

THE BENGAL LAND REVENUE SALES ACT, 1841

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THE BENGAL LAND REVENUE SALES ACT, 1841

ACT NO. XII. OF 1841.

Passed by the Hon'ble the Governor General of India in Council, on the 19th of July, 1841.

AN Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

I. Preamble.—Whereas it is deemed expedient with a view to the benefit of the Agricultural Community, to regulate the number of periodical sales of Estates for arrears of Revenue; to discontinue the levy of interest and penalty upon such arrears; to provide for the sale at fixed and known periods of Mehals, the whole of the Land Revenue due from which may not have been discharged on or by appointed days; and otherwise to amend the laws for the realization of the Land Revenue; —

Regulations rescinded.—It is hereby enacted, that Sec. 2, Reg. XIV. 1793; Sec. 2, Reg. III. 1974, Reg. XI. 1822, except Sections 36 and 38, and Reg. VII. 1830 are rescinded, except in so far as they rescind other Regulations or parts of Regulations.

II. Interest and Penalty abolished.—And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of Land Revenue which shall fall due after the date specified in Section XXXV. of this Act.

III. Days fixed for sale.—And it is hereby enacted, that upon the promulgation of this Act the Sudder Board of Revenue at Calcutta shall determine with regard to each permanently settled District of Zillah under their jurisdiction, the fixed dates in each year on which shall be commenced the process for realizing by sale of Mehals the arrears of Land Revenue due thereupon. And the said Board shall give notice of the dates so fixed in the Calcutta Gazette; and shall direct corresponding publication to be made, as far as regards each District, in the language of that District, in the Office of the Collector, or other Officer duly authorized to hold sales under this Act, and in the Courts of the Judge, Magistrate Principal Sudder Ameens, Sudder Ameens, and Sudder Moonsiffs; and the days so fixed shall not be charged until the same be charged by the said Board by advertisements and notifications in the manner above described; such advertisements and notifications to be issued, on every occasion after the first above provided for, at least three months before the close of the official year preceding that in which new date or dates are to take effect. Provided always, that another notice shall also be given for a period of not less than 15 clear days previous to each fixed date of sale by advertisement to be stuck up in each of the forenamed Offices and courts, and the Collector shall be bound to furnish during this interval to all enquirers full particulars as to what estates are in balance, and the amount due on each.

IV. Exception in unsettled Provinces and Benares.—And it is hereby enacted, that in Districts not permanently settled, and in the Province of Benares, no sale shall take place for arrears of Land Revenue or other demand of government without the special sanction of the Sudder Board of Revenue previously obtained in each several case of sale.

V. Definition of an arrear.—And it is hereby enacted, that if the whole or a portion of a kist or instalment of any month of the year, according to which the settlement and kistbundee of any Mehal have been regulated be unpaid on the first of the following month of such year, the sum so remaining unpaid shall be considered an arrear of Revenue.

VI. All Estates in arrear to be sold.—And it is hereby enacted, that except as hereinafter excepted, all Estates from which at sunset of the day preceding that fixed for a sale an arrear of Revenue may be due, shall on the said fixed day, or on the day or days following as hereinafter provided, be put up to publication

by and in the presence of the Collector or other Officer authorized by Government to exercise the powers of Collector in that behalf, and shall be sold to the highest bidder; and no payment or tender of payment made subsequent to sunset of the day preceding that fixed for a sale shall bar or interfere with the sale either at or after its conclusion.

VII. Claims to abatement and set off.—And it is hereby enacted, that no claim to abatement or remission of Revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, or render a sale under this Act void or voidable ; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it, was in the collector's hands, bar a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name alone and without dispute, unless after application in due time made by the defaulter, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the estate.

VIII. Exceptions.—Provided always, and it is hereby enacted, that no estate shall be sold for the recovery of arrears or demands of the description mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, shall have been affixed, for a period of not less than fifteen clear days preceding the day of sale, in the Office of the Collector, or other Officer as aforesaid, by whom the sale is intended to be made, in the Court of the Judge within whose jurisdiction the land advertised lies, in the Courts of all the Principal Sudder Ameens, Sudder Ameens and Moonsiffs of the District, and at the Police Thannah of the Division in which the estate to which the notice related, or part of it is situated, the same to be certified by the receipt of the Officer at whose Office such publication may have been made; and also at the Cutcherry of the Malgoozar of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose. And it shall be declared in the said notification that no payment or tender of payment of the arrear or demand due, which may be made after sunset of the day preceding the fixed day of sale, will bar or interfere with the sale either at or after the transaction.

First.—Arrears due from or to be recovered by the sale of estates not permanently settled.

Secondly.— Arrears other than those of the current or of the preceding year.

Thirdly.—Arrears due on account of estates other than that to be sold.

Fourthly.—Arrears of estates under attachment by order of the Judicial Authorities.

Fifthly.—Arrears due on account of Tuccavy, Poolbundee, or other demands not being Land Revenue, but recoverable by the same process as arrears of Land Revenue.

IX. Payment by non-proprietors. —And it is hereby enacted, that Collectors shall, at any time before sunset of the day preceding the fixed day of sale receive as a deposit from any party not being a proprietor of the estate in arrear, the amount of the arrear of Revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate. And in case the party so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a plaintiff in a suit pending before a Court of Justice for the possession of the same or any part thereof, it shall be competent to the Judge of the Zillah in which such estate is situated, to order the said party to be put into temporary possession of the said estate, subject to the rules in force for taking security in the cases of appellants and defendants. And if the party depositing whose money shall have been credited as aforesaid shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party, which would have been endangered, or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit with interest, from the proprietors of the said estate.

X. Wards' Estates and Minors. Attached by a Revenue Officer. Attached by a Court. —And it is hereby enacted, that no estate shall be liable to sale for the recovery of arrears which have accrued during

the period of its being under the management of the Court of Wards, and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a Revenue Officer, in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

XI. Exemption from sale, Proviso.—And it is hereby enacted, that it shall be competent to the Collector at any time before the sale of an estate shall have commenced to exempt such estate from sale ; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale of an estate shall have commenced, to exempt such estate from sale, by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect, to such estate. Provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.

XII. Sale.—And it is hereby enacted, that sales shall ordinarily be made by the Collector or other Office duly authorized by Government in that behalf in the Land Revenue Cutcherry at the Sudder Station of the District, provided, however, that it shall be competent to the Sudder Board to prescribe a place for holding sales other than Cutcherry whenever they shall consider it beneficial to the parties concerned.

XIII. Adjournment.—And it is hereby enacted, that in case the Collector, or other Officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his Cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

XIV. Order of sale.—And it is hereby enacted, that on the day of sale fixed according to Section III. of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the Towjee or registers in use in the Collector's Office of the District being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number.

XV. Deposit on purchase.—And it is hereby enacted, that the party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale as the Collector may think necessary, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed, 25 per cent. on the amount of his bid and in default of such deposit, the estate shall, forthwith, be put up again and sold.

XVI. Balance of purchase money.—And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth, day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty: or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to

the estate, or to any party of the sum for which it may subsequently be sold, and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of Public Revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold, and if default of payment of purchase money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section VIII. of this Act.

XVII. Rents stopped after notice for sale.—And it is hereby enacted, that whenever an estate shall have been sold as aforesaid, the Collector, or other Officer as aforesaid shall affix proclamation in the language of the District in his Cutcherry; and as soon thereafter as may be in the Cutcheries of the Moonsiffs and of the Darogahs of Police, within whose jurisdiction or jurisdictions any part of such estate may be situate; and also at the Cutcherry of the Malgoozar of such estate; or on some conspicuous place on such estate. Forbidding the ryots and under-tenants of such estate to pay rent falling due subsequent to the date therein specified and up to the date of the subsequent notice hereinafter prescribed by Section XXI. of this Act, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid within the period aforesaid.

XVIII. Appeal.—And it is hereby enacted, that it shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XVI., or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise: and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation, for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed interest, at the current rate of Government Securities, on the amount of deposit or balance of purchase money during the period of its being retained in the Collector's Office, and the order of the Commissioner shall, in such cases, be final.

XIX. Government may restore Estate. —And it is hereby enacted, that it shall be competent to the Commissioners of Revenue on the ground of hardship or injustice to suspend the passing of final orders in any case of appeal from a sale and to represent the case of the Sudder Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale; and the Local Government in any such case, may annul the sale and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.

XX. Sale when to the final. —And it is hereby enacted, that all sales of which the purchase money has been paid up as prescribed in Section XVI. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale, as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

XXI. Certificate of Title. —And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid, shall give to the purchaser a Certificate of title in the following form:

I certify that A. B. has purchased at Public Auction under Act XII, of 1841, Mehal C, and that his purchase has taken effect on and since the —day of — (being the date of sale.)

(Signed) D. E., Collector.

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate sold being vested in the person or persons named form the date specified : and the Collector shall also notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogah of the jurisdictions within which any part of the estate sold shall be situated, and also at the Cutcherry of the Malgoozar of the estate or on some conspicuous place on the estate; and shall apply the purchase money first to the liquidation of all arrears due upon the day of sale, or upon the day of the original sale, if the sale finally consummated be a re-sale; and secondly, to the liquidation of all outstanding demands debited to the Muhal in the Public accounts of district, holdings the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate sold, to be paid to their receipt on demand in the manner following; to wit, in shares proportioned to their recorded interest in the estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. Provided that, if prior to payment of any surplus that may remain of the purchase money after liquidation of all Government arrears and dues to the proprietor of the estate sold, or his representative, the same may be claimed by creditors in satisfaction of debts due by him to them, or by any one creditor, such surplus shall not be payable to any such claimant, nor shall it be withheld from the proprietor by attachment, except under precept, and in satisfaction of decrees of Court for such debts. And if the balance of purchase money have in any such case been paid away in liquidation of the proprietor's just debts by order of any Court, and a decree shall afterwards pass for annulling the sale, the proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.

XXII. Benamee purchase.—And it is hereby enacted, that any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was use, shall be dismissed with costs.

XXIII. Notice of annulment.—And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly noticed by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section XXI. of this Act, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon, at the highest rate of the current public securities, from the dates on which they were respectively paid in, to the date on which the refund is actually made.

XXIV. Purchase liable for Mesne Revenue.—And it is hereby enacted, that the party certified as the proprietor of an estate by purchase at public sale for the recovery of arrears of Revenue shall be answerable for all instalments of the Revenue of Government which may fall due subsequently to the day of sale: provided, however, that in the case of re-sales the purchaser shall be answerable for all instalments of Revenue which fell due subsequently to the day of the first sale.

XXV. Grounds and conditions of reversal by a Civil Court. Proviso.—And it is hereby enacted, that no sale for arrears of Revenue or other demands realizable in the same manner, made after the taking effect of this Act, shall be set aside by a Court of Justice except upon the ground of its having been made contrary to the provisions of this Act: And except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner, under Section XVIII. of this Act, and except the action in the Civil Court be instituted within one year form the date of the sale becoming final and conclusive, as provided in Section XX. of this Act: and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money; Provided, however, and it is hereby enacted, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged.

XXVI. Refund on reversal of sale.—And it is hereby enacted, that in the event of a sale being reversed by a final decree of a Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

XXVII. Enhancement of rents in Bengal, & c.—And it is hereby enacted, that the purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa an Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled after notice given under Section X. Regulation V. 1812, to enhance at discretion, (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions:

First. Tenures which were held as Istemreree or Mocurreree at a fixed rent, more than 12 years before the Permanent Settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been or may not be, proved to be liable to increase of assessment, on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly. Lands held by Khood Kasht or Kudeemee Ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force.

Fourthly. Lands held under *bona fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly. Farms granted in good faith at fair rents and for specified areas by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date. Provided that a written notice, specifying full particulars of the position, rent and area of the lands, the terms of the lease and the names of the parties shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the Public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an estate at a sale for arrears of Revenue shall be at liberty by suit in Court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good in faith at fair rents.

XXVIII. Under-tenures elsewhere.—And it is hereby enacted, that the purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section XXVII. Shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annual all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as the agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the last Settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bona fide* leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging or for gardens, tanks, canals, water-courses, or the like purpose, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Magoozars from the old established rated by special favour, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the pergunnah, Mouzah, or other local division such persons are

liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

XXIX. Local Government may reserve all under tenures.—And it is hereby enacted, that it shall be competent to the Local Government when it shall seem proper at any time before a sale for arrear shall have been actually made, to direct it to be made, subject to the leases, assignments, or other incumbrances, with which a proprietor in possession, his ancestors, or predecessors may have burthened his assessed estate, or to such of them as shall appear proper. In all such cases, notice of the condition imposed by the Local Government shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the Local Government may direct : provided, however, that in case the sale so restricted shall not realize an amount, equal to the arrear due at the time of sale, or there shall appear ground to apprehend, that by reason of the restriction the future realization of the Revenue will be endangered, it shall be competent to the Local Government at any time before such restricted sale shall have become final and conclusive in the manner laid down in Section XX. of this Act, to direct the sale to be cancelled, and a new sale of the estate to be made without other restriction than those contained in the exceptions specified in Clauses 1 to 5 of Sec. XXVII. of this Act. If after the sale has become final and conclusive, occasion should again arise to bring to sale for arrears an estate purchased with a restriction of the above description, it shall at all times be competent to the Local Government to direct that the *Muhal* shall be sold without any other restriction than those contained in the exceptions specified in Clauses 1 to 5 Sec. XXVII. of this Act, or with the reservation before reserved. In the former event, should the purchase money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the Local Government to direct a portion, or the whole of the excess to be paid to persons whose interests having been reserved at the first, shall become void at the second sale.

XXX. Purchase by a recorded or unrecorded proprietor or copartner, & C.—And it is hereby enacted, that excepting copartners of estates under Butwarrah who may have saved their shares from sale under Sections 33 and 34, Regulation XIX. 1814, any recorded or unrecorded proprietor or copartner who may purchase in his own name or in the name of another the estate of which he is proprietor or copartner ; or who by re-purchases or otherwise, may recover possession of the said estate after it has been sold for arrears under this Act: and likewise any purchaser of an estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to ryots and under-tenants which were not possessed by the previous proprietor at the time of the sale of the said estate.

XXXI. Arrears of rent.—And it is hereby enacted, that arrears of rent which at the date of sale may be due to the defaulter from his tenants, shall be recoverable by him after a sale by any process except distraint which might have been used by him for the purpose before the sale was made.

XXXII. Contempt.—And it is hereby enacted, that any Collector or Officer exercising the powers of Collector, in respect to sales, be competent to punish any contempt committed in his presence in open Cutcherry or Office for the time being, by fine, to an extent not exceeding Co.'s Rs.200, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

XXXIII. Default.—And it is hereby enacted, that a default to make good a bid by making the deposit required by Section XV. of this Act shall be held to be a contempt.

XXXIV. Operation of Act.—And it is hereby enacted, that the operation of this Act shall be confined to the Provinces of Bengal, Behar, Orissa and Benares, now subject to the General Regulations and to the Ceded and Conquered Provinces similarly subject to the General Regulations under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect land in the Town of Calcutta or the Settlements of Singapore, Penang or Malacca.

XXXV. Date of effect.—And it is hereby enacted, that this Act shall have effect on and after the First day of January 1842.
