

The Bengal Land (Conditional Sales) Regulation, 1798

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Act 1 of 1798

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The Bengal Land (Conditional Sales) Regulation, 1798 Bengal Regulation 1 of 1798 A regulation to prevent fraud and injustice in conditional sales of land under deeds of wafa or other deeds of the same nature. It has been long a prevalent practice in the Province of Bihar to borrow money on the mortgage and conditional sale of landed property, under stipulation that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer has, in the above Province, been usually denominated bai-bil-wafa; and the same transaction is common in Bengal, under an instrument termed katkabala. It doubtless exists also under deeds of the above or similar denominations in Orissa and Benaras; and since the promulgation of the rules respecting interest contained in [Regulation XV, 1793] [Regulation XV of 1793 was repealed by the Repealing Act, 1868 (8 of 1868), section 1 and Schedule.] it has become more prevalent, particularly in the Province of Bihar, wherein instances have occurred in which persons lending money on bai-bil-wafa, in order to render the sale absolute, and thereby possess themselves of the landed property of the borrower, have denied the tender or evaded receiving payment of the money due to them within the period limited for the discharge of it. In such cases, the proof of the tender falls on the borrower; and, if he fail in the proof of it for want of legal evidence, he is liable to lose his estate. It is necessary, therefore, for the security of the borrower, in such transactions, that he should have the means of establishing before a Court of Judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender; who, if he means to act fairly, will also derive a benefit from a clear rule being laid down, whereby it may be readily ascertained whether the borrower was willing to redeem his property by the payment of the money lent upon it within the period agreed upon between the parties, or whether, from his having omitted to perform the conditions of such redemption, the sale has become absolute and the property included therein finally transferred to the lender. For the above purposes, and for the prevention of other abuses in the transactions referred to, the [Central Government] [Substituted for the word 'Governor-General in Council' by the Government of India (Adaptation of Indian Laws) Order, 1937.] has passed the following rules, to be considered in force in the Provinces of Bengal, Bihar, Orissa and Benaras, from the date of the receipt of this Regulation by the several Courts, respectively.

2. Procedure for borrower of money on conditional sale of land who desires to redeem it by paying money lent.

- In all instances of the loan of money on bai-bil-wafa, or on the conditional sale of landed property, as explained in the preamble to this Regulation, however denominated, the borrower, who may be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him, taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied, or without any tender to the lender, to deposit the amount due to him, on or before the stipulated date, in the Diwani Adalat of the city or zila in which the land may be situated; and the Judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date, and for what purpose, such deposit may have been made. He shall also at the same time cause a written notice of such deposit to be delivered to the lender; and on the application of the latter, and his surrender of the conditional bill of sale, or showing satisfactory cause why it cannot be surrendered shall pay him the amount deposited, and take his acknowledgement, to remain among the records of the Court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows :-When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent per annum or, if interest be payable and no rate has been stipulated, with interest at the established rate of twelve per cent; but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during the period he has been in possession. In either case, a deposit, made as above required, shall be considered to preserve to the borrower his full right of redemption; and, if the land be in the possession of the lender, shall entitle him to demand the immediate recovery thereof, subject to the adjustment of accounts specified in the following section : Provided however that, if the borrower in any case shall deposit a less sum than above required, alleging that the sum so deposited is the total amount due to the lender for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received and notice given to the lender as above directed, and if the amount so deposited be admitted by the lender, or be established on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower, who will not however in such cases be entitled to the recovery of his lands, until it be admitted or established that he has paid the full amount due from him.

3. When lender has possessed land, and adjustment of accounts is necessary, he is to account for proceeds of estate.

- In all instances wherein the lender on a bai-bil-wafa, or similar conditional sale, may have been put in possession of the land, and an adjustment of accounts may consequently become necessary between him and the borrower, the lender is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed with regard to mortgages and interest in [Regulation XV, 1793] [Regulation XV of 1793 was repealed by the Repealing Act, 1868 (8 of 1868).],

as far as the same may be applicable to the nature of the case. But such part of section 10 of the above Regulation as directs that the mortgages therein referred to are to be considered as cancelled and redeemed whenever the principal sum, with the simple interest due upon it shall have been realised from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this Regulation, it is hereby declared not to apply thereto.

4. Tips not to be considered legal tender unless accepted by lender.

- A tip for the repayment of money lent on the conditional sales referred to in this Regulation shall not be considered a legal tender unless accepted as such by the lender; the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgement that he has received back the money lent by him.

5. Regulation not to alter contract between parties.

- Nothing in this Regulation being intended to alter the terms of contract settled between the parties in the transactions to which it refers (illegal interest excepted), the several provisions in it are to be construed accordingly, and any question of right between the parties is to be regularly brought before and determined by the Courts of Civil Justice.