

Transfer of Property Act,, 1882, Section 58(c) - Mortgage or conditional sale - Clause in the document is to the effect that the executant shall repay the amount within a period of five years and in case he fails to repay neither he nor his heirs or legal representatives will have any right to take back the said properties. Here only the right of the transferor is emphasised, while the right of the transferee to foreclose the mortgage is not spoken to. That would be so, if the documents were to be a mortgage by conditional sale. Only in such a case the first condition spoken to under Section 58(c) will come into play. It is well settled in law that the right of redemption and foreclosure are coextensive. The absence of such a right of the mortgagee could only mean that it is a conditional sale - Pandit Chunchun Jha v Sheikh Ebadat Ali (1955) 1 SCR 174 (AIR 1954 SC 345), distinguished.

[1992 PLRonline 0001](#)