

The Bengal Indigo Contracts Regulation, 1823

BIHAR

India

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Act 6 of 1823

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The Bengal Indigo Contracts Regulation, 1823 Bengal Regulation 6 of 1823 [Dated 10th July, 1823] A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the indigo-plant, and for declaring certain principles in regard to the same.

1. Preamble.

- The poverty of the lower orders in India, and particularly of those employed in agriculture, occasions the general use of borrowed capital for the production of the chief articles of trade and consumption. The capitalist advances his money, and sometimes the seed likewise, upon a contract to receive the produce of a defined quantity of land, either at a certain fixed price, or at rates to be subsequently determined with reference to the market price at a specified season; and this system is understood generally to prevail in the Province of [Bengal] [This includes the present State of Bihar.] in the cultivation of the plant from which the indigo-dye is extracted. According to the existing Regulations, if the contracting raiyat should fail to cultivate the land in the manner specified, or, having so cultivated the land, should sell the produce to another, or otherwise defraud his creditor, and fail to execute his contract by delivery of the stipulated article, the person with whom he has so contracted has no other remedy than a regular action for the recovery of the penalty conditioned in the agreement. It is usual for the Courts of Justice, in decreeing such causes, to award such limited penalty as may, in each instance, appear to be a fair compensation to the person making the advance for the non-employment of his capital. In the absence, however, of any rule for the regulation of the discretion thus assumed, much confusion has arisen from the conflicting opinions and judgements of the several judicial officers as to the extent of penalty recoverable on agreements of this nature. [* * * * *] [Portion repealed by Act 12 of 1891.] It seems reasonable, also, that the person who advances seed and capital, or capital only, for the expenses of cultivation on a defined parcel of land, should be considered to possess a lien and interest in the indigo-plant produced, on that land, when so stipulated in a written engagement between the parties and especially in cases in which such written engagement may have been duly registered [* * * *] ['Under

the provisions of the Regulation 20 of 1812', repealed by Act 12 of 1876.] and that it should not be in the power of a raiyat, who has already conditioned for the delivery of the produce of his land to one person, to break the condition by a clandestine and fraudulent transfer of such produce to another. The system at present in force provides, as above observed, no other remedy for parties injured by this dishonest practice than by a regular action in the Civil Court. The difficulty and delay of obtaining redress by that course have not unfrequently led to acts of violence, and even to serious affrays; and the more frequent occurrence of such affrays is to be apprehended in consequence of the eager competition which now prevails amongst the indigo-manufacturers in some parts of Bengal, arising from the unusually high price of indigo. The Governor-General in Council has in consequence judged it expedient to declare the principles on which the points above stated shall be settled, and to provide for the more prompt adjustment of disputes and enforcement of contracts of the nature above specified; and the following Rules have accordingly been passed, to take effect in the several districts comprised within the Province of [Bengal] [This includes the present State of Bihar.] from the date of their promulgation.

2. When persons making advances for cultivation of indigo-plant on certain land have lien on, or interest in, its produce.

- If any person shall have given advances to a raiyat, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo-plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place such person shall be considered to have a lien or interest in the indigo-plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests and for the due execution of the conditions of the contract.

3. Such person how to proceed when he has just-reason to believe that raiyat will dispose of produce otherwise than stipulated.

- First.-If any person, who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading or is about to evade the execution of his contract, by making away with and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zila [* *] ['Or City' repealed by Act 16 of 1874.] Judge [* *] ['Or to a Registrar exercising the powers of Joint Magistrate,' repealed by Act 16 of 1874.] within whose local jurisdiction the land stipulated to be cultivated with the indigo-plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and bona fide executed by the individual complained against. Summons for attendance of defendant.-Second.-On such petition and original deed of engagement being filed, a summons, or talab chitthi, shall be immediately issued through the nazir in the usual Form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent within such specified period as may in each instance appear reasonable, and which period shall in no case exceed twenty

days. Summons how served. -Third- The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village cutcherry or other place of public resort, and to erect a bamboo on the specific parcel of ground on account of which the claim have been preferred, and which it shall be the duty of the plaintiff or his agent to point out. And public notice of claim how given. -By these means sufficient public notice of the claim will be given to enable person desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the Court for that purpose, and the failure so to attend, before the summary decision be passed, will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it be established by a regular suit. On non-appearance of defendant or other claimants evidence to be taken, and case decided ex parte. -Fourth. -If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed, and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be preferred in bar of that of the plaintiff, the Judge [* *] ['Or other officer' repealed by Act 12 of 1891.] shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim in the same manner as if the defendant had personally appeared. In what cases award shall be passed, adjudging plaintiff's right to produce. -Fifth. -If the defendant or his authorized agent should attend within the period specified and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken; and if its voluntary execution be established to the satisfaction of the Court [* * *] ['Or other tribunal trying the case' repealed by Act 12 of 1891.] and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crops according to the terms of the agreement. The same principle shall be applied if the engagement be admitted and no satisfactory reason be shown why the defendant should not be held to the performance of his contract. If claim be not established, plaintiff to pay costs and compensation to defendant. -Sixth- If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs and such reasonable sum in addition as may seem to the Judge [* * *] ['Or other tribunal trying the case' repealed by Act 12 of 1891.] a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected. Notice to third parties in what cases and their claims how investigated. -Seventh. -If it should appear in the course of the inquiry that the defendant is under engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by vakil; and if such person or any third party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge [* * *] ['Or other tribunal trying the case' repealed by Act 12 of 1891.] shall, after such summary investigation as may be necessary determine whether either of the parties have any just claim to the produce of the land, and, if so, which of them may have the prior and better claim; a preference will of course be given to engagements duly registered [* * *] ['Under the provisions of Regulation 20, 1812' repealed by Act 12 of 1876.]. The result of such investigation shall be recorded, and a decree passed adjudging the question of right between the parties. Defendant not to be subjected to unnecessary detention. -Eighth. -No defendant who may attend under the process described in this section shall

be confined in jail, or be in any manner detained longer than may suffice to take his answer to the claim and to obtain from him such further explanations as the nature of the answer may suggest. In what cases order may issue to deliver plant to a party, before summary inquiry completed. -Ninth.-If pending the summary inquiry in the manner above directed, it shall appear that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge [* * *] ['Or other tribunal trying the case' repealed by Act 12 of 1891.] to pass an [order] [As to security to be given by a person desiring to remove indigo plant, ordered to be delivered to him under clause (9) of 3, see Act 10 of 1836, Section 2.] for the delivery of the plant to either of the parties provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation; the amount of such compensation shall be fixed by the Judge [* *] ['Or other tribunal trying the case' repealed by Act 12 of 1891.] in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured; and the amount, when so fixed, shall be carefully recorded on the proceedings.

4. Authority to watch fields and to prevent removal of plant given to parties in certain circumstances.

-First.-Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement; and, in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest police daroga and to claim from him the assistance of the police in preventing such removal; it shall, moreover, be the duty of the police-officers and of all other officers on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power. Security of rent due to landholders how provided. -Second.-In order that the foregoing rule may not operate to the prejudice of the landholders, who [* * *] ['By the existing Regulations' repealed by Act 1 of 1903.] are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided that whenever any manufacturer, who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the raiyat, for any arrear of rent which may have been due on account, of the specific parcel of ground from which the indigo-plant may have been taken.

5. Suits by parties injured by breach of contract in regard to cultivation and delivery of indigo-plant.

-First.-In cases in which a raiyat who may have received advances and entered into written agreements for the cultivation and delivery of indigo-plant, in the manner indicated in this Regulation, shall have failed to cultivate the ground specified, or, having cultivated it, shall have failed or refused to complete his engagement, or shall have sold, made away with, or transferred the produce to another person, the party with whom such agreement was first made shall be at liberty to institute, at his option, either a summary or a regular suit. Judgement to what extent in summary

suits.-Second.-If the summary process be adopted and the cause be decided in favour of the plaintiff, the defendant shall be subject to the payment of the amount of the advances actually received by him, with interest on the same, and the costs of the summary process.[* * *] [The third clause repealed by Act 10 of 1836.]Penalty in regular suits where breach of contract not ascribable to fraud or dishonesty.-Fourth.-If no fraud or dishonest dealing be established, and the failure of a raiyat or other contractor to execute the stipulations of his engagement by the delivery of indigo-plant in the manner stipulated be owing to accident, or to any cause not implying fraud or dishonesty, the penalty to be adjudged against a contractor shall not exceed three times the sum advanced as the consideration for executing the deed, including interest.

6. Investigations how and by whom conducted.

- [* *] ['Summary' repealed by Act 16 of 1874.] Investigations under this Regulation shall be conducted according to the form and in the manner prescribed for the conduct of [* *] ['Summary' repealed by Act 16 of 1874.] suits for arrears of rent [* * *] [Words repealed by Act 16 of 1874.]. It shall [* *] [Words repealed by Act 16 of 1874.] be competent to any person whose claim under a deed of engagement for the cultivation and delivery of indigo-plant may have been set aside [* *] ['By a summary award' repealed by Act 16 of 1874.] or who may be otherwise dissatisfied with the decision passed on [* *] ['Summary' repealed by Act 16 of 1874.] [and investigation] [Substituted by Act 12 of 1891, Schedule II, for 'an investigation'.] under the foregoing provisions, to institute a regular suit for the recovery of the penalty stipulated in the deed of engagement, or for the establishment of any other claim or interest to which he may deem himself entitled.[* * * *] [Sections 7 and 8 repealed by Act 7 of 1870.]