bhim Singh & Others, (1971), AIR Delhi, 316.\]

Types of Mortgages

Mortgages are governed by the provisions of the Transfer of Property Act. The various types of mortgages recognized and governed by this Act under Section 58 (b) to 58 (g) are as follows:

Simple Mortgage
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According to Section 58 (b), a simple mortgage is one where "without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money and agrees expressly or impliedly that in the event of his failure to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of the sale to be applied so far may be necessary, in the payment of the mortgage money".

Thus, in simple mortgage, the mortgagee has two fold security for the debt-

(i) the personal obligation of the mortgagor; and
(ii) the property.

The mortgagee has no right to sell the property directly; the sale must be through the intervention of the court. The mortgagee will have to obtain first a decree from the court for sale of the mortgaged property since the words used are "cause the mortgaged property to be sold".

In case of such a mortgage if the mortgagor sells the property, the purchaser takes the property subject to the mortgage but does not incur any other personal obligation, as was the case with mortgagor.

Mortgage by conditional Sale

According to Section 58 (c) of the Act, mortgage by conditional sale is one where mortgagor ostensibly sells the mortgaged property on the condition that-

(i) on default of payment of the mortgagee money on a certain date, the sale shall become absolute, or
(ii) on such payment being made, the sale shall become void, or
(iii) on such payment being made, the buyer shall transfer the property to the seller.

The essential characteristics of such a transaction are:

(i) It is an ostensible sale and not a real sale
(ii) The ostensible sale is subject to a condition-
     (a) the ostensible sale ripens into real sale in case the mortgagor defaults in payment, or
     (b) incase the mortgagor makes payment, the mortgagee has to retransfer the property to the mortgagor.
(iii) The possession of the property continues with the mortgagor.
(iv) The fact that transaction is a mortgage should be specified in the document of sale.
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(v) The mortgagor does not have any personal liability; therefore, in case the mortgaged property is not sufficient to pay off the mortgagee's claim, he cannot recover the balance out of any other property of the mortgagor.

Usufructuary Mortgage

In case of usufructuary mortgage the mortgagor gives possession of the property or binds himself, either expressly or by implication, to give such possession to the mortgagee. The mortgagee is authorized to retain his possession over the property until the payment of the mortgage money is made and to receive rents and profits accruing from the property and to appropriate the same in lieu of interest or in payment of the mortgage money or in both.

The chief characteristic of usufructuary mortgage is the transfer of the possession over the mortgaged property to the mortgagee, who is entitled to receive income accruing these from and to appropriate the same towards the payment of the mortgage money and/or interest thereon. The liability of the mortgagor is thus gradually reduced.

As the mortgagor does not bind himself personally to repay the mortgage money, no suit for the repayment of the mortgage money can be filed against him. The mortgagee is also not entitled to file a suit for sale or foreclosure of the mortgaged property. He has only one remedy, i.e., to retain his possession over the property and to recover his dues from the income accruing therefore. The mortgagee is thus placed in a disadvantageous position, as he shall have to wait for a long period to recover his dues.

English Mortgage

In cash of English mortgage, the mortgagor binds himself to repay the mortgage money on a certain date and transfer the mortgaged property absolutely to the mortgagee on the condition that the mortgagee will re-transfer the same to the mortgagor upon payment of the mortgage money. The mortgagee under an English mortgage is entitled to immediately possession and to retain possession until he is repaid. Thus, the mortgagor-

(i) incurs personal liability to pay, and
(ii) in addition transfers the mortgaged property absolutely, i.e., with all the interests and rights in the property.
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In case of default by the mortgagor, the mortgagee is entitled to sell the property without seeking permission of the court in special circumstances mentioned in Section 69.

Mortgage by Deposits of Title Deeds or Equitable Mortgage

According to Section 58 (f) of the Act, where a person delivers to a creditor or his agent documents of title to immovable property, with the intention to create a security thereon, the transaction, is called a "mortgage by deposit of title deeds". However, the Act makes the provisions of this Section applicable only to towns of Bombay, Calcutta and Madras and such other towns as may be specified by the State Government by notification in the official Gazette in this behalf. This mortgage does not require registration. It is most popular with banks.

Anomalous Mortgage

A mortgage other than any of the mortgages explained above is an anomalous mortgage. Such a mortgage includes a mortgage formed by combination of two or more types of mortgages. It may, therefore, take various forms depending upon custom, local usage or contract.

Legal Mortgage and Equitable Mortgage

On the basis of transfer of title in the mortgaged property, mortgages can be classified into the following two categories:

(i) Legal Mortgage
(ii) Equitable Mortgage

In a legal mortgage, the mortgagor transfers to the mortgagee the legal title to the property. It must be registered in the case the amount of loan is Rs.100 or more. On repayment of the loan the mortgagee transfers the title to the mortgagor. In case of an equitable mortgage, the mortgagor deposits the title deeds with the mortgagee with the intention of giving the mortgagee an equitable interest in the property. It does not require registration.

Procedure for a Legal Mortgage

(i) If the principal money secured is Rs.100 or more, the instruments must be registered.
(ii) The mortgage is complete as soon as the deed is registered but it will be effective from the date of execution. The deed is to be signed by the mortgagor and two witnesses.
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Procedure for Equitable Mortgage

(i) The mortgagor should deposit the title deeds relating to his property with the bank wherefrom his is taking the advance. In case the advance is made by a bank, which is not situated at a notified place, the title deeds may be deposited with another branch of the bank, which is at a notified place.

(ii) The mortgagor is required to send a covering letter with the title deeds acknowledging the deposit of title deeds with the intention to create an equitable mortgage thereon to secure a specific debt or debts.

(iii) The bank should only accept the documents in original.

(iv) The bank should also maintain an equitable mortgage register wherein details such as date, time, or the deposit, particulars of advance and a list of documents should be entered in that register.

(v) Tax receipts should also be verified.

(vi) In case the mortgagor is a limited company, the mortgage must be registered within 30 days of execution of the mortgage.

Advantages of an Equitable Mortgage

(i) It is economical and does not require registration. Hence, the stamp duty can be saving.

(ii) Secrecy can be maintained because no witnesses are required.

(iii) Charge can be created simply by deposit of title deeds with the mortgagee.

(iv) It provided the mortgagee the same remedies as are available in legal mortgage.

Disadvantages of an Equitable Mortgage

(i) Property mortgaged can be realized, when required, only through the court’s orders. The process is expensive and time consuming.

(ii) The mortgagee has to be extra cautious. In no case he should part with the title deeds.

Remedies of a Mortgage

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In the event of default by the mortgagor, a legal mortgage has the following remedies available with him:

(i) Sell the property/land (this includes, of course, any property and building on the land);
(ii) Appoint to receiver to collect any rents arising out of land;
(iii) Enter into possession of the land; and
(iv) Apply to the court to have the legal estate (the ownership) transferred to the mortgagee. This is known as application for ‘foreclosure’ and is rarely granted. The court usually orders a sale.

In addition to these four rights of action, a mortgagee has the right to sue for repayment of the debt.

An equitable mortgagee has similar rights but these must be pursued through the courts. The remedies are:

(i) Apply to the court for an order for sale:
(ii) Apply to the court for an order for foreclosure;
(iii) Apply to the court to appoint a receiver for rents; and
(iv) Apply to the court for an order to compel the debtor to execute a legal mortgage. The remedies of a legal mortgage then become available.

Again, an equitable mortgagee also has the right to sue for repayment of his debt.

> **Floating charge:**

It is the charge created upon the movable assets of a running business. The charge will not be crystallized at the time of its creation. But it will be crystallized only at the happening of certain events like recall of advance or closure of business by the firm. During the subsistence of the floating charge, the business concern may make use of the assets charged freely for its business purpose as if no charge is created upon it. When the business ceases to exist the charge will take effect. The crucial question here is whether there will be any movable assets at the time of closure of business. However, as an instrument of securing the interest of the creditor floating charge plays a very dominant role. It is also useful as a charge upon the assets acquired in future by the business concern.

> **Negotiating the securities:**

Negotiating the Securities is comparatively a new concept of asset recovery. This is based on a principle that `one at hand is better than
two in the bush'. Negotiating means passing the interest in the security for valuable consideration. The enforceable interest in the security is assigned in favour of another person or institution, who in turn would enforce the security against the Debtor. Usually it is done at a discounted rate.

Recently negotiating the securities has become a major area of business. Asset Reconstruction Companies have been set up to purchase and sell the assets and securities. The securitization act also provide for the establishment of Asset Reconstruction Companies. The banks like Standard Chartered Bank, Kotak Mahindra Bank, I.C.I.C.I Bank etc. have become major players in the market. Many other banks have established their own subsidiaries to deal with negotiating and taking over the securities.

➢ Legal effect of Documentation:

The security of a credit facility depends largely on the correctness of documentation. Whenever a creditor wants to establish his legal right to recover the loan he has to depend on the documents which evidence the transaction. A faulty documentation may upset the prospect of recovery. The details of loan transaction like the amount of loan, rate of Interest repayment period, terms of payment etc. are clearly described in the document.

With the establishment of Tribunals to recover the debt where the oral evidence is not given much weight age, the disputes are adjudicated on the basis of documents only. In such a situation a proper claim can not be put forward unless the documents are properly executed.

With the enactment of SARFEASI Act 2002, the banks and Financial Institutions can enforce their right against secured assets without the intervention of the Court. For this purpose the security right must be properly documented. In nutshell, the success of Recovery depends largely on documentation.

➢ Realisation of securities:

From the above discussion it becomes clearly that documentation has a vital role to play with respect to realization of securities. What is the appropriate time to realize security is a question of prudence. A wise decision has to be taken by a creditor with respect to the timing of realization of securities. Any delay in enforcing the security in time will result in deterioration of security and there by the security note fetching the requisite value. This will hamper the process of recovery. For ex: in case of loans secured by stocks, the security has to be off loaded when
the share market is at its peak. A wise credit decision is the essence of realization of securities.

➢ **Documentation:**

Documentation is the process of reducing the terms and conditions of loan into appropriate writing. It is the evidence of transation between a creditor and Debtor. As far as there is no dispute on the factor of Debtor creditor relation Documentation has no role to play. At the event of any dispute, Documentation will come to provide supporting evidence of the transaction. Documenting a loan transation was a practice followed from the olden days. The Gold Smiths, local money lenders, Indigenous Bankers etc. used to keep a record of their accounts and lending inscribed on palm leaves, on leather and some times on cloth also. This would perhaps be the initial form of Documentation. With the growth of time it has developed into hundies. As a security to the amount advance as loan the money lenders started taking some written notes which have been developed into promissory note in course of time. With the development of trade and intercourse promissory notes gained vide acceptability as a loan document.

In order to bring in more certainty it has become necessary to reduce into writing the term and conditions governing the transactions. When the terms and conditions are agreed between the parties a become a loan agreement. It is a commercial practice to secure the amount of loan by additional securities like guarantee of third parties, a collateral security of movable and immovable properties, stock in trade, receivables etc. All these securities require written documents. Now a day all the banks and the Financial Institutions have developed a well established system of standard documentation.