



LAW COMMISSION OF INDIA

SIXTH REPORT

ON

REGISTRATION ACT, 1908

1957

CHAIRMAN
LAW COMMISSION
NEW DELHI,
July 13, 1957.

SHRI ASHOK KUMAR SEN,
Minister of Law,
Government of India,
NEW DELHI.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Sixth Report of the Law Commission on the Registration Act.

2. At its first meeting held on the 17th September, 1955, the Commission decided to take up the revision of the Registration Act and entrusted the task to a Committee consisting of Dr. N. C. Sen Gupta and Shri V. K. T. Chari.

3. The consideration of the subject was initiated by Shri Chari who formulated a scheme for the revision of the Act. The principles underlying the scheme were discussed at meetings of the Statute Revision Section held on the 14th April, 1956, and the 10th June, 1956. It was also decided that Shri P. Satyanarayana Rao, the senior Member of the section of the Commission dealing with Statute Revision should assist the Committee in drawing its report. A draft Report prepared on the basis of the scheme and the discussions thereon was thereafter circulated to all the Members of the Commission and their views were invited thereon. These views with the draft Report were discussed at meetings of the Statute Revision Section on the 29th December, 1956 and the 9th February, 1957. Some of the suggestions made by Members at these meetings were accepted and it was left to the Chairman and Shri P. Satyanarayana Rao to finally settle the Report in the light of the discussion.

4. Dr. N. C. Sen Gupta has signed the Report subject to a separate note, a copy of which has been annexed to the Report.

5. The Commission wishes to acknowledge the services rendered by its Joint Secretary, Shri D. Basu, in connection with the preparation of the Report.

Yours sincerely,
M. C. SETALVAD.

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REPORT OF THE LAW COMMISSION ON THE REGISTRATION ACT

1. The system of registration of documents was in vogue in British India from an early date. It was first introduced in Bengal by Bengal Regulation XXXVI of 1793; in Bombay by Regulation IV of 1802 and in Madras by Regulation XVII of 1802. These Regulations applied not only to the Presidency towns but also to the moffusil. The Regulations in the three different Presidencies were more or less in the same form. Taking Madras Regulation XVII of 1802 (as printed in Clarke's Regulation, 1848) as an example, we find that a Registrar was appointed for each *zilla*. It authorised the Registrar and required him to register the following documents:

- (1) Deeds of sale or gift of lands, houses and other real property;
- (2) Deeds of mortgage on land, houses and other real property, as well as certificates of the discharge of such incumbrances;
- (3) Leases and limited assignments of land, houses and other real property, including generally, all conveyances used for the temporary transfer of real property;
- (4) *Wasseathnamas* or Wills;
- (5) Written authorities from husbands to their wives to adopt sons after their (husbands') demise.

Section 6 of the Madras Regulation was similar in terms to the corresponding provisions of the Bombay and Bengal Regulations. (Mulla's Commentary on the Registration Act, Fifth Edition, at page 210, sets out in full Section 6 of the Bombay Regulation). This was the most important provision of these Regulations. *Firstly*, it provided that every deed of sale or gift registered under the Regulation would invalidate any unregistered deed of the same nature whether executed prior or subsequent to the registered deed. *Secondly*, it provided that every registered mortgage deed would have priority over any unregistered mortgage deed whether executed prior or subsequent to the registered mortgage. *Thirdly*, it stated that the object of the two preceding rules was to prevent persons being

defrauded by purchasing or receiving in gift or taking in mortgage real property which may have been before sold, given or mortgaged, and that persons would never suffer such imposition when they are apprised of the previous transfer or mortgage of the property. It, therefore, provided that if the buyer, donee or mortgagee had knowledge of the previous sale, gift or mortgage, the rule of invalidation of priority mentioned in the previous two clauses would not apply.

2. This system, subject to certain modifications introduced by Act I of 1843, continued in force till the Registration Act, XVI of 1864 was enacted except in Bombay where an important change was introduced by a Regulation of 1827. Section 13 of that Act provided that certain documents shall not be received in evidence in any Court or be acted upon by any public officer unless the document shall have been registered. [This section corresponds to clause (c) of the present section 49 and the documents listed therein correspond to the documents specified in clauses (a), (b), (c) and (d) of sub-section (1) of the present section 17]. It may be noted that this section itself did not specifically say that these documents must be compulsorily registered but the same result was secured by means of the sanction of refusing to receive in evidence such documents, if unregistered. It was Act XX of 1866 which provided, for the first time, that instruments of the four classes mentioned therein must be registered.

3. It will thus be seen that the system of registration which was introduced in 1793 remained an optional system till 1866. From 1866 certain classes of documents were required to be compulsorily registered. The Act of 1866 was replaced by Act III of 1877 which was amended from time to time till it was replaced by the present Act XVI of 1908.

Existing
system.

4. The Indian Registration Act, 1908 applied to the British Indian Provinces and, after the coming into force of the Constitution, to the corresponding Part A and Part C States. By Act III of 1951 the Act was made applicable to Part B States also. We have not thought it necessary to enquire into the system of registration in vogue in Part B States before 1951 as it would not seem to be of any practical value in relation to the revision of the Act which now extends to the whole of the territory of India excluding

only the State of Jammu and Kashmir (to which State the relevant legislative power of Parliament does not extend).

5. The sections of this Act may be broadly grouped under three heads. The first head relates to the documents which are registrable under the Act. The second relates to the procedure to be followed for getting a document registered under the provisions of the Act. The third deals with the administrative machinery provided under the Act and the respective duties of the different classes of officers. This classification leaves out of consideration the provisions relating to penalties etc.

Analysis of
the existing
Act.

6. The documents registrable under the Act fall under three categories. In the first category come documents relating to transactions which, according to the substantive law, can be effected only by registered instruments. It is hardly necessary to point out that the Registration Act does not lay down that any transaction, in order to be valid, must be effected by a registered instrument. What it provides is that when there is a written instrument evidencing a transaction, it must, in certain cases, be registered, while in other cases, it may, at the option of the parties, be registered, in the manner laid down in the Act. The obligation to get a transaction effected only by a registered instrument is laid down by the substantive law. Thus, the Transfer of Property Act requires that sales, mortgages, exchanges, gifts and leases can be effected only by registered instruments subject to an exception in case of some transactions relating to immovable property of less than Rs. 100 in value. Similarly, the Trusts Act requires that a trust in respect of immovable property should be created only by an instrument in writing and registered. The substantive law, however, does not provide the machinery for effecting registration. It is the Registration Act which provides the machinery for effecting registration and the parties to registrable instruments must necessarily have recourse to the provisions of this Act.

7. Under the substantive law, certain transactions can be effected without a writing e.g., partitions, releases, settlements etc. But if the transaction is evidenced by a writing and relates to immovable property, the Registration Act steps in and clauses (b) and (c) of section 17 (1) require registration of such documents, subject to the

exceptions specified in sub-section (2) of that section. If an authority to adopt is conferred in writing, other than a will, it is also required to be registered [sec. 17 (3)]. These documents fall under the second category.

8. It is open to the parties, if they so choose, to get certain documents registered at their option and this is permitted by section 18. Wills need not be registered but it is open to the parties to get them registered under the provisions of the Act. Such documents come under the third category.

9. The Act further provides for the consequences of non-registration of documents (sec. 49) and the effects of registration (secs. 48 and 50).

10. To enable a person to get a document registered under the Act, certain conditions have to be fulfilled and certain formalities observed. The document must contain a description of the property and has to be presented for registration in the proper registration office within the time limited by the Act. The details regulating presentation, such as time for presentation, place of presentation, persons entitled to present a document and the mode of enquiry before the Sub-Registrar, are all dealt with in various parts of the Act. When the Sub-Registrar refuses registration, an appeal to the Registrar is provided in Part XII of the Act. If the Registrar also refuses registration, a suit under Sec. 77 can be filed within thirty days of his order for a direction that the document be registered. This, in brief, is a summary of the procedure laid down by the Act.

11. The Act also prescribes the machinery for the administration of the Act. The administration of the Act is the duty of each State Government. Each State is divided for the purposes of the Act into districts and sub-districts. At the apex of the administration is the Inspector-General of Registration and under him there are a Registrar for each district and a Sub-Registrar for each sub-district. Besides these, there is a provision for the appointment of Inspectors of Registration-offices. These appointments are to be made by the State Government.

12. The Registers to be maintained by the registering officers are enumerated in Section 51 as Books 1 to 5. Indexes to Books 1 to 4 have to be maintained by the registering officers. The contents of these Indexes are specified

in section 55. The object of these books is not only to preserve an authentic record of the copies of the documents registered but also to afford facilities to persons interested in making a search in respect of title to immovable property. To make the registry as complete as possible, section 89 of the Act provides that copies of certain orders, certificates and instruments, though not required to be registered under the Act, are to be sent to the registering officers concerned and they are to be filed in Book 1 which pertains to non-testamentary documents relating to immovable property. This Book is intended to furnish as complete a history of the title to immovable property as possible. Section 87 of the Act cures any defects in the appointment of officers or in the observance of the procedure relating to the registration of documents.

13. Books 1 and 2 and Indexes relating to Book 1 are open to inspection by the public who are also entitled to copies of the entries therein. With regard to Book 3, only the executants (or their agents) are entitled to copies during their lifetime but after their death any person is entitled to copies. Book 4 contains documents registered under section 18 which do not relate to immovable property and any person executing, or claiming under, the document or his agent or representative is entitled to copies of the entries therein (section 57). Book 5 relates to deposits of Wills. Book 1 is the important register maintained in respect of non-testamentary instruments relating to immovable property. When a document is registered, an endorsement is made on the document, denoting the register number and the Book and the volume in which it is registered, in the following form—

“Registered as document No. 1443 of 1948, Book 1,
Vol. II, pp. 646 to 649.”

14. From this brief survey of the provisions of the Act it is clear that the object of the Registration Act is to preserve an authentic record of the terms of documents so that if a document be lost or destroyed or misplaced, a certified copy from the register can be obtained. Registration also facilitates the proof of execution of a document as its execution is admitted by the executant, before the Sub-Registrar. Yet another useful purpose that registration serves is to enable any person intending to enter into any transaction relating to immovable property to obtain

complete information relating to the title to such property and for this purpose to look into the register and obtain certified copies of the documents.

15. Though some sections of the Act have been amended, no revision of the Act has been attempted. We consider that the time has now arrived for a complete recasting of the Act.

16. It would have been better had the substantive law provided that transactions relating to immovable property, such as partition, release and surrender, should be effected only by registered documents. If a registered document were made obligatory in such cases, disputes relating to these matters would be reduced to a minimum. But these are not matters which can be provided for in the Registration Act. They will require attention when the reform of the substantive law is considered.

Scheme is adopted for revision.

17. Before dealing with the changes we recommend in the Registration Act, it is necessary to advert briefly to the general scheme of revision adopted by us in Appendix I which embodies our proposals. We have re-grouped the sections of the Act in such a way as to make its scheme logical and clear. The scheme is as follows:*

(Secs. 1-2) Part I.—This Part contains the usual provisions relating to the short title, extent and commencement of the Act, and the definitions.

(Secs. 17-18). Part II.—The substantive provisions relating to registrable documents are contained in this Part.

Part III.—In this Part we have grouped together all the provisions dealing with the procedure for registration of documents and the effects of registration and non-registration. The sections have been divided under the following sub-heads, arranged in Chapters.

(Secs. -22).

(a) Conditions to be fulfilled by a document before it is presented for registration.

[Secs. 23-33, 40, 52(1) (a)-(b)].

(b) Presentation of a document i.e., time for and place of registration and persons entitled to present documents for registration.

[Secs. 34-35, 41(1), 71, 74-77].

(c) Procedure to be followed after a document is presented for registration.

* The sections referred to in the margin are the existing sections.

- (d) Procedure on admitting the document to registration. [Secs. 52(1) (c), 58-62].
- (e) Procedure to enforce attendance of parties and witnesses and power to examine them. (Secs. 36-39, 63).
- (f) Procedure to be followed when a document is registered at a place where the whole or a part of the property is not situate. (Secs. 64-67)
- (g) Effects of registration and non-registration and irregularities not affecting the validity of registration. (Secs. 47-50, Sec. 89).

Part IV.—This Part provides for the filing in Book 1 of the copies of certain documents other than those which are registered. It should be mentioned here that we have not only enlarged the scope of the existing provision in section 89 by including in its ambit additional documents but also improved the procedure, with the object of obviating the necessity for the registration of such documents, at the same time making the Registry as comprehensive as possible so that it may afford complete notice regarding transactions affecting immovable property. The procedure we recommend is that when a copy of such a document is received from a court or a public officer, it should not only be filed in Book 1, as at present, but a memorandum of such a document should also be prepared and entered in Book 1 and all the entries in Book 1 should be transcribed in the Index. (Sec. 89).

Part V.—This Part deals with the procedure to be followed in making deposits of Wills and for the destruction of Wills lying unclaimed for a number of years. (Secs. 42-46).

Part VI.—This Part deals with the establishment of registration offices and matters connected therewith, which have been sub-divided under the following heads, in separate Chapters:

- (a) Registration Officers, powers and duties of registration officers and establishment of the registration offices. (Secs. 3-8, 10-16, 68-69).
- (b) Register Books and Indexes. (Secs. 51, 54, 55, 57).
- (c) Fees for registration, searches and copies. (Secs. 78-80).

(Secs. 81-84) Part VII.—This Part includes the provisions relating to penalties.

(Secs. 69,85-86, 88, 90-91). Part VIII.—This Part deals with Miscellaneous provisions.

18. In making our proposals, we have taken into consideration the suggestions received by us and have given effect to such of them as we considered useful. Special reference may be made to one suggestion which has received our particular consideration. It was suggested that panchayats should be empowered to register documents of a simple nature and that, if the experiment succeeds, their powers should be enlarged gradually. We do not think that it is expedient or practicable to adopt this suggestion. The members of panchayats would have no knowledge or experience of the procedure to be followed in the registration of documents. The experiment will entail considerable expense for providing the staff and equipment necessary to register the documents and to maintain the several Books and Indexes required by law. The offices of Sub-Registrars are so distributed within the districts as to be within easy reach of persons intending to register documents and no particular inconvenience has been brought to our notice in this behalf. We are, therefore, unable to accept this suggestion*.

Examination of the provisions of the Act, indicating the changes required.

19. We now proceed to examine the provisions of the Act seriatim, pointing out the problems which have arisen and indicating, broadly, our proposals for their solution.

Part I.—Preliminary

Sec. 1. 20. We are of the opinion that there is no reason why State Governments should be given the power to exclude any areas from the operation of the Act.

Proviso to Sec. 1(2), omitted. We, therefore, recommend that the Proviso to sub-section (2) of section 1 be omitted.

Sec. 2. 21. The more important of the changes which we recommend in the definition clauses contained in section 2 are as follows:

“Addition”. (A) In the definition of ‘addition’, the reference to ‘caste’ has already been omitted, by the Indian Registra-

*Dr. Sen Gupta, however, takes a different view and has dealt with the matter in his note which forms a part of our report.

tion (Amendment) Act (XVII of 1956). The reference to 'rank and title' should also be omitted in view of our present social structure and the constitutional provision in regard to the conferment of titles. It is also necessary to provide that in the case of a married woman, her husband's name should also be stated.

"Immovable
property"
Sec. 2(9),
[omitted]

(B) The definition of "immovable property" in clause (6) should be redrafted so as to make the meaning clear and to enable a separate definition of movable property, which is, in fact, a counter-part of the definition of "immovable property", to be omitted.

There is a conflict of views on the question whether standing timber when it is not intended to be severed immediately should be treated as movable or immovable.¹ We are of the view that for the purpose of this Act, standing timber should not be regarded as immovable property whether such timber is intended to be severed immediately or not. It may be noted that the definition of "immovable property" in the Transfer of Property Act excludes standing timber.

In accordance with the prevailing judicial opinion, it should be made clear that fruits upon and juice in trees should not be considered as immovable property, whether they exist at the date of the contract or are to grow in future.²

Hardship is caused where machinery embedded in or attached to the earth is sold without the land and is treated as immovable property. The purchaser has to pay stamp duty on the value of the machinery as well as the land and get the document registered at considerable expense. To avoid this hardship we consider that it should be made clear that machinery embedded in or attached to land, when dealt with apart from the land, should be regarded as movable property and not immovable property.

It may be necessary to redraft the definition of "immovable property" in the Transfer of Property Act so as to bring it in consonance with the definition of immovable property suggested by us for the purposes of this Act.

(C) The existing definition of "lease" which includes "Lease" "an agreement to lease" gave rise to conflicting decisions

¹ *Seem Chettiar v. Santhanathan Chettiar*, 20 Mad. 58.

² *Raja Devi v. Yaqub*, (1925) 47 All. 738.

until the law was settled in *Hemantakumari's case*¹ by the Privy Council. Dealing with this provision their Lordships stated.

"An 'agreement for lease', which a lease is by the statute declared to include, must, in their Lordships' opinion, be a document which effects the actual demise and operates as a lease.....In the context where it occurs and in the statute in which it is found", (the agreement for lease), 'must in their opinion relate to some document that creates a present and immediate interest in the land'".

If, in the context of this definition, an "agreement to lease" is to be understood as interpreted by their Lordships, it is unnecessary to retain this expression in the definition; for, an agreement to lease is, practically, a lease. It has been accepted by subsequent decisions that lease in the Registration Act bears the same meaning as in the Transfer of Property Act². We have, therefore, omitted from the definition of lease an "agreement to lease" and adopted the definition of lease given in section 105 of the Transfer of Property Act.

"Representative".

(D) Sections 40 and 41 of the Act do not exclude the operation of section 32. Therefore, a will or authority to adopt can be presented for registration after the death of the testator or the donor of the authority to adopt. Difficulty, however, arises when the donee of the authority is a minor and is incapable of presenting the deed of authority to adopt. The minor may be an adopted son himself, or the widow of the donor, having no natural guardian or certificated guardian. In a case of the former class, the Privy Council held, in *Venkatappayya v. Venkata Ranga*,³ that though the ties in the natural family were severed, the natural father of the adopted boy could validly present the document for registration⁴. The improper presentation of a document is a defect of a radical nature which renders the document void. It is not a defect in procedure curable under section 87 of the Act⁵. We have enlarged the scope of the present definition to get over this difficulty. [We have also proposed that such defects should be curable under section 87].

¹ *Hemantakumari v. Midnapur Zamindari Co.*, 47 Cal. 485 (P.C.)

² *Janakinath v. Mahendranarayana*, 57 Cal. 775.

³ *Venkatappayya v. Venkata Ranga*, I.L.R. 52 Mad. 175 (P.C.)

⁴ *Lakshmiipathi Raju v. Seethayya*, (1944) 2 M.L.J. 126.

⁵ *Majib-un-Nissa v. Abdur Rahim*, 23 All. 233 (P.C.) Also see footnote at page 144 of Mulla's commentary.

It has been suggested that instead of a relation of the minor, a *de facto* guardian may be allowed to act on behalf of the minor. But the Muhammadan law does not recognise a *de facto* guardian as has been held in *Imambandi's case*.¹ A *de facto* guardian has been recognised in Hindu Law but the nature of the acts of management from which an inference of guardianship can be drawn has not been clearly laid down. Further, section 11 of the Hindu Minority and Guardianship Act, 1956 (Act XXXII of 1956) now provides that a *de facto* guardian shall not be entitled to deal with the property of a minor. Hence, the suggestion cannot be accepted.

22. There is no definition of the word "resides" in the Registration Act and there is doubt as to whether residence includes temporary residence. Since the word "resides" or similar words occur in other Acts as well, we recommend the insertion of a definition of the word "resides" in the General Clauses Act, 1897, on the lines of Explanation I to section 20 of the Code of Civil Procedure, 1908.

23. A suggestion was made that the words "instrument" and "document" should be defined and that only one of these words should be used throughout the Act instead of both of them as at present. The word "document" is already defined in section 3(18) of the General Clauses Act. It may be noticed that in the Registration Act, the word "document" is used throughout in a wider sense while the word "instrument" is used in sections 17 and 18 with reference to documents which are registrable. "Instrument" has, in the context, a restricted meaning. It refers to a document which effectuates a transaction. No inconvenience has so far been felt by the use of the two words in the Act. We are, therefore, of the view that it is unnecessary to define an instrument.

Part II.—Of the Registration Establishment

24. Sections 3 to 16 deal with the registration establishment. We recommend no major alteration in this group of sections, but only consequential and verbal changes. However, we are not in favour of the retention of the clause in section 10(1) which provides for the exercise of the functions of the Registrar by the District Court dur-

¹ *Imambandi v. Mustaddi*, 45 Cal. 878 (P.C.).

ing a temporary vacancy. There is no reason why there should be any difference in this respect between the areas dealt with by sub-sections (1) and (2) of the section. We recommend a uniform provision.

Part III.—Of Registrable Documents

Sec. 17 (1)
(a).

25. Clause (a) of sub-section (1) of section 17 refers only to gifts of immovable property. Under section 123 of the Transfer of Property Act, a gift of immovable property can be effected only by a registered instrument. Clause (a) was first introduced before the Transfer of Property Act, 1882 when oral gifts of immovable property were valid, but, if made in writing, required registration. We propose to substitute a new clause (a) which is wider in scope and includes in it all documents which are required to be registered to afford validity to the transactions effected thereby.

Sec. 17 (1)
(b).

26. Clause (b) requires registration of certain instruments in respect of any right, title or interest of the value of rupees one hundred and upwards affecting immovable property. We consider that the time has come for removing the exemption in respect of instruments where the value of the right, title or interest dealt with is below one hundred rupees. If this exemption is removed it would mean that even for transactions of smaller value there will have to be documents requiring both stamp duty and registration fees. This cannot, however, be effected by a mere change in the Registration Act, without amending the Transfer of Property Act under which a sale or mortgage does not require even a writing if the value of the property is below one hundred rupees. The question whether this limit should be removed from the Transfer of Property Act is one which requires careful consideration as it involves a question of policy. It is not possible to anticipate our conclusion on this question and we, therefore, recommend that this provision in section 17(1)(b) of the Registration Act may be retained for the present.

27. Under clause (b) as it stands, any document creating a right, title or interest for a consideration of less than Rs. 100 does not require registration even though the

value of the immovable property in respect of which such right etc. is created is higher than Rs. 100. This does not cause any difficulty in the case of mortgages where the principal amount is less than Rs. 100. But the position becomes anomalous when, for example, a transaction relates to a right of way or easement where the value of the right is less than Rs. 100 but that of the immovable property is much more than Rs. 100. We think it necessary to provide that any document which creates such a right over immovable property of the value of Rs. 100 or more should be registered. This will not affect the stamp duty, since, for the purposes of the Stamp Act, the value of the right alone is to be taken into consideration.

28. In the case of an assignment of a mortgage there is a conflict of opinion as to the test to be applied for determining the value for the purpose of registration. The generally accepted view is that the consideration for the assignment deed should be the criterion.¹ The solitary exception to this is the view taken by the Punjab High Court.² In order to resolve this conflict we recommend that an Explanation be added to the effect that in the case of an assignment of a mortgage the consideration for the deed of assignment should be deemed to be the value for registration.

29. We consider that it is not necessary to retain clause (c). Two views have been taken on the scope of this clause. The first is that even if the transaction is evidenced by a registered instrument, the receipt of payment of money under such document should be registered, if the payment is made on account of the creation, declaration etc., of any right, title or interest specified in sub-clause (b). The other view is that it applies only to transactions to which clause (b) will not apply as in the Punjab where the Transfer of Property Act is not in force and oral sales and mortgages are possible. If, in the receipt, a recital is made that the amount was the consideration on account of the creation etc., of a right, title, or interest in immovable property the document would according to the Punjab High Court, require registration even though the transaction itself was oral.³ The better view seems to be that

Sec. 17(1) (c)
(Omitted).

1 *Satra v. Visram*, (1872) 2 Bom. 97; *Subramaniam v. Perumal* (1895) 18 Mad. 454

2 *Ram Sarup v. Mubrak*, (1906) P.R. No. 1, p.1.

3 *Sher v. Muzaffar*, (1920) 1 Lah. 25.

taken by the Full Bench of the Patna High Court in *Chamroo v. Stephen*,¹ viz., that where there is already a registered sale deed the subsequent receipt acknowledging payment of consideration on account of the creation of the right does not require registration. If the Transfer of Property Act is extended to all the States including the Punjab, there will be no need to retain clause (c), even for cases where sales and mortgages are oral.

30. Our recommendation, therefore, is that the Transfer of Property Act should be extended throughout India, and that section 17(1)(c) of the Registration Act should be omitted. If our recommendation to so extend the Transfer of Property Act is not accepted, clause (c) of the sub-section should be redrafted so as to make it clear that it does not apply to receipts in respect of transactions already registered under clause (b).

Sec 17(1),
(c) 31. Leases of immovable property from year to year or for any period exceeding one year or reserving a yearly rent, can be created, under section 107 of the Transfer of Property Act, only by a registered instrument. Section 17(1)(d) of the Registration Act requires that leases of immovable property from year to year or for any term exceeding one year or reserving a yearly rent should be registered. The language, it will be noticed, is similar to the first paragraph of section 107 of the Transfer of Property Act. At first sight it would seem that the provision in section 17(1)(d) was unnecessary as there was already a requirement of registration under the Transfer of Property Act and that the case would be covered by clause (a) of sub-section (1) of section 3 which we have proposed in Appendix I. However, section 117 of the Transfer of Property Act makes an exception in favour of agricultural leases and there is no requirement under the substantive law that such leases should be in writing. If they are in writing, they have to be registered. If clause (d) of sub-section (1) of section 17 is omitted and clause (b) of that sub-section is retained, all agricultural leases—even leases for periods shorter than a year if in writing, would become registerable. Such a change would obviously be undesirable. The existing exemption can be maintained only by retaining clause (d) of section 17(1) and requiring registration of leases of immovable property from year

¹ *Chamroo v. Stephen*, (1947) 25 Pat. 523.

to year or for any term exceeding one year or reserving a yearly rent. This would exclude other agricultural leases, such as leases from month to month or for a term of a year or less than a year. There is a Proviso to section 17(1) which empowers the State Government to exempt from the operation of the sub-section leases executed in any district or part of a district the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed Rs. 50. This is an enabling provision for the benefit of agriculturists and should be retained to obviate the necessity of getting such leases registered. We, therefore, recommend that both section 17(1)(d) and the Proviso should be retained.

32. Clause (e) relates to non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree, order or award affects or purports to affect immovable property of the value of Rs. 100 and upwards. The clause, as it now stands, would cover all decrees or orders whether executable or not and also awards. If the decree or order is an executable one, it will attract the provisions of Order 21, rule 16, C.P.C. under which the transferee will have to produce the instrument of assignment before the executing court and apply for execution, in the same manner as a decree-holder, after getting the transfer recognised by the Court. That rule provides that the assignment should be in writing. The further requirement of registration seems to be unnecessary as the Court will have in any case, to inquire into the validity of the assignment even if the assignment is registered under the Registration Act, though, of course, registration might give some additional weight to the assignee's case. We have, therefore, excluded from this clause executable decrees and orders. It is, however, considered that if, under Order 21, rule 16, C.P.C., a provision be added making it obligatory on the part of the assignor to report the assignment to the Court after notice to the judgment-debtor within three months from the date of the assignment, the requirement of registration would further lose its force.

33. Clause (e) places awards on the same footing as decrees or orders of court. In view of the provisions of the Arbitration Act of 1940, this requires consideration. Before this Act, an award itself created rights and a suit could be filed to enforce such an award. In such circum-

stances the award itself was a document declaring or creating rights and a transfer of such an award would undoubtedly amount to a transfer of the rights under it. Under the Arbitration Act, 1940, the award has no such effect and a suit to enforce it is not maintainable (sec. 32). It is to be filed in Court under section 14 and a judgment has then to be passed in terms of the award (sec. 17). The result of these provisions is that it is the decree passed by the Court that creates rights and not the award, and if the award is not followed by judgment and decree, it becomes useless. If, however, there is an assignment of the inchoate rights under the award, such an assignee may take appropriate steps under the Act. Hence, it would appear to be unnecessary to provide for the compulsory registration of an assignment of an award. We recommend that the words "any award" in clause (e) be omitted.

34. We now pass on to sub-section (2) of section 17. Clause (1) of this sub-section exempts composition deeds from the purview of clauses (b) and (c) of sub-section (1). A composition deed may create a trust in respect of immovable property or movable property exclusively or may include both. It has been decided by the Privy Council in *Govind Ram v. Madan Gopal*¹ that a composition deed which creates a trust in respect of immovable property requires registration on the ground that the exemption in the Registration Act does not override the requirements of a valid trust under the Trusts Act. We, however, think that a composition deed creating a trust filed in the insolvency proceedings and accepted by the Court need not be registered and it would be sufficient if a copy of the document is sent to the Sub-Registrar to be filed under section 89. There may be another class of composition deeds which deal with immovable property without creating a trust, as, for example, when a debtor distributes his land in small parcels to various creditors in satisfaction of their claims against him. We are not in favour of extending the said privilege to such documents, as they affect rights in immovable property and we think that they should be covered by clause (b) of section 17(1). In cases where the composition deed relates to movable property, there is no need for registration. Hence, if the exemption in section 17(2)(i) be omitted, all composition deeds relating to immovable

¹ *Govind Ram v. Madan Gopal*, 72 I.A. 76: (1945)All. 241.

property, whether creating a trust or not, would be caught by clause (b) of section 17(1) except those which are taken out of it by the exception which we have provided in proposed section 3(2) (f) (read with section 42) of Appendix I. We have made a provision for sending a copy of a composition deed in respect of immovable property which is accepted by an Insolvency court, to the Sub-Registrar (under section 42 of Appendix I). Such a composition deed need not be registered. We, therefore, recommend that, clause (i) of section 17(2) be omitted.

35. In view of section 82 of the Companies Act, 1956, which lays down that a share in a Company is *movable property*, it is not necessary to retain clause (ii). We recommend that it be omitted. Sec. 17 (2)
(ii)
(Omitted)

36. Clause (iii) should be retained with verbal changes. Sec. 17 (2)
(iii)

37. Clause (iv) may be redrafted as "any endorsement upon or transfer of such debenture". The rest of the clause may be omitted to make the meaning clear. The real intention of this clause is to exempt the transfer of debentures which come within the purview of clause (iii) from the requirement of registration. Sec. 17 (2)
(iv).

38. A suggestion has been made that documents falling within clause (v) should be made compulsorily registrable. We do not consider that there is any justification for making this change. There is no need to have two registered documents in respect of transaction. The clause should, therefore, remain as it is. Sec. 17 (2)
(v)

39. Clause (vi) of section 17(2) is a somewhat curious provision. It proceeds to create an exception to clauses (b) and (c) of sub-section (1) of the section in the case of certain decrees or orders of court, on the assumption that there is a provision requiring decrees or orders to be registered. But section 17(1) (b) and (c) refer only to non-testamentary instruments, and a decree or order cannot by any stretch of language be said to be a non-testamentary instrument. This clause was amended in 1929 to get rid of the effect of the decision in *Hemantakumari's case*¹ which laid down that where there is a compromise which is recorded and made a decree of the court, whether the property covered by the compromise relates to the subject-matter of the suit or is outside it, there is

¹ *Hemantakumari v. Midnapur Zemindary Co.*, 47 Cal. 485 (495-496) C.

no need to register the compromise, as it is exempted under section 17(2) (vi).

We, however, think it unnecessary to insist that a decree or order of a court relating to immovable property outside the suit should be registered and it would be sufficient in our opinion if a copy of such decree or order is sent to the Sub-Registrar having jurisdiction under section 89 of the Act (*vide* sec. 42 of Appendix I).

Clause (vi) should, therefore, be omitted.

Sec. 17 (2),
(vii), (viii)
(ix), (x), (xi)
(xii)

40. Clauses (vii), (viii), (ix), (xa) and (xii) will also be covered by the new provision proposed by us in section 3(2) (f), read with section 42 of Appendix I. These clauses should, accordingly, be omitted.

Sec. 17(2)
(xi).

41. Clause (xi) should be retained with the omission of the words at the end "when the receipt does not purport to extinguish the mortgage." A mortgagee may, while receiving the last payment due on the mortgage or any sum lesser than the mortgage-debt, issue a receipt acknowledging the discharge of the debt in full by such receipt. There is no reason why the receipt should become compulsorily registrable merely because it also states the fact that by the payment recited therein the debt is finally extinguished. Any person who has notice of the registered mortgage will naturally inquire whether it is extinguished or not. Strictly speaking, it is not the receipt acknowledging the discharge of the debt which extinguishes the security but the fact of the discharge of the debt. It would accordingly, appear to be unnecessary to require the registration of receipts in such cases.

42. We have created a new exception in respect of the counterpart of a lease where the lease corresponding thereto has itself been registered *vide* section 3(2) (d) of the proposal. We have no doubt adopted the definition of lease in section 105 of the Transfer of Property Act; but we have not extended the procedure of executing a lease contained in section 107 of the Transfer of Property Act to all leases. The Transfer of Property Act does not apply to all the States, for example, the Punjab and also does not apply to agricultural leases (*vide* section 117). Thus, there is a possibility of leases being executed which do not fall within the provisions of the Transfer of Property Act and they may have counterparts. If the lease itself is registered, there is no necessity in such

cases to require these counterparts also to be registered. Hence the necessity for the new provision.

43. The Explanation to sub-section (2) of section 17 ^{Expl. to Sec. 17 (2).} should be retained. We propose that sub-section (3) be retained.

44. An oral authority to adopt is valid under the law, ^{Sec. 17 (3).} but if it is in writing other than a Will, it requires registration. The substantive law should be altered by providing that an authority can be conferred only by a writing, which should be registered except where the writing is a Will.

One of us, Dr. Sen Gupta, thinks that in view of the provisions of the Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956) a widow does not need the authority of the husband to make a valid adoption. The position does not, however, appear to be clear having regard to the language of the Act; we have thought it advisable therefore to retain the provision.

45. Incidentally, a question as to age arises in connection with a Will. A Hindu can confer an authority to adopt even if he has not attained the age of majority of 18 or 21 as the case may be, under the Indian Majority Act. At what age he can make a Will is a question of substantive law. In our view, the age at which a Hindu would be competent to confer an authority to adopt shall be the same whether the authority to adopt is conferred by a Will or a deed.

46. It has been suggested that a deed of adoption should be made compulsorily registrable. But unless the substantive law is altered by providing that a registered instrument shall be required to effect an adoption so that the only evidence of an adoption can be a registered instrument, we do not think that such a provision can be appropriately enacted in the Registration Act. The document we have in mind is a document which merely receipts the factum of adoption and creates the status of the adopted son but does not declare or create interest in any specific properties. It may be mentioned that the Hindu Adoptions and Maintenance Act, 1956, recently passed by Parliament, does not go so far as to provide that an adoption can be made only by a registered instrument but it offers an incentive towards registration by creating a presumption of a valid adoption in cases where

the adoption is evidenced by a registered deed. Section 16 of the Act says—

“Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

It would be easy to take another step forward and provide that adoptions shall be made only by a registered document.

Sec. 18 [cls.
(a)-(e)]
(Omitted).

47. Section 18 provides for what is generally referred to as optional registration, that is, for cases in which a person may get a document registered even though such registration is not compulsory under section 17. This being the scope of section 18, we consider that clauses (a) to (e) are unnecessary as each of them is only the obverse of a corresponding clause in section 17. Therefore, the purpose of section 18 would be served by retaining clause (f), with verbal alterations.

Secs. 19-22.

48. Excepting verbal changes, particularly in subsections (2) and (3) of section 21, no other change is required in these sections. But we propose to put them under a new sub-head, *viz.*—“Conditions of admissibility for registration” (*vide* Chapter I of Part III of Appendix I).

Part IV.—Time of Presentation.

49. We consider that the period of four months provided for presenting documents for registration should be reduced to one month. This would reduce the opportunities to bring ante-dated deeds into existence. It is also desirable that registration should be prompt. No serious hardship is likely to be caused, as there is a power to excuse delay (sec. 25), and we are also recommending a reduction in the amount of the fine. The period of four months in the Proviso should, however, be retained, as it relates to copies of decrees or orders which may take some time to prepare.

Sec. 23 A.7
(Omitted).

50. We recommend that section 23A may be omitted. We have provided that any irregularity or defect with

respect to the person who presents a document should not invalidate the registration. There is, therefore, no necessity for re-registration.

51. Consequential changes have to be made in section 24. The reference to re-registration should be deleted; and the period of four months should be reduced to one month.

52. It is quite inequitable to levy a heavy penalty in respect of documents presented for registration after the prescribed time. A multiple of the registration fee will usually be very high, as the fee for registration is in most States an *ad valorem* fee. We, therefore, recommend that the fine payable under section 25(1) should not be more than ten rupees in addition to the registration fee payable. The wording of the section is also not happy. The words "owing to urgent necessity" are not appropriate and should be substituted by the words—"On proper cause being shown".

53. Section 26 should be retained, with verbal changes.

54. A suggestion has been made that persons taking under a Will should be compelled to present it for registration after the death of the testator within a specified period. We are not inclined to accept the suggestion. Section 27 should remain as it is.

Part V.—Place of Registration.

55. Section 28 specifies the place where a document relating to immoveable property should be registered. It has to be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. The expression "some portion" has been understood to mean any portion and not a substantial portion¹. In the undermentioned Privy Council Case¹ the property which gave jurisdiction to the Sub-Registrar was 500 sq. yds. whereas the other properties included in the document were extensive and of the value of several lakhs of rupees. If the Registrar has no territorial jurisdiction to register a document, the registration is void. Such a defect is treated as going to the root of the matter, not being curable under section 87 as a defect in procedure. Parties have to choose the Sub-Registrar before whom they should present the document in cases where

¹. *Hari Ram v. Sheodayal Mal*, 11 All. 136 (P.C.).

different items of property comprised in the document are situate in different jurisdictions. To secure registration at a nearby office, as is evident from the reported decisions, which are numerous, the parties have resorted to the objectionable device of including a fictitious, non-existing or insignificant item of property in the deed to enable the Sub-Registrar of their choice to register it. Under the law, as it stands today, it is open to the parties to the deed or strangers to impeach the registration on the ground that it is void, as these devices have been held by the Privy Council to be a fraud on the registration law.

56. Of the decisions of the Privy Council, it will be convenient to refer first to *Harendra Lal Chowdhuri v. Hari Das*¹, the leading case on the subject. The registration of a mortgage deed was secured in that case by including an item of property described by metes and bounds and also referred to as No. 25, Guru Das Street in Calcutta. There was no such property in Calcutta and the mortgagor had never any title to the property so described by metes and bounds. This item of property was a fictitious item, deliberately included by the parties to obtain registration of the document in a Sub-Registrar's office situate nearby. The other properties included in the deed were outside the jurisdiction of the Sub-Registrar who registered the document. The registration was held to be void on the ground that the Sub-Registrar had no jurisdiction to register the document. In *Biswanath v. Chandra*², the property which gave jurisdiction to the Sub-Registrar was not fictitious. The mortgagor, with a view to obtaining registration, purchased an insignificant share of a village and included it in the mortgage deed. The only object of the purchase, it was found, was to get the document registered in a Sub-Registrar's office nearby and there was evidence to the effect that the mortgagee never took possession of the purchased property and, in fact, never intended to have any interest in it. The Judicial Committee invalidated the registration, holding that the case stood on the same basis as the previous one³, even though the property was in existence. These decisions^{2,3} were reviewed by the Judicial Committee in *Collector of Gorakhpur v. Ram Sundar*⁴, known as the

¹. *Harendra Lal v. Hari Das*, (1914) 41 Cal. 972 (P.C.).

². *Biswanath v. Chandra*, (1921) 48 Cal. 509 (P.C.).

³. *Harendra Lal v. Hari Das*, (1914) 41 Cal. 972 (P.C.).

⁴. *Collector of Gorakhpur v. Ram Sunder*, (1934) 56 All. 468 (P.C.).

Gorakhpur case. In that case, the item included for the purpose of registration was a platform situate in a walled garden to which there was no access and which was not capable of any enjoyment. The Judicial Committee held that the principle applied to cases where the deed, though relating to an existing property, did not relate to a specific property for any effective purpose of enjoyment or use. This principle was again applied by the Privy Council in *Inuganti Venkatarama v. Sobhandari*¹ where also there was an existing property, being a site of 1 sq. yd. out of a larger extent. The case was held to be covered by the decision in the *Gorakhpur case*, and the registration was held to be void. There are also a number of decisions of the High Courts in India to the same effect. The point for consideration is whether such unsatisfactory consequences can be avoided in cases where the parties have resorted to such a device merely in order to avoid the necessity of going to a distant place for registration. It is inequitable and unjust that the very persons who were parties to the transaction and secured registration by such a device should later be allowed to impeach the registration as being a fraud on the registration law. As long as rights of third parties are not affected no harm is likely to be caused by recognising registration effected by a resort to such devices. Nobody would be prejudiced by registration under a different jurisdiction, because there is provision in the Act for sending copies of the document to the respective Sub-Registrars within whose jurisdiction the various items of property to which the document relates are situate. However, registration under a different jurisdiction is sometimes resorted to also with a view to defeat the rights of third parties, especially when there is a race between two rival purchasers of the same property from the owner. The owner may give an unregistered sale deed to A and later give another ante-dated sale deed to B and have it registered in an office far away, by including in it a fictitious or non-existent or insignificant item of property so as to withhold knowledge of the transaction from the prior purchaser. No machinery is provided under the Act for an elaborate enquiry by the Sub-Registrar to verify whether the property comprised in the deed exists within his jurisdiction. In our country, there is no registry of titles of property as in some of the Continental countries. It is, no doubt, true that in surveyed areas there are land registers and in municipal areas

1. *Inuganti Venkatarama v. Sobhandari*, (1936) 59 Mad. 539

there are municipal registers. But it is common knowledge that these registers are not kept up-to-date and do not always show the real state of the title, as *benami* transactions are recognised by the law. There is, therefore, no means of easily ascertaining the existence or otherwise of the property specified in the document which is relied on for conferring jurisdiction on the Sub-Registrar.

In view of these difficulties, it seems to us that the only safe rule to adopt is that if the Sub-Registrar is *prima facie* satisfied regarding the jurisdiction to register the document and registers it, such registration should not be allowed to be impeached on the ground of want of jurisdiction by the parties to the transaction. But if by obtaining such registration third parties who had no notice of the transaction are affected, such persons should be permitted to establish that their rights are not affected. This principle was adopted by the Madras High Court in *Venkataswami v. Venkata Subbayya*¹. A person who alleges his own baseness ought not to be heard and if two persons are *in pari delicto*, the person in possession should not be disturbed.

57. We, therefore, suggest that the following principles should be given effect to:

(1) The Sub-Registrar should have jurisdiction to register a document if any item of property specified in the document exists within his jurisdiction, whether the parties intended to transfer it or not and even if it is insignificant in extent or value;

(2) if no property exists within his jurisdiction, the Sub-Registrar should refuse registration;

(3) if the Sub-Registrar *bona fide* believes that the property exists within his jurisdiction and registers the document, the registration should not be invalidated even if ultimately it turns out that the property was non-existent or fictitious, provided that, if by the inclusion of a fictitious or non-existent or insignificant item, third parties not having notice of the transaction thereby are affected such registration shall not affect the rights of such third parties;

(4) The parties to the registration should not be entitled to impeach the registration on the ground that the item which gave jurisdiction to the Registrar to register the

¹. *Venkataswami v. Venkata Subbayya*, (1932) 55 Mad. 507.

document was either non-existent or fictitious or insignificant.

58. Since section 40(1) specifies an instance where a document can be presented to any registering officer irrespective of his local jurisdiction, it would be proper to bring that instance into section 28 by way of an exception to the general rule laid down therein. Sec. 40. (1).

59. No change in principle is required in sec. 29, but we propose to combine it with section 28, with verbal changes. Sec. 29.

60. Sub-section (1) of section 30 is unnecessary in view of the extended powers proposed to be given to all Registrars. With regard to clause (2), the present position is that only the Registrars of districts of the three Presidency towns are entitled to register documents without regard to the situation of the property in any part of India. It has been suggested that this power should be extended to a Registrar having jurisdiction over the capital town of any State in India. We consider that the power should be given to all Registrars and not merely to those having jurisdiction in State Capitals. Under section 67, when a registration is made by a Registrar in whose jurisdiction no part of the property is situate, or only some portion or item is situate, the Registrar is required to send memoranda to the other Registration officers within whose jurisdiction any part of the property is situate. We intend to provide that the memoranda so sent should be entered in the relevant Book and Index. There should, therefore, be no objection to our proposal to extend the power under sub-section (2) of section 30 to all District Registrars. Sec. 30 [sub-sec. (1), omitted].

Part VI.—Of Presenting Documents for Registration

61. Section 32 is intended to specify the persons who should present documents for registration, while section 31 deals with the office at which the registration has to be made. But while section 31 does not mention "presentation", a reference to presentation is made in section 32 and exceptions are also provided therein. We consider that "presentation" which is a formal act and the initial step in registration should be mentioned in section 31 itself. Sec. 31.

62. Consequent upon the mention of 'presentation' in section 31, as suggested by us, some verbal changes will

have to be made in section 32. Thus, the words "at the proper registration office" and the reference to section 31 in the exceptions under section 32 have to be omitted. The reference to section 89 is unnecessary because that section relates to the sending of copies of orders for filing and not for registration. The reference to section 88 which exempts various public officers from personal attendance at the office of the Registrar for registration, may be retained. The provision in section 40 relating to Wills and authorities to adopt should be incorporated into section 32.

63. It has been suggested that the provisions relating to execution before the Registrar should be relaxed in the case of Powers of Attorney. As a power of attorney is granted for the very purpose of admitting documents executed by Pardanashin ladies and others who cannot attend in person, we do not approve of this suggestion. The present procedure enables the Registrar or Sub-Registrar concerned to be satisfied that the original has been executed by the donor of the power.

Sec. 33. 64. Excepting some verbal alterations, no change is required in section 33.

Sec. 34. 65. The list of sections subject to which the provisions of section 34 are to operate will have to be altered in view of the re-arrangement proposed by us. The Proviso should also be amended on the lines suggested in reference to section 25(1), excepting that the maximum period under the present Proviso should be two months. Provision will also have to be made for cases where the executants do not appear within the specified period. We suggest that in such cases the Registrar should make an entry to that effect on the document and return it without registration to the party who presented it.

Sec. 35. 66. It is common knowledge that a person relying on a document required by law to be attested is often called upon to prove due attestation after a long lapse of time. In very many cases the attestors would not be alive. If none of them is alive an almost impossible burden is cast on the person relying on the document to prove due attestation. There are reported decisions in which a plea of want of attestation has been successful in such circumstances, the courts being bound to give effect to such a technical plea in view of the existing law. To avoid such difficulties, we suggest that there should be an inquiry

at the stage of registration as to the due attestation of the document and that the registration of the document should raise a presumption of its due execution and attestation. In order to carry out this suggestion, a specific provision should, we think, be made to the effect that the registering officer should read over and explain to the executant the nature of the document before enquiring of him whether it was executed by him or not, and that the admission of execution should be endorsed only after the document has been read over and explained. Such a provision will embody the existing practice.

A provision should be made at the appropriate place that in every case where attestation is required by law, at least one attesting witness should be examined at the time of registration. The executant who would be examined about the execution of the document should also be asked about the signature of the attesting witnesses and his answers should be recorded. It should further be provided that the Registering Officer should decline to register, if attestation is not proved, in the same manner as he does when execution is denied.

If the requirement of examining an attesting witness is introduced in the Registration Act, it will be necessary to make consequential amendments in section 68 of the Evidence Act.

67. Sections 71 to 77 lay down the procedure to be followed when a Sub-Registrar refuses to register a document. Logically, these provisions should come after section 35 and we suggest a re-arrangement, accordingly. The contents of sections 71—77 will be dealt with hereafter. Secs. 71-77.

Part VII.—Of Enforcing the appearance of Executants and Witnesses.

68. Sections 36 to 39 relate to the procedure for enforcing the appearance of parties and witnesses, while section 63 relates to the power of registering officers to examine parties and witnesses. These sections should be grouped together. No change is necessary in these sections. Secs. 36—39

69. A suggestion has been made that the existing system of serving summons through the Revenue Department should be given up. It has, however, been pointed out by the State Governments that the existing system

seems to be working well. If the suggestion were to be carried out, it would involve the appointment of a separate process-serving establishment which, as the experience in the Civil Courts shows, may not be very satisfactory. The suggestion cannot, accordingly, be accepted.

Part VIII.—Of Presenting Wills and Authorities to Adopt.

Sec. 40

70. There is no justification for a separate Part for these two kinds of documents. We have already considered section 40 in connection with sections 28 and 32 and suggested that it should be incorporated into those sections.

Sec. 41.

71. No change is required in sub-section (1) of section 41. But it should be transferred to the Part which deals with presentation and registration in general. Similarly, sub-section (2) of section 41 should be incorporated, in sub-section (3) of section 34.

Part IX.—Of the Deposit of Wills

Secs. 42—46.

72. It has been pointed out that numerous sealed covers containing Wills have accumulated in registration officers, no person having come forward to claim those documents. Under the existing Act, when an application is made for a copy of the Will after the death of the testator, the Will is copied in Book 3 and the Registrar has to re-deposit it thereafter [Section 45(2)]. It is only when a court summons the Will that the original leaves the Registrar's office. Under the present system, it may happen that even when there is a Will, the man's estate may be dealt with, without any reference to the Will. To remedy this situation, we think that suitable amendments should be made in sections 42—46 on the following lines:

It should be provided that at the time of the deposit under section 42 the testator shall also endorse on the cover the name and address of the person to whom the original document should be delivered on the testator's death. In order to ascertain whether the testator is alive or dead, every Registering officer should, on the first day of July every year, send a notice to every depositor and the person entitled to delivery of the document on the testator's death requiring them to furnish their address. If as a result of such notice or in any other manner, it comes to the knowledge of the

Registrar that the testator has died, the Registrar should after making an entry as to the death of the testator and the nature of the information on which he has acted, open the cover in the presence of a judicial officer not below the rank of a subordinate judge. After opening the cover he should issue a notice to the executor, if any, and also to such other person or persons deriving any substantial benefit under the Will, as the two officers may determine, informing them about the existence of the Will and giving them notice that they should take appropriate steps within a period of six months, failing which the Will would be liable to be destroyed. The actual destruction should, however, be made in accordance with the provisions of the Destruction of Records Act, 1947, after due notification and until actual destruction it will be open to the parties concerned to take such steps as they could have taken under the Act before the expiry of the six months.

Part X.—Of the Effects of Registration and Non-registration.

73. Section 47 may be retained as it is. There is a conflict of views 1—4 on the question whether, for the purposes of deciding a fraudulent preference under the Insolvency Law, the transfer should be deemed to have been made on the date of the instrument or on the date of the registration. We consider, however, that this is a matter to be dealt with by an amendment of the relevant provisions of the Law of Insolvency and not of the Registration Act. Sec. 47.

74. Section 48 states that in case of competition between a registered document and an earlier oral agreement or declaration relating to such property, the registered document shall prevail, unless the oral agreement or declaration has been accompanied or followed by delivery of possession so as to constitute a valid transfer under the law. The reference, obviously, is to sale of immovable property of the value of less than Rs. 100/- which, under the Transfer of Property Act, can be effected either by a registered instrument or by an oral sale followed by delivery. The section is, however, defective Sec. 48.

1. *Iswarayya v. Subbanna*, (1935) 58 Mad. 166.

2. *G. W. Godbole v. Marotisa*, (1937) Nag. 403.

3. *Rama Nanda v. Pankaj*, (1938) 2 Cal. 275.

4. *U on Maung v. Maung Shwe*, A.I.R. 1937 Rang. 446 (F.B.) [*Vide* also Mulla, Registration Act, 5th Ed., p. 175.]

in so far as it overlooks the provisions of section 27(b) of the Specific Relief Act, under which an earlier oral agreement would prevail against a subsequent registered deed if the subsequent purchaser is not *bona fide* purchaser without notice of the earlier agreement. The Proviso to section 48 makes an exception in favour of a mortgage by deposit of title-deeds, but, in view of what has just been stated, another exception has also to be made in respect of the case referred to in section 27(b) of the Specific Relief Act.

Sec. 49, [Cl. (c) and Proviso omitted].

75. Clause (a) of section 49 provides that an unregistered document shall not affect any immovable property comprised therein, if such document is required to be registered by any law. The decisions under cl. (c) have uniformly laid down that the unregistered document can be adduced in evidence for any purpose other than that of affecting the immovable property. But there has been a divergence of judicial opinion as to the extent to which evidentiary use may be made of documents which purport to affect immovable property.¹ In one line of cases it has been held that a covenant, such as a personal covenant in a mortgage deed, can be proved, but where the transaction is indivisible, that is to say where there is no separate evidence of the loan or payment other than the deed itself, such loan or payment cannot be proved by the documents alone. We see no reason for maintaining this distinction as it is highly technical and gives relief to a person who has got secondary evidence while denying it to a person who has the primary evidence, namely, the document itself. Cases such as *Sambayya v. Gangayya*² stand on a different footing, since what was sought to be enforced in that case were the rights or obligations contained in the deed which would arise only if the deed were valid. There is another line of cases which hold that an unregistered document can be used to prove matters like the character of possession, status, acknowledgment etc.

76. Clause (c) in its present form, as couched in a language which prohibits the reception of the unregistered document as evidence of any transaction affecting

1. *Muruga v. Subba*, (1951) Mad. 473 (F.B.).

2. *Sambayya v. Gangayya*, (1890) 13 Mad. 308.

the property. It must be noted that even if the document is received in evidence it will merely prove that there was a contract or agreement which, however, did not ripen into a valid transaction affecting the immovable property, for want of registration. Such evidence, even if let in, will be ineffective to create any right, title or interest in immovable property. On the other hand, we consider that it should be open to the parties to prove the document itself in order to bring before the Court the best evidence relating to what was in fact done and if it falls short of a valid transaction relating to the immovable property, the rights based upon contract, such as, refund of money or damages and the like, should be capable of being enforced by the Court without, however, in any way validating the transaction or enforcing any right, title or interest in the immovable property. What has to be made clear is that the unregistered document shall not in any way be used to establish a right, title or interest in immovable property¹ on the basis of a transaction which requires a registered document or in respect of which a document, if there be one, requires compulsory registration whether by section 17 or by any other law. This object could be secured simply by retaining clause (a) as it is, since we have put in a definition of 'affect immovable property', amplifying the meaning of that expression. Once this is made clear, neither clause (c) nor the reference to "collateral transaction" in the Proviso will be necessary. The rest of the Proviso will also be unnecessary, since under section 49 as modified by us, the unregistered document will be admissible to prove the contract though not the title to property. We are also recommending some other changes in this connection, in section 50, to give a complete view of the law.

77. While section 48 deals with the question of priority between an earlier oral agreement and a subsequent registered document, section 50 deals with the question of priority between two documents,—the earlier unregistered and the later registered. But the section, as it stands, does not take cognizance of the provisions of section 53A of the Transfer of Property Act. An exception should, we think, be engrafted in favour of a person who is in possession of property under an unregistered

¹ *Muruga v. Subba*, (1951) Mad. 473 (F.B.).

document and whose rights are protected under section 53A of the Transfer of Property Act. Similarly, another exception should be made to ensure that though the unregistered document may not affect the property comprised therein, the person in whose favour such document was executed would be entitled to enforce the contract embodied in the unregistered document in a suit for specific performance, provided the subsequent purchaser was affected with notice of the prior agreement, as envisaged by section 27(b) of the Specific Relief Act.

Part XI.—Of the Duties and Powers of Registering Officers.

(A) As to the Register-books and Indexes

78. We recommend no change in sub-section (1) of section 51 except that in regard to Book 2 the wording of the section should be suitably altered so as to enable a record to be kept of the Sub-Registrar's order of reference to the Registrar and his reasons for the order. We further suggest that in the offices of Registrars, there should be maintained a similar book in which may be recorded his reasons for refusal to register. In sub-sections (2) and (3), certain verbal changes are necessary.

79. A suggestion has been made by several registering officers and others that a provision should be made for the recopying of books and indexes when the books are in danger of being destroyed or becoming illegible. The State of Bombay and some other States have already made provision in this regard by way of amendments. The necessity for such a provision is obvious. We recommend the addition of a new sub-section containing suitable provisions, in sections 51 and 55.

Sec. 52. 80. Section 52 deals with several matters: (1) the endorsements to be made on documents when they are presented [clauses (a) and (b) of sub-section (1)], (2) the copying of documents in the books after admission to registration, and (3) the authentication of the books. We consider that these different matters should be separately provided for in the respective Chapters dealing with presentation, the procedure on admitting to registration, and Register-Books, as shown in Appendix I.

Secs. 53-54 81. No change is recommended in sections 53 and 54.

82. By way of implementing the scheme recommended by us under section 89, we recommend that in section 55 it should be provided that in respect of all memoranda forwarded under the provisions of the Act an entry should be made in Index No. II, giving the particulars of the documents in relation to which the memoranda have been received. The actual memoranda and copies will, however, continue to be filed and kept separate as part of Book 1. Sec. 55.

83. We also consider that the power conferred upon the Inspector-General by sub-sections (3) and (6) of section 55 should properly belong to the State Government.

84. No change is recommended in section 57. Sec. 57.

(B) *As to the Procedure on admitting to Registration.*

85. No change is recommended in the text of sections 58 to 62. Secs. 58—62.

86. Section 63 has already been dealt with by us, in Sec. 63. Para. 70, *ante*.

(C) Special Duties of Sub-Registrar.

(D) Special Duties of Registrar.

87. Sections 64, 65, 66 and 67 require the transmission of certain memoranda and copies by the registering officers where the property is situated elsewhere. All these provisions should be grouped together in one section under a new head. We also recommend that there should be specified forms prescribed for all memoranda. As regards copies, we have already recommended, under section 55, that the contents thereof should be reduced to the form of memoranda and the particulars of all the memoranda should be entered in Index No. II. Secs. 64-67.

(E) *Of the Controlling Powers of Registrars and Inspectors-General.*

88. No change is necessary in section 68. Sec. 68.

89. Section 69 deals with the power of the Inspector-General of Registration to superintend and to make rules. We are of the opinion that the power to make rules should be vested in the State Government, while the power of superintendence should remain with the Inspector-General. Sec. 69.

90. Section 70 relates to the power of the Inspector-General to remit fines. We do not think it necessary to Sec. 70
(Omitted).

give him this power as we have recommended that the fine should not exceed Rs. 10. This section may, therefore, be deleted.

Part XII.—Of Refusal to Register.

Secs. 71-77. 91. We have already suggested that sections 71 to 77, which lay down the procedure to be followed after refusal to register, should be placed after section 35. Besides, some other changes appear to be necessary in the provisions contained in this group of sections.

Secs. 72-73 (Omitted). 92. We are of the opinion that the procedure for appeal in case of refusal by the Sub-Registrar should be replaced by a simpler procedure. We consider that there is no need to provide for an order of refusal by the registering officer and then an appeal or application to his superior officer against that order. It would be conducive to expedition and simplicity if, instead of refusing to register any document and driving the parties to an appeal or application, the Sub-Registrar himself refers the matter to the Registrar to whom he is subordinate. The Registrar would then follow the procedure laid down in section 74 of the Act. If the Registrar, on enquiry, refuses to register, such order will be subject to the result of any suit which may be filed under section 77. In view of this recommendation, sections 72 and 73 will have to be omitted.

Sec. 74. 93. No change is necessary in section 74.

Sec. 75. 94. Section 75 requires that if the Registrar decides in favour of registration, the document should be presented by the party to the Sub-Registrar within 30 days thereafter. We would, however, recommend that in such cases the Registrar may himself send the documents directly to the Sub-Registrar and at the same time direct the parties to be present before the Sub-Registrar within a specified period for registration in default of which registration would be finally refused.

Sec. 77 95. There is a conflict of decisions between the Madras High Court, on the one hand, and the Allahabad and Calcutta High Courts, on the other, regarding the rights of a person who, having presented a document and having been refused registration, does not pursue the remedy under section 77. The Madras High Court in *Satyanarayana v. Chinna Venkata*¹ held that if, after setting the machinery

¹ *Satyanarayan v. Chinna Venkata*. (1926) 49 Mad. 302.

of registration into motion, a person does not pursue it to its logical conclusion by filing a suit under section 77, he is thereafter precluded from enforcing other remedies to which he may be entitled under the law. The Allahabad and Calcutta High Courts¹, however, held that such a person is, nevertheless, entitled to specific performance of the agreement which is the basis of his unregistered sale deed. Recently the Madras High Court has, in *Venkata Subbaiah v. Venkatarathnamma*², followed its earlier decision³, and held that the law had not been altered by the addition of the Proviso to section 49 of the Registration Act by Act XXI of 1929. There would appear to be nothing in the language of section 77 to justify the view taken by the Madras High Court that section 77 excludes other remedies. It would also be inequitable to compel a person to pursue a useless remedy, where the original vendor has by a subsequent deed conveyed his rights in favour of a third party. It is clearly necessary, in such an event, that the rights of the persons should be adjudicated in a properly constituted suit in the presence of the third party who has acquired rights subsequently and obtained a proper conveyance. We think that the view taken by the Allahabad and Calcutta High Courts is sound, and a Proviso should be added to section 77, to give effect to that view.

Part XIII.—Of the Fees for Registration, Searches and Copies

96. Section 78 enables the State Governments to prescribe the fees for registration etc. This has resulted in varying scales of fees. We consider that this is a matter in which there should be uniformity and suggest that the Union Government should be given this power. There are complaints that registration fees are unduly high in some States. Being a fee, it should be commensurate with the expenses of the department and even though a higher fee be leviable on documents of higher value, there should be a ceiling. No other change is necessary in sections 78 to 80. Secs. 78—80

Part XIV.—Of Penalties

97. Sections 81 to 84 deal with penalties, prosecutions etc. Under Section 83 there is a conflict of decisions as to Secs. 81—84

¹ *Amer Chand v. Nathu*, (1910) 7 A.L.J. 683; *Surendranath v. Gopal Chander*, (1910) 12 C.L.J. 464.
² *Venkata Subbaiah v. Venkatarathnamma*, I.L.R. (1954) Mad. 775.
³ *Satyanarayana v. Chinna Venkatarao*, (1926) 49 Mad. 202.

whether private prosecutions for offences under the Act lie notwithstanding the language of the section. The Calcutta, Madras, Bombay and Nagpur High Courts have taken one view,¹ while the High Court of Allahabad has taken a different view.² We are of the opinion that private prosecutions should be done away with as they are likely to result in harassment of parties. We have re-drafted the section accordingly.

Part XV.—Miscellaneous.

- Secs. 8 86. 98. No change is necessary in sections 85 and 86.
- Sec. 87. 99. The provision in section 87 should be enlarged to cover defects in regard to presentation and persons presenting and the section should be transferred to the Part on Registration.

In *Jambu Prasad v. Muhammad Aftab Ali Khan*,³ the Privy Council took the view, that as presentation goes to the root of registration, registration of the document should be deemed to be void, if there is no proper presentation. But this view was later relaxed by Lord Phillimore, in *Bharat Indu v. Hamid Ali*.⁴ The reason assigned was that when a document is presented in the presence of the executant (as happened in that case), no objection to its presentation should thereafter be allowed to be raised and that that defect should not be allowed to invalidate the registration. In our view, whether the executant or any other party to the document was present or not at the time of registration, once registration is effected, these persons should not be allowed to go behind the registration on the ground of want of due presentation and such defect, if any, should be cured by section 87. If a person executes a document in favour of another and sends it for registration through a person having no authority and the document is registered, the executant should not be permitted thereafter to take advantage of the want of authority of the person who presented the document for registration. If, on the other hand, the document is presented on behalf of the claimant, the executant or his agent will be present at the time of the registration to admit its execution. If he does not

¹ *Gopinath v. Kuldip Singh*, 11 Cal. 566 (F.B.); *In re Piramu Nadathi*, 40 Mad. 880; *Emperor v. Yesa Nana*, I.L.R. (1937) Bom. 359; *Onker v. Emperor*, I.L.R. (1945) Nag. 542.

² *Emperor v. Muhammad Mehdi*, 57 All. 412 (F.B.).

³ *Jambu Prasad v. Muhammad Aftab Ali Khan*, 37 All 49 (P.C.).

⁴ *Bharat Indu v. Hamid Ali*, 42 All. 487 (P.C.).

object to the registration at that stage on the ground of want of authority for the presentment, he should not be allowed later to take such a technical objection and invalidate registration. We, therefore, recommend that such a defect should be regarded as curable under section 87, once the document is registered without objection.

100. To the list of officers in section 88 should be added the presiding officers of courts. Sec. 88.

101. Section 89 provides for the despatch of copies of decrees etc. by public officers. In our opinion, registration under the Registration Act should operate as a complete and effective notice concerning title. All the documents affecting title to immovable property must be brought within the purview of the Registration Act. The document may be registered under the Act, or a memorandum of the document may be filed in accordance with the provisions of section 65 and 66, or the document may be entered in Book 1, in the manner laid down in section 89. For this purpose, as we have stated at the outset, it will be necessary to enlarge section 89, by adding to the list of documents of which copies have to be sent to the registering officer. Bringing in all such documents under section 89 would not put the parties to any additional expenditure as they are not required to get them registered under the Act; only the particulars of them will be entered in Book 1 which pertains to non-testamentary documents relating to immovable property. Sec. 89.

102. Copies of all decrees or orders of a Court affecting immovable property situated anywhere within India should also be sent by the Court to the Registrar or Registrars in whose jurisdiction the property or properties are situate.

103. We have accepted the suggestion that Courts should send copies of complaints in suits involving immovable property to the registering officer concerned in order that parties concerned may have notice of the pending list. It should be provided that the plaintiff should file with his complaint extra copies of it and that on receipt of such copies from the plaintiff, the Court shall send the same to the registering officers concerned. A registering officer receiving such a copy should then file the copy in Book 1 and also prepare a memorandum thereof and get it copied in Book 1. We further recommend that this procedure should be extended to memoranda of appeal, and that, in order to

implement this scheme, appropriate rules should be inserted in the Code of Civil Procedure, requiring a schedule of property to be given in every memorandum of appeal relating to immovable property.

104. The definition of notice in sec. 3 of the Transfer of Property Act was extended by the Amending Act of 1929, by including in it a provision that registration would be noticed not only where the instrument was actually registered under any of the provisions of the Registration Act but also where a memorandum of such registered instrument was filed before a Sub-Registrar in the manner provided by sections 65 and 66. But the definition does not make it clear whether documents sent to the registering officer under section 89 and filed by him in Book 1 would also have the effect of notice of such documents as affecting title [see Mulla, Registration Act, 5th Edition, p. 294, citing (1882) 2 A.W.N. 51 and (1908) P.R. 143 (F.B.)]. It is, therefore, necessary to make the matter clear by enacting a provision on the lines of section 90 sub-section (2), giving an entry in Book 1 the same effect as if the document was registered in accordance with the provisions of the Registration Act. If it is further provided that copies of all documents affecting title have to be compulsorily sent to the Registrar under section 89, for being filed in Book 1, and that memoranda of such documents should also be entered in Book 1, the registry would afford a complete history of the title to every parcel of immovable property in the district and would enable a person to get definite information relating to it. If a search in the Registry is to be effective, the register must be as complete as possible. The above-mentioned lacuna in the definition of notice under the Transfer of Property Act is probably due to an oversight and the question of amending that definition will have to be considered at the time of the revision of that Act. Meanwhile, it will be sufficient to introduce the proposed changes in the Registration Act.

Secs. 90-91. 105. Sections 90 and 91 should be retained, with verbal changes.

106. With a view to present a clear picture of the recommendations made by us in this Report, we have made alterations giving effect to them in the text of the existing Act as shown in Appendix I.

Appendix II gives explanatory notes on each section of Appendix I, indicating the changes recommended by us.

Appendix III contains two comparative Tables—Table A shows the sections in the existing Act with the corresponding sections in Appendix I, while Table B shows the sections in Appendix I (with a Table of Contents) and the corresponding sections in the existing Act.

Appendix IV contains the suggestions made by us in respect of other Acts, in the various paragraphs of the Report.

M. C. SETALVAD,
(Chairman)

M. C. CHAGLA,
K. N. WANCHOO,
P. SATYANARAYANA RAO,
N. C. SEN GUPTA,*
V. K. T. CHARI,
D. NARASA RAJU,
G. S. PATHAK,
S. M. SIKRI,
G. N. JOSHI,
N. A. PALKHIVALA.

(Members)

K. SRINIVASAN,
DURGA DAS BASU,
Joint Secretaries.

BOMBAY,
The 13th July, 1957.

*Dr. Sen Gupta has signed the report, subject to the Note appended at the end.

APPENDIX I

Proposals as inserted in the body of the existing Act

(This is, however, not to be treated as a Draft Bill)

[Corresponding Sections of the existing Act are noted in the margin, and additions to the provisions of the existing Act are shown in the text in italics, wherever possible.]

THE REGISTRATION ACT, 19—

PART I

PRELIMINARY

Short title,
extent and
commence-
ment:
[Sec. 1]

- 1. (1) This Act may be called the Registration Act, 19—.
- (2) It extends to the whole of India except the State of Jammu and Kashmir. * * *
- (3) It shall come into force on—

Definitions :
[Sec. 2]

2. In this Act, unless there is anything repugnant in the subject or context,—

[Cl. (1)].

(1) "addition" means the place of residence, the profession or trade of a person described, his father's name, or where he is usually described as the son of his mother, then his mother's name and, *in the case of a married woman, her husband's name;*

[New]

(2) "*affect immovable property*": A document is deemed to affect immovable property if it purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;

[Cl. (2)].

(3) "book" means any of the register-books required to be kept by this Act and includes a portion of a book and also any number of sheets connected together with a view to forming a book or portion of a book;

- (4) "district" and "sub-district" respectively mean [Cl. (3)] a district and sub-district formed under this Act;
- (5) "endorsement" and "endorsed" include and apply [Cl. (5)] to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;
- (6) "*execution*" means the act of voluntarily signing [New] a document having understood the contents thereof;
- (7) "immovable property" includes land, buildings, [Cl. (6)]-benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth, hereditary allowances, rights to ways, lights, ferries and fisheries but does not include:—
- (a) standing timber, growing crops or grass whether immediate severance is intended or not,
- (b) fruit upon and juice in trees whether in existence or to grow in future, and
- (c) machinery embedded in or attached to the earth. when dealt with apart from the land;
- (8) "India" means the territory of India excluding [Cl. 6(A)]-the State of Jammu and Kashmir;
- (9) "lease" has the same meaning as in the Transfer [Cl. (7)]-of Property Act, 1882 and includes a counterpart; part;
- (10) "minor" means a person who, according to the [Cl. (8)] personal law to which he is subject, has not attained majority;
- (11) "*prescribed*" means prescribed by the rules [New] made under this Act;
- (12) "representative includes— [Cl. (10)]
- (a) in the case of a minor, his guardian; or, in his absence,
- (i) any near relation of the minor; or,
- (ii) if the minor is an adopted son, any near relation in the adoptive or natural family; or,

- (iii) if the minor is a widow, any near relation in the family of the father or husband, being in each case a relation not having any interest adverse to that of the minor; or,
 (b) in the case of a lunatic or idiot, the committee or other legal curator."

PART II

REGISTRABLE DOCUMENTS

Documents of which registration is compulsory.

3. (1) The following documents shall be registered,.... namely:—

[New]

(a) instruments which under any law require registration for giving validity to the transactions effected thereby;

[Sec. 17 (1) (b)]

(b) other non-testamentary instruments which affect immovable property.....of the value of one hundred rupees and upwards;

[Sec. 17 (1) (d)]

(c) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent:

Provided that the State Government may, by order, published in the Official Gazette, exempt from the operation of this clause any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees;

[Sec. 17(1) (e)].

(d) non-testamentary instruments transferring or assigning any decree or order of a Court..... other than an executable decree or order, when such decree or order affects immovable property of the value of one hundred rupees and upwards.

[New]

Explanation (i)—For the purposes of cl. (b) of this subsection, the consideration specified in a deed of assignment of a mortgage shall be deemed to be the value of the property.

[Expl. to Sec. 17 (2)]

Explanation (ii)—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

- (2) Nothing in.....sub-section (I) applies to: [Sec. 17(2) (iii)]
 - (a) any debenture issued by *any Joint Stock Company* and not *affecting immovable property* except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
 - (b) any endorsement upon or transfer of such debenture.....; or [Sec. 17(2) (iv)]
 - (c) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage; or [Sec. 17(2) (xi)]
 - (d) *a counterpart of a lease where the lease corresponding thereto has itself been registered, or* [New]
 - (e) any document not itself *affecting immovable property.....*, but merely creating a right to obtain another document which will, when executed, *affect such property; or* [Sec. 17(2) (V)]
 - (f) *any decree or order, instrument, document, certificate, plaint or schedule of property attached, copies of which are required to be sent to the Registering Officer under Section 42 of this Act and to be filed in Book 1.* [New]

(3) Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered. [Sec. 17(3)]

4. *Any document not required to be registered under Section 3 may also be registered under this Act.* Documents which registration is optional. [Sec. 18(f) modified]

Part III

REGISTRATION

Chapter I.—*Conditions of admissibility for registration.* Documents in language not understood by registering officer.

5. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, officer.

[Sec. 19]. he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents containing interlineations, blanks, erasures or alterations. [Sec. 20].

6. (1) The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description of property and maps or plans. [Sec. 21 (1)]

7. (1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

[Sec. 21 (2), modified]

(2) Houses and lands in Municipal areas shall be described by the area, boundaries, municipal town survey number, the municipal door number, if any, and the streets or roads, if any, they abut.

[Sec. 21 (3) modified]

(3) In all other places, houses and lands shall be described by their area, boundaries, survey number or paimaish or other like number, if any, and, whenever it is practicable, by reference to a Government map or survey.

[Sec 21 (4)]

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situated in several districts, by such number of true copies of the map or plan as are equal to the number of such districts:

[Sec. 22(2), modified]

Provided thatthe failure to comply with the provisions of sub-sections (2) and (3) shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

Time for presenting Documents. [Sec. 23].

Chapter II.—Presentation.

8.(1) Subject to the provisions contained in this chapter, no document other than a Will shall be accepted

for registration unless presented for that purpose to the proper officer within *one* month from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or where it is appealable within four months from the day on which it becomes final.

(2) A will may, at any time, be presented for *deposit* [Sec. 27] or registration

9. Where there are several persons executing a document at different times, such document may be presented for registration.....within *one* month from the date of each execution. Documents executed by several persons at different times. [Sec. 24.]

10. (1) If.....any document executed, or copy of a decree or order made, in India, is not presented for registration *within the period hereinbefore provided, the Registrar may, on proper cause being shown, extend the time for presentation by a period not exceeding four months, on payment of a fine not exceeding ten rupees in addition to the proper registration fee.* Extension of time for presentation [Sec. 25, modified]

(2) An application for such *extension of time when filed before a Sub-Registrar shall forthwith be forwarded to the Registrar to whom he is subordinate.*

11. When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the time hereinbefore *provided* in that behalf, the registering officer, if satisfied— Documents executed out of India. [Sec. 26]

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in India, may, on payment of the proper registration-fee, accept such document for registration.

12. (1) *Save as otherwise provided in this chapter, every document, shall, so far as it purports to affect immovable property, be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property specified in* Place of presentation. [Sec. 28, 28 modified]

the document, or, where the document refers to more than one item, any of the items specified in the document, is situate.

[Sec. 40,
in part]

(2) A will or an authority to adopt may be presented for registration to any Sub-Registrar or Registrar.

[Sec. 29,
modified]

(3) Every document, not being a document referred to in sub-section (1), and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or the original decree or order was made, as the case may be, or in the office of any other Sub-Registrar under the Government of the State where all the persons executing or claiming under the document or decree or order, desire the same to be registered.

(4) Notwithstanding anything contained in sub-section (1),—

(a) after a document is registered, no party thereto shall be entitled to question the validity of its registration on the ground that the property which purported to give jurisdiction to the Sub-Registrar to register it either did not exist or was fictitious or insignificant or was not intended to be conveyed;

(b) a document the registration of which is secured by the inclusion of a non-existent, fictitious or insignificant portion or item shall not in any manner affect the rights of a person who was not a party thereto and acquired rights in the property without notice of the transaction to which such document relates.

[New]

13. Notwithstanding anything contained in section 12, any Registrar may receive and register any documentwithout regard to the situation in any part of India of the property to which the document relates, if he is satisfied that there is sufficient cause for doing so.

Presentation
at private
residence.

14. The presentation, registration or deposit of documents under this Act shall ordinarily be made only at the office of the officer authorised to accept the same for registration or deposit:

Provided that such officer may, on proper cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will and accept for registration or deposit such document or will.

15. Except in the cases mentioned in section 73
, every document to be registered
 under this Act, whether such registration be compulsory
 or optional, shall be presented.....

Persons to
 present
 documents
 for regis-
 tration.
 [Sec. 32
 and 40,
 modified]

(a) *in the case of a document other than a will or
 authority to adopt,*

(i) by some person executing or claiming under the
 same, or, in the case of a copy of a decree or
 order, by any party to the proceeding or some
 person claiming under the decree or order, or

[Sec. 32 (a)]

(ii) by the representative or assign of such person,
 or

[Sec. 32 (b)]

(iii) by the agent of such person, representative or
 assign, duly authorised by power-of-attorney in
 accordance with the provisions of the next
 section.

[Sec. 32. (c)]

(b) *in the case of a will, by the testator, or after his
 death by any person claiming as executor or otherwise
 thereunder, and*

Sec. 4 (1),
 in part

(c) *in the case of an authority to adopt, by the donor,
 or after his death by the donee or the adoptive son, or his
 representative, as the case may be.*

[Sec. 40 (2),
 in pari]

16. (1) For the purposes of section 15, the following
 powers-of-attorney shall alone be recognised, namely—

Powers of
 attorney
 recognisa-
 ble for the
 purposes
 of section
 15.

(c) if the principal at the time aforesaid does not
 power-of-attorney resides in any part of India
 in which this Act is for the time being in force,
 a power-of-attorney executed before and authen-
 ticated by the Registrar or Sub-Registrar within
 whose district or sub-district the principal
 resides;

[Sec. 33].

(b) if the principal at the time aforesaid resides in
 any other part of India in which this Act is
 not in force, a power-of-attorney executed before
 and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not
 reside in India, a power-of-attorney executed
 before and authenticated by a Notary Public or
 any Court, Judge, Magistrate or any Consular
 Representative of the Union Government:

Provided that the following persons shall not be required to attend at any registration office or *before a Magistrate* for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this sub-section, namely:—

- (i) persons who, by reason of bodily infirmity, are unable without risk or serious inconvenience to attend;
- (ii) persons who are in jail under civil or criminal process; and
- (iii) person exempt by law from personal appearance in court.

*Explanation:—*In this sub-section, "India" means India, as defined in cl. (28) of sec. 3 of the General Clauses Act, 1897 (X of 1897).

(2) In the case of every such person *as is mentioned in clause (a) of sub-section (1)*, the Registrar or Sub-Registrar, or, *in the case of clause (b) of sub-section (1)* the Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or court hereinbefore mentioned in that behalf.

Duties of registering officers when document presented. [Sec. 52(1) (a) and (b)]

17. (1) The day, hour and place of presentation, and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of *its presentation*.

(2) A receipt for such document shall be given by the registering officer to the person presenting the same.

CHAPTER III.—*Procedure for Registration.*

18. (1) Subject to other provisions contained in this Part and in sections 42, 44, 46, 73 and 76, no document shall be registered unless the persons executing such document or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 8, 9, 10 and 11: Appearance of parties [Sec. 34, modified] [Sec. 34(1)]

Provided that, if.....all such persons do not so appear, the Registrar may, on proper cause being shown, extend the time for appearance by a period not exceeding two months, on payment of a fine not exceeding rupees ten in addition to the fine, if any, payable under section 10.

(2) Appearance under sub-section (1) may be simultaneous or at different times. [Sec. 34(2)]

(3) Any application for extension of time under the proviso to sub-section (1) may be filed before the Sub-Registrar who shall forthwith forward it for disposal to the Registrar to whom he is subordinate. [Sec. 34 (4)]

(4) If, within the period allowed for appearance or extended under sub-section (1), and two months thereafter, the executant or executants, being the persons presenting the documents, do not appear, the registering officer shall make an entry to that effect in the document and return the same to the party. [New]

(5) Nothing in this section applies to copies of decrees or orders. [Sec. 34 (5)]

19. If all the persons executing the document or their representatives, assigns, or agents duly authorised appear personally before the registering officer.....he shall satisfy himself:— Enquiry before registration. [Sec. 3 (3) (b), (c), 35 (1) (a), 41 (2)]

(a) in the case of any person appearing personally before him, as to his identity; [Sec. 34(3) (b)]

(b) in the case of any person appearing as representative, assign or agent, as to his right to appear; and [Sec. 34 (3) (c)]

(c) in the case of a will or an authority to adopt presented.....by any person other than the testator or donor, as to the death of the testator or the donor and the right of the person presenting such will or authority to present the same. [Sec. 41 (2)]

Procedure on admission etc. 20. (1) The registering officer, on being satisfied as aforesaid, shall—

[New] (a) read over the document and explain its contents to the executants or their representatives, assigns or agents, as the case may be, and

(b) inquire whether or not such document was

[Sec. 34 (3) (a)] (i) executed by the persons by whom it purports to have been executed, and

[New] (ii) attested according to law by persons by whom it purports to have been attested, where such attestation is required by law.

[Sec. 35 (1), modified] (2) On the admission of the execution of the document by such person and on proof of such attestation, the registering officer shall register the document as to the person admitting execution, in the manner hereinafter provided.

[New] *Explanation:—Attestation shall not be deemed to have been proved unless one attesting witness at least has been called for the purpose of proving due execution, if there be an attesting witness alive, and subject to the process of any registering officer or court and capable of giving evidence.*

[Sec. 35 (2), modified] [Sec. 75(4)] (3) Every Registrar or other registering officer shall, subject to the provisions of this Act, have power to examine any person and to compel him to give evidence for the purposes of this Act, as if he were a civil court.

Procedure on denial of execution etc. 21. (1) If any person by whom the document purports to be executed.

[Secs. 35(3), 71(1), modified] [Sec. 35 (3)]. (i) denies its execution, or

(ii) is dead and his representative or assign denies its execution, or

(iii) appears to the registering officer to be a minor, an idiot or a lunatic, or

[New] (iv) does not appear before the registering officer within the time allowed for appearance, or

[New] (v) if the attestation of the document is not proved in cases where such attestation is necessary for the validity of the document,

the registering officer, if he is a Sub-Registrar, shall not register the document—

(a) as to the person so denying or dead or failing to appear or appearing to be a minor, an idiot or a lunatic, as the case may be, or

[Sec. 35(3) modified]

(b) where attestation has not been proved,

but shall refer the document to the Registrar, in the manner provided in subsection (2):

Provided that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall.....exercise the powers of a Registrar for the purposes of this subsection and of sections 22 and 23.

[Sec. 35 (3), Prov.]

[Sec. 17(1), modified]

(2) Every Sub-Registrar making a reference under subsection (1) shall—

(a) make an order recording his reasons therefor,

(b) on application made by any person executing or claiming under the document furnish him, without payment and unnecessary delay a copy of the order giving reasons,

(c) direct the parties by notice in writing to appear before the Registrar on a specified day,

[New]

(d) forward the document together with his order thereon and the relevant records to the Registrar to whom he is subordinate, and

[New]

(e) make an entry in Book 2.

[New]

22. (1)On receipt of the records sent by the Sub-Registrar under the preceding section, or where any of the contingencies specified in sub-section (1) of section 21 arises in respect of a document presented for registration to himself, the Registrar shall, proceed to enquire whether the document was executed by the persons purporting to have executed the document and whether the other requirements of law to entitle the document to registration have been complied with.

Procedure before the Registrar. [Sec. 74, modified]

(2) If on such enquiry, the Registrar finds that the document has been executed and that the other requirements of law have been complied with, he shall order the document to be registered.

[Sec. 75 (1)]

(3) The Registrar shall forward the order directing registration to the Sub-Registrar who made the reference

[Sec. 75 (2) modified]

in respect of the document, who shall then carry out the order, following, so far as may be practicable, the procedure provided in Chapter IV for the registration of such document.

[Sec. 75 (3)] (4) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

[Sec. 75 (4),
in part] (5) The Registrar may.....direct by whom the whole or any part of the costs of any such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (V of 1908).

[Sec. 76 (1)
(b),
modified] (6) If, on enquiry under sub-section (1) of this section, the Registrar finds—

(a) that the document has not been executed by the persons purporting to have executed the same, or

(b) that the attestation has not been proved where attestation is required by law for the validity of the document, or

(c) that the person purporting to have executed the document appears to be a minor, an idiot or a lunatic,

he shall make an order of refusal and record the reasons for such order in Book 2A and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

[Sec. 76(2)] (7) No appeal shall lie from an order of refusal made under sub-section (6) of this section.

Suit in case
of order of
refusal by
Registrar,
[Sec. 77(1)] 23. (1) Where the Registrar refuses to order the document to be registered, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

[Sec. 77(2)] (2) The provisions contained in sub-section (3) of Section 22 shall, *mutatis mutandis*, apply to all documents

presented for registration in accordance with such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

Provided that failure to file a suit or the dismissal [New] of a suit filed under this section, shall not disentitle a party to any other remedy which he may be entitled to, on the basis of the unregistered document.

24. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

Registration of wills and authorities to adopt. [Sec. 41 (1)]

CHAPTER IV.—*Procedure on admitting to registration.*

25. Subject to the provisions contained in section 30, every document admitted to registration and every memorandum of document received shall, without unnecessary delay, be copied in the book appropriated thereof according to the order of its admission.

Copying of the document or memorandum. Sec. 52(1) (c)

26. (1) On every document admitted to registration (other than a copy of a decree or order), and on every copy sent to a registering officer under section 42, there shall be endorsed from time to time the following particulars, namely:—

Particulars to be endorsed on documents admitted to registration. [Sec. 58]

- (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (c) any payment of money or delivery of goods or documents made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence with reference to such execution.

(2) if any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall, at the same time, endorse a note of such refusal.

27. The registering officer shall affix the date and his signature to all endorsements made under section 17 and

Endorsements to be dated

and signed by registering officer. [Sec. 59]

26 relating to the same document and made in his presence on the same day.

Certificate of registration. [Sec. 60]

28. (1) After such of the provision of section 18 to 21 and 26 and 27 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided by the Act, and that the facts mentioned in the endorsements referred to in section 27 have occurred as therein mentioned.

Endorsement and certificates to be copied and document returned. [Sec. 61]

29. (1) The endorsements and certificate referred to and mentioned in sections 27 and 28 shall thereupon be noted in the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 7 shall be filed in Book 1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person, if any, as he has nominated in writing in that behalf on the receipt mentioned in section 17.

Procedure on presenting document in language unknown to registering officer. [Sec. 62]

30. (1) When a document is presented for registration under section 5, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 5 shall be filed in the registration office.

(2) The endorsements and certificate respectively mentioned in sections 27 and 28 shall be made on the original, and, for the purpose of making the copies and memoranda required by section 36 and 65 the translation shall be treated as if it were the original.

CHAPTER V.—Power to examine and enforce the appearance of executants and witnesses.

Power to administer oaths and record substance

31. (1) Every registering officer may administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer shall also.....record of statement.
 a note of the substance of the statement made by each [Sec. 63]
 such person, and such statement shall be read over, or,
 if made in a language with which such person is not
 acquainted, interpreted to him in a language with which
 he is acquainted, and, if he admits the correctness of
 such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for
 the purpose of proving that the statements therein
 recorded were made by the persons and under the cir-
 cumstances therein stated.

32. If any person presenting any document for regis- Procedure
 tration or claiming under any document, which is capable where
 of being so presented, desires the appearance of any appear-
 person whose presence or testimony is necessary for the ance of
 registration of such document, the registering officer exccurant
 may, in his discretion, call upon such officer or Court as or witness
 the State Government directs in this behalf to issue a is desired.
 summons requiring him to appear at the registration [Sec. 36]
 office, either in person or by duly authorised agent, as
 in the summons may be mentioned, and at a time named
 therein.

33. The officer or Court, upon receipt of the fee pay- Officer or
 able in such cases, shall issue the summons accordingly, Court to
 and cause it to be served upon the person whose appearance issue and
 is so required. cause
 service of
 summons.
 [Sec. 37].

34. (1) (a) A person who by reason of bodily infirmity Persons
 is unable, without risk or serious inconvenience, to appear exempt
 at the registration-office, or from
 appearance
 at registra-
 tion office.
 [Sec. 38]

(b) a person in jail under civil or criminal process,
 or

(c) persons exempt by law from personal appearance
 in Court, and who would but for the provision next
 hereinafter contained be required to appear in person at
 the registration office, shall not be required so to appear.

(2) In the case of every such person the Registering
 Officers shall either himself go to the house of such
 person, or to the jail in which he is confined, and examine
 him or issue a commission for his examination.

35. The law in force for the time being as to Law as to
 summonses, commissions and compelling the attendance summonses,
 commission

and witness
Sec. 39] of witnesses, and for their remuneration in suits before Civil Courts, shall save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and to any person summoned to appear under the provision of this Act.

CHAPTER VI—*Procedure where a document is registered at a place where the whole or part of the property is not situate.*

Procedure
where
document
relates to
land in
several sub-
districts.
[Sec. 64,
modified]

36. (1) Every Sub-Registrar, on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district, shall, make a memorandum thereof *in the prescribed manner*, and send the same together with the endorsement and certificate, if any, thereon to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate and such Sub-Registrar *on receipt of the memorandum* shall file it in Book 1 and *also get it copied therein*.

[Sec. 6 (1)]

(2) Every Sub-Registrar on registering *any such document* relating to property situate in more districts than one shall also forward a copy thereof together with any endorsement and certificate (if any) thereon and a copy of the map or plan (if any) mentioned in section 7, to the Registrar of every district in which any part of such property is situate, other than the district in which his own sub-district is situate.

[Sec. 65(2)]

(3) The Registrar, on receiving *a copy referred to in* sub-section (2), shall file in Book 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document *in the prescribed manner* to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate; and every Sub-Registrar receiving such memorandum shall file it in Book 1 and shall *also get it copied therein*.

[Secs. 66 and
67]

[Secs. 66(1),
67].

(4) (a) *Every Registrar*, registering any non-testamentary document *affecting* immovable property, shall forward a memorandum of such document, *in the prescribed manner* to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

[Secs. 66(2),
67]

(b) The Registrar shall also forward a copy of such document *and of the endorsements and certificate of registration* together with a copy of the map or plan (if any)

mentioned in section 7, to every other Registrar in whose district any part of such property is situate.

(c) Such Registrar on receiving any such copy shall file it in his Book 1, and shall also send a memorandum thereof in the prescribed manner to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate. [Sec. 66(3)]

(d) Every Sub-Registrar receiving any memorandum under this sub-section or preparing a memorandum under sub-section (1) shall file it in his Book 1 and shall also get it copied therein. [Sec. 66(4), modified]

CHAPTER VII.—Effects of registration and non-registration.

37. No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents, shall [Effects of non registration [Sec. 49, modified]

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, unless it has been registered.

38. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. [Time from which registered document operates. [Sec. 47]

39. All non-testamentary documents duly registered under this Act, and relating to any property whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, except where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force. [Registered documents relating to property when to take effect against oral agreements. [Sec. 48]

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act, 1882 (IV of 1882), shall take effect against any mortgage deed subsequently executed and registered which relates to the same property:

Provided further that the rights of a person under a registered document against any prior oral agreement or declaration relating to such property shall be subject to the provisions of section 27(b) of the Specific Relief Act, 1877. [New]

Certain registered documents relating to land to take effect against unregistered documents. [Sec. 50(1)]

40. (1) Every document of the kinds mentioned in sub-section (1) of section 3.....shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not:

[New] *Provided that the person in possession of the property under an unregistered document prior in date, would be entitled to the rights under Section 53A of Transfer of Property Act if the conditions of that section are fulfilled:*

[New] *Provided further, that the person in whose favour an unregistered document is executed would be entitled to enforce the contract under the unregistered document in a suit for specific performance against a person claiming under a subsequent registered document, subject to the provisions of Section 27(b) of the Specific Relief Act.*

[Sec. 50 (2)] (2) Nothing in sub-section (1) applies to leases exempted under the proviso to clause (c) of sub-section (1) of section 3, or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

[Sec. 50, Expl.] *Explanation.—The expression “unregistered” for the purpose of this section means not registered under this Act or under any earlier law relating to the registration of documents.*

Irregularities not affecting validity of registration. [Sec. 87]

41. (1) Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

[New] (2) *Any defect in or the want of authority of a person to present a document shall not, by itself, render invalid the registration of the document or the transaction effected by it.*

PART IV

FILING OF DOCUMENTS AND COPIES IN BOOK 1

Copies of orders, certificates, documents etc., to be sent to the

42. (1) *Every public officer or court passing any decree or order, or making or accepting any instrument or document, specified in this sub-section and affecting immovable property, shall send a copy of such decree or order*

or instrument or document, as the case may be, to every registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property specified in such decree or order or instrument or document is situate:

- (a) an order granting a loan or an instrument of collateral security granted under the Land Improvement Loans Act (XIX of 1883); or an order granting a loan under the Agriculturists' Loans Act (XII of 1884) or an instrument for securing repayment of the loan made under that Act; [Secs. 89(1) (3), 17(2) (ix), (x)]
 - (b) an instrument of partition made by a revenue officer; [Sec. 17(2) (viii)]
 - (c) an order under the Charitable Endowments Act, (VI of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; [Sec. 17(2) (xi)]
 - (d) a grant of immovable property by or on behalf of the Government; [Sec. 17(2) (vii)]
 - (e) a decree or an order of a court, including a decree or order upholding the possession of a defendant under section 53A of the Transfer of Property Act; [Sec. 17(2) (vi), modified]
 - (f) a security bond executed in favour of a court or of a public officer in his official capacity; [New]
 - (g) a composition deed accepted by a court in insolvency proceedings; and [Secs. 17(2) (i), modified]
 - (h) a certificate of sale granted to the purchaser of any property sold in public auction by a civil court or a revenue or other public officer in his official capacity. [Secs. 89(2) and (4), 17(2) (xii)]
- (2) Every court ordering the admission of a plaintiff or a memorandum of appeal, in which an interest in, or right or title to, immovable property is in controversy, shall send, to every registering officer within whose jurisdiction any part or item of the property is situate, a copy of the plaintiff or memorandum of appeal, as the case may be, with such other particulars as may be prescribed. [New]
- (3) Every registering officer receiving such copy of a decree, order, instrument, document, certificate, plaintiff or memorandum of appeal, as the case may be, shall file it [New]

in Book 1 and shall prepare a memorandum in such form as may be prescribed and the provisions of section 36 shall apply to such memorandum.

[New] (4) *The filing of the copies received under this section shall, for the purposes of this Act and of Section 3 of the Transfer of Property Act, have the same effect as if the document had been registered under this Act.*

PART V

DEPOSIT AND DESTRUCTION OF WILLS

Deposit of wills, [Sec. 42] 43. (1) Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

[New] (2) *The testator shall also endorse on the cover the name and address of the person to whom the original document should be delivered after registration thereof, after his death.*

Procedure on deposit of wills. [Sec. 43] 44. (1) On receiving such cover, the Registrar shall, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribed in his book 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt and the names of any persons who may testify to the identity of the testator or his agent, and any other inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in a fire-proof box.

Withdrawal of sealed cover. [Sec. 44] 45. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Proceedings on death of depositor. [Sec. 45 (1)] 46. (1) If, on the death of a testator who has deposited a sealed cover under section 43, application be made to the Registrar who holds it in deposit to open the same and if the Registrar is satisfied that the testator is dead, he shall in the applicant's presence, open the cover and, at the applicant's expense, cause the contents thereof to be

copied into his Book 3, and then deliver the deposited Will to the nominee of the testator or his representative.

(2) If, in respect of any will deposited, no steps are [New] taken by the testator or other person under section 45 or sub-section (1) of this section, the Registrar shall follow the procedure hereinafter provided for the disposal of such will or sealed cover.

47. (1) Nothing hereinbefore contained shall affect the provisions of section 294 of the Indian Succession Act, 1925 or the power of any court by order to compel the production of any will. Saving of certain enactments and powers of courts. [Sec. 46]

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 46, open the cover and cause the will to be copied into his Book 3 and make a note on such copy that the original has been removed into court in pursuance of the order aforesaid.

48. (1) Any will in deposit with a Registrar at the commencement of this Act and any will hereafter deposited may be destroyed after following the procedure hereinafter provided, if the will is not registered before such destruction. Destruction of wills. [New]

(2) Every registering officer shall on the 1st day of July in the year next after the commencement of this Act and on the 1st day of July in every succeeding third year, send by post a notice to every depositor and his nominee, inquiring about the depositor's present address and shall enter on the cover and in his registers any new address supplied in response to such notice.

(3) If, as a result of such notice or in any other manner, the Registrar is satisfied that the testator has died, the Registrar shall, after making an entry in his books as to the death of the testator and the nature of the information on which he has acted, open the cover in the presence of a judicial officer (not below the rank of a subordinate judge). He shall thereupon issue a notice to the executor, if any, and also to such other person or persons deriving any benefit under the will as the two officers may determine, informing them about the existence of the will and also that unless steps are taken within a period of six months therefrom for registration of the will, the document shall be liable to be destroyed.

(4) Notwithstanding the expiry of the period specified in the notice, until the will is actually destroyed in accordance with the provisions of the Destruction of Records Act, 1917 (V of 1917), the registration of the same can be effected, at the request of the person entitled thereto, on payment of the proper charges.

PART VI

REGISTRATION ESTABLISHMENT

Chapter I.—Registration Officers and Registration Office Establishment.

Inspector-General of Registration.
[Sec. 3]

49. (1) The State Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government:

Provided that the State Government may, instead of making such appointment, direct that all or any of the powers and the duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such an officer or officers, and within such local limits as the State Government appoint in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under the Government.

Districts and sub-districts.
[Sec. 5]

50. (1) For the purposes of this Act, the State Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars and Sub-Registrars and their Offices.
[Sec. 7(1)]

51. (1) The State Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the office of the Joint Sub-Registrars.

[Sec. 7(2)]

(2) The State Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordi-

nate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and the duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear a *reference made* by himself under this Act.

(3) The State Government may appoint officers,..... [Sec. 6]in accordance with the rules prescribed therefor, to be Registrars of the several districts and Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

52. (1) The State Government may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers. [Sec. 8]

(2) Every such Inspector shall be subordinate to the Inspector-General.

53. The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the State Government. [Sec. 69 (1), in part]

54.(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate. [Sec. 68]

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any Act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered. [Sec. 10, modified]

55. When any Registrar..... is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf.....shall be the Registrar during the said absence or until the State Government fills up the vacancy. [Sec. 11]

56. When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence all the duties of a Registrar..... [Sec. 11]

Absence of Sub-Registrar or vacancy in his office. [Sec. 12]

57. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be the Sub-Registrar during such absence, or until the vacancy is filled up.

Reports to State Government of appointments under sections 55, 56 and 57. [Sec. 13(1)]

58. All appointments made under section 55, 56 and 57 shall be reported to the State Government by the Inspector-General.

* * *

Establishments for registering offices. (Sec. 14) [Sec. 16(1)]

59. (1) The State Government may allow proper establishment for the several offices under this Act.

(2) The State Government shall provide for the office of the every registering officer the books necessary for the purposes of this Act.

[Sec. 16 (2)]

(3) The books so provided shall contain the forms from time to time prescribed by the State Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified in the title page by the officer by whom such books are issued.

[Sec. 16(3)]

(4) The State Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

Seal of Registering Officers. [Sec. 15]

60. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the State Government directs:—
“The seal of the Registrar (or of the Sub-Registrar) of.....”

Chapter II.—*Register books and indexes*

Register books to be kept in the several registration offices. [Sec. 15(1), modified]

61. (1) The following books shall be kept in the several offices hereinafter named, namely:—

A—In all registration offices:

Book 1—“Register of non-testamentary documents relating to immovable property”;

Book 2—“Record of reasons for referring a document to the Registrar by a Sub-Registrar”;

Book 3—“Register of wills and authorities to adopt”; and

Book 4—"Miscellaneous Register".

B—In the offices of Registrars:

Book 2A—"Record of reasons for refusing to register".

Book 5—"Registrar of deposits of wills".

(2) (a) In Book 1 shall be entered all documents registered under section 3 and 4 which relate to immovable property and are not wills and also memoranda prepared under section 42 or received under section 36. [Sec. 51(2), modified]

(b) Copies of decrees, orders, instruments, documents or certificates received under section 42 shall be filed in Book 1. [New]

(3) In Book 4 shall be entered all documents registered under section 4 which do not relate to immovable property. [Sec. 51(3)]

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar. [Sec. 51(4)]

(5) If, in the opinion of the Registrar, any of the books mentioned in sub-section (1) is in danger of being destroyed or becoming illegible wholly or partially, the Registrar may, by a written order, direct such book or portion thereof, as he thinks fit, to be recopied in such manner as may be prescribed and the copy prepared and authenticated under such direction shall for all purposes of this Act and of the Indian Evidence Act 1872 (Act I of 1872), be deemed to be the original book or portion and all references in this Act to the original book shall be deemed to be to the book or portion so recopied and authenticated. [New]

(6) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the State Government. [Sec 52(2)]

62. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year. Entries to be numbered consecutively [Sec 53]

63. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable Current indexes and entries therein. [Sec. 54]

immediately after the registering officer has copied or filed a memorandum of the document to which it relates.

[Indexes to be made by Registering Officers and their contents. [Sec. 55(1)] [Sec. 55(2), Modified]

64. (1) Four such indexes shall be made in all registration offices and shall be named respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and all persons claiming under every document entered and every memorandum copied or copy filed in Book 1, together with such other particulars as may be prescribed in respect of the documents or copies filed in Book 1.

[Sec. 55(3), modified]

(3) Index No. II shall contain such particulars relating to the property included in every such document and memorandum, as may be prescribed.

[Sec. 55(4)]

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book 3, and of the executors and persons respectively appointed thereunder, and, after the death of the testator or the donor (but not before), the names and additions of all persons claiming under the same.

[Sec. 55(5)].

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book 4.

[Sec. 55(6).]

(6) Each index shall contain such other particulars and shall be prepared in such form, as the State Government from time to time directs.

(7) If in the opinion of the Registrar, any of the indexes mentioned in sub-section (1) is in danger of being destroyed or becoming illegible wholly or partially, the Registrar may, by a written order, direct such index or portion thereof, as he thinks fit, to be recopied in such manner as may be prescribed and copies so prepared shall for the purposes of this Act and of the Indian Evidence Act, 1872 (Act I of 1872) be deemed to be the original index or portion and all references in this Act to the original index or portion shall be deemed to be references to the indexes or portions prepared as aforesaid.

Registering officers to allow inspections of certain books and indexes,

65. (1) Subject to the previous payment of the fees payable in that behalf, Books 1 and 2 and the Indexes relating to Book 1 shall be, at all times, open to inspection by any person applying to inspect the same; and, subject to the provisions of section 30, copies of entries in such

Books shall be given to all persons applying for such copies. and to give certified copies of entries. [Sec. 57]

(2) Subject to the same provisions, copies of entries in Book 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

CHAPTER III.—*Fees for registration, searches and copies.*

66. The Union Government shall prepare a table of fees payable— Fees to be fixed by Union Government. [Sec. 78]

- (a) for the registration of documents;
- (b) for searching the registers;
- (c) for making or granting copies of reasons, entries or documents, before, or after registration;

and of extra or additional fees payable—

- (d) for every registration under section 13;
- (e) for the issue of commissions;
- (f) for filing translations;
- (g) for attending at private residences;
- (h) for the safe custody and return of documents; and
- (i) for such other matters as appear to the Union Government necessary to effect the purposes of this Act.

67. A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and Publication of fees. [Sec. 79]

the vernacular language of the district shall be exposed to public view in every registration office.

Fees payable on presentation, [Sec. 80]

68. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART VII

PENALTIES

Penalty for incorrectly endorsing, copying, translating or registering documents, with intent to injure [Sec. 81]

69. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating or registering of any document presented, or deposited under its provisions endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code (XLV of 1860), to any persons, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment. [Sec. 82]

70. Whoever—

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or
- (b) intentionally delivers to a registering officer, in any proceeding.....a false copy or translation of a document, or a false copy of a map or plan; or
- (c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or
- (d) abets anything made punishable by this Act; shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Registering officer to commence prosecution-

71. (1) No prosecution for any offence under this Act shall be commenced save by or *with* the permission of the

Inspector-General, or the Registrar or the Sub-Registrar, in whose territories, districts or sub-district, as the case may be, the offence has been committed. tions. [Sec. 83].

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

72. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860). Registering Officers to be deemed public servants. [Sec. 84]

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code (XLV of 1860), the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

PART VIII

MISCELLANEOUS

73. (1) Notwithstanding anything contained in this Act it shall not be necessary for— Registration of documents executed by Government Officers or certain public functionaries. [Sec. 88]

(a) any officer of Government, or any presiding officer of a court,

(b) any Administrator-General, Official Trustee or Official Assignee, or

(c) the Sheriff, Receiver or Registrar of a High Court, or

(d) the holder for the time being of such other public office as may be specified in a notification in the Official Gazette issued in that behalf by the Union or the State Government, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him or in his favour, in his official capacity, or to sign as provided in Section 26.

(2) Any instrument executed by or in favour of an officer of Government or any other person referred to in sub-section (1) may be presented for registration in such manner as may be prescribed.....

(3) The registering officer to whom any instrument is presented for registration under this section may, if he

thinks fit, refer to any Secretary to Government or to such Officer of Government or other person referred to in sub-section (1) for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

Destruction of unclaimed documents.
[Sec. 85]

74. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed, *after such notice as may be prescribed.*

Registering officer not liable for things *bona fide* done or refused in his official capacity.
[Sec. 86]

75. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Power of State Government to make rules.
[New]

76. (1) *The State Government may make rules for the purpose of carrying into effect the provisions of this Act.*

[Sec. 69 (1), modified]

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*

- Cl. (a) (a) providing for the safe custody of books, papers and documents;
- [Cl. (b)] (b) declaring what languages shall be deemed to be commonly used in each district;
- * * *
- [Cl. (c)] (c) regulating the exercise of the discretion reposed in the registering officer by *section 31*;
- [Cl. (f)] (d) regulating the form in which registering officers are to make memoranda of documents;
- [Cl. (g)] (e) regulating the *manner of copying and authentication* by Registrars and Sub-Registrars of the books, or portions thereof, kept in their respective offices under *section 61*.
- [Cl. (gg)] (f) regulating the manner in which instruments referred to in sub-section (2) of *section 73* may be presented for registration;
- [Cl. (h)] (g) declaring the particulars to be contained in indexes Nos. I, II, III and IV respectively;
- [New] (h) *regulating the manner of recopying the Indexes Nos. I, II, III and IV respectively and portions thereof, under section 64*;

- (i) *regulating the manner of issuing the notice* [New] referred to in section 74;
- (j) declaring the holidays that shall be observed in [C. (j)] the registration offices;
- (k) *regulating the recruitment and promotion of* [New] *Sub-Registrars and Registrars and regulating the duties of such officers; and*
- (l) generally, regulating the proceedings of the [CL. (l)] Registrars, Sub-Registrars and other registration officers.

(3) The rules so made.....shall be published in the [Sec. 69 (2), Official Gazette, and on publication shall have effect as if modified] enacted in this Act.

77. (1) Nothing contained in this Act or in *the Indian Registration Act, 1908* (XVI of 1908), or in the *Indian Registration Act, 1877* (III of 1877), or in the *Indian Registration Act, 1871* (VIII of 1871), or in any Act there-
by repealed, shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:—

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settlement; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records; or
- (d) Sanads, inams, title-deeds, *grants* and other documents *affecting immovable property, made by Government;*
- (e) notices given under section 74 or section 76 of the *Bombay Land Revenue Code, 1879* (Bombay Act V of 1879), of relinquishment of occupancy by occupants or of alienated land by holders of such land.

(2) All such documents and maps shall, for the purposes of *sections 37 and 39*, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection
and copies
of such
documents.
[Sec. 91.]

78. Subject to such rules *as are prescribed* and the previous payment of such fees *as are fixed* in this behalf, all documents and maps mentioned in clauses (a), (b), (c) and (e) of *sub-section (1) of section 77*, and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

APPENDIX II
EXPLANATORY NOTES ON SECTIONS OF
APPENDIX I

[The corresponding sections of the existing Act are referred to as "existing" sections.]

Section 1 reproduces existing section 1 with the omission of the word "Indian" in sub-section (1) and of the Proviso to sub-section (2).

Section 2 corresponds to existing section 2.

Clause (1) reproduces the existing definition of "addition" with two modifications—

(a) It has been provided that in the case of a married woman her husband's name should be shown.

(b) The words "rank and title" have been omitted.

Clause (2) gives a new definition of "affect immovable property". We have adopted this definition in order to avoid repeating in every section the long clause "which purport or operate declare etc." and to give effect to our views in Para 27.

Clause (3) reproduces existing clause (2) with verbal alterations, to make the definition of "book" more explicit.

Clause (4) reproduces existing clause (3).

The definition of "district court" in existing clause (4) has been omitted in view of the change recommended in section 55, corresponding to existing section 10.

Clause (5) reproduces existing clause (5).

Clause (6) adds a new definition of "execution" to make it clear that execution imports not merely that a person signed a document but also that he signed it after understanding its contents.

Clause (7) redrafts the existing definition of "immovable property" in existing clause (7) in order to make the meaning clear and also to dispense with a separate

definition of "immovable property". The contents of existing clause (9) have been added to the definition of "immovable property" by way of exceptions (a) and (b), while (c) introduces a new exception relating to machinery.

Clause (8) reproduces existing clause (6A).

Clause (9) substitutes existing clause (7) in order to adopt the definition of "lease" as given in the Transfer of Property Act, omitting "an agreement to lease" from the definition.

Clause (10) reproduces existing clause (8). The definition of "movable property" in existing clause (9) has been omitted in view of the proposed definition of "immovable property", as already stated.

Clause (11) is new. As in other recent Acts, it defines "prescribed" as referring to rules made under the Act.

Clause (12) redrafts existing clause (10) in order to make the definition of "representative" more explicit and comprehensive.

Section 3 and 4 contain the substantive provisions relating to registrable documents.

Section 3 corresponds to existing section 17, with the following changes—

In sub-section (1),—clause (a) has been substituted by a new clause which is wider in scope and includes in it all documents which are required by the substantive law to be registered for giving validity to the transaction effected thereby.

Changes have been made in existing clause (b) in view of the new definition of "affect immovable property".

Existing clause (c) has been omitted.

Clause (c) reproduces existing clause (d). The Proviso which stands at the end of sub-section (1) of the existing section has been made a Proviso to the new clause (c), for, it refers only to leases.

Clause (d) corresponds to existing clause (e), omitting executable decrees and awards.

Two Explanations have been added to sub-section (1). Explanation (i) is new. It seeks to resolve the conflict of judicial opinion as to the test to be applied for determining

the value for registration in case of assignment of a mortgage.

Explanation (ii) reproduces the Explanation to existing sub-section (2).

Sub-section (2) corresponds to existing sub-section (2), with the following changes—

Existing clause (i) relating to composition deed has been omitted except in so far as it has been included under the new scheme embodied in section 42 (corresponding to existing section 89).

Existing clause (ii) relating to shares in a company has been omitted.

Clauses (a) and (b) correspond to existing clauses (iii) and (iv), with verbal changes.

Clause (c) reproduces existing clause (xi) with the omission of the words “when the receipt does not purport to extinguish the mortgage.”

Clause (d) is new. It provides that though the registration of ‘lease’ includes a ‘counterpart’, the counterpart shall not require registration where the lease corresponding thereto has itself been registered.

Existing clauses (vi) to (xa) have been omitted in view of their inclusion in the new scheme proposed under section 42 (corresponding to existing section 89) and this has been made clear by the inclusion of a new clause (f) in section 3(2).

Sub-section (3) reproduces sub-section 3 of existing section 17.

Section 4 corresponds to clause (f) of existing section 18. Clauses (a) to (e) have been omitted as unnecessary.

Sections 5—7 include those provisions which lay down the conditions which must be fulfilled by a document before it is presented for registration.

Section 5 reproduces existing section 19.

Section 6 reproduces existing section 20.

Section 7 corresponds to existing section 21 with the following changes—

Sub-sections (2) and (3) have been redrafted in order to make them more explicit. In sub-section (3), the words “territorial division and superficial contents” have been replaced by more definite expressions.

After *sub-section* (4), a proviso has been inserted, which includes the contents of *sub-section* (2) of existing section 22.

Sub-section (1) of existing section 22 has been omitted as unnecessary in view of the changes made in section 7 (corresponding to existing section 21).

Sections 8—17 group together all the provisions relating to presentation.

Section 8 combines existing sections 23 and 27.

Sub-section (1) corresponds to existing section 23, substituting a period of one month for four months for presenting a document. No change has been made in the Proviso.

Sub-section (2) reproduces existing section 27 with verbal changes.

Existing section 23A has been omitted.

Section 9 corresponds to existing section 24, omitting the reference to re-registration and substituting the period of one month for four months, in consequence of the changes already made in section 8 (corresponding to existing section 23).

Section 10 corresponds to existing section 25. Apart from verbal changes—

(a) The words "urgent necessity or unavoidable accident" have been substituted by "on proper cause being shown".

(b) In place of a fine "not exceeding ten times—
———", "not exceeding ten rupees" has been provided.

Section 11 corresponds to existing section 26.

Section 12 corresponds to existing section 28 with the following changes:—

Sub-section (1) corresponds to existing section 28 with verbal changes.

Sub-section (2) takes out a part from existing section 40, in order to include the case of will or authority to adopt in the present context of presentation for registration.

Sub-section (3) combines the contents of *sub-sections* (1) and (2) of section 29.

Sub-section (4) gives effect to the principles formulated in Para 59 of the Report.

Section 13 corresponds to existing section 30, with the omission of sub-section (1), in view of the power being conferred on all Registrars, in the new provision.

Section 14 corresponds to the existing section 31 with the insertion of the words "presentation" at the beginning.

Section 15 combines existing section 32 and that portion of section 40 which relates to the persons who can present a document for registration with consequential changes.

Section 16 corresponds to existing section 33 with verbal changes.

Section 17 incorporates the provisions contained in clauses (a) and (b) of sub-section (1) of existing section 52, to give a connected account of presentation for registration.

Sections 18-24 comprise the provisions relating to the procedure to be followed after a document is presented for registration.

Section 18 corresponds to section 34 with the following changes.—

Sub-section (1) corresponds to existing sub-section (1) with alterations which are necessary in view of the changes made in section 10 (corresponding to existing section 25). Existing sub-section (3) has been transferred to sections 19 and 20.

Sub-section (3) reproduces existing sub-section (4) with verbal changes.

Sub-section (4) is new and provides what the Registrar should do when, within the time allowed, the executant or executants do not appear.

Section 19 makes a new provision relating to inquiry before registration, by combining the contents of existing sections 34(3)(b)(c) and parts of 35(1)(a), 41(2).

Sections 20 and 21 split up the provisions relating to procedure (a) where the persons executing the documents admit execution and (b) where they deny it,—which are now combined in existing section 35.

Section 20 relates to admission.

Sub-section (1) corresponds to existing section 34(3)(a) with the following changes—

(a) in clause (a), a provision has been made for reading over the document.

(b) a new provision relating to inquiry about attestation has been inserted.

Sub-section (2) corresponds to sub-section (1) of existing section 35, including a new Explanation which requires that at least one attesting witness must be examined by the registering officer for the purpose of proving due execution.

Sub-section (3) enlarges the scope of sub-section (1) of existing section 35 by stating that a registering officer has all the powers of a Civil Court for the purpose of examining or enforcing the attendance of *any* person, which follows from sub-section (4) of existing section 75.

Section 21 relates to the procedure on denial of execution.

Sub-section (1) corresponds to sub-section (3) of existing section 35, with the addition of the cases of non-appearance of the executant as well as failure to prove attestation as grounds of refusal. It also provides for a reference to the Registrar instead of making an order of refusal.

Sub-section (2) then provides what steps the Sub-Registrar shall take when he decides to make such a reference and this sub-section roughly corresponds to a portion of sub-section (1) of existing section 71.

Section 22 lays down the procedure that the Registrar has to follow not only where he receives a reference under the preceding section but also where the document is presented to himself for registration, and adopts the relevant provisions in existing sections 74, 75 and 76. Existing sections 72 and 73 have been omitted for the reference proposed is to take the place of appeal and application which are provided by the existing sections 72 and 73.

Clause (a) of sub-section (1) of existing section 76 has been omitted, as the exception mentioned therein has become unnecessary in view of the changes made in section 13 (corresponding to existing section 30).

Section 23 reproduces existing section 77 with the addition of a Proviso which seeks to settle a difference of judicial opinion, by making it clear that the failure to file a suit under this section does not disentitle the party to any other remedy to which he may be entitled, on the

'basis of the unregistered document, e.g., specific performance.

Section 24 reproduces sub-section (1) of existing section 41,—sub-section (2) having already been incorporated in section 19.

Sections 25 to 30 deal with the procedure to be followed on admitting a document to registration.

Section 25 corresponds to existing section 52 (1) (c), with the inclusion of memoranda of documents received, in view of the changes introduced in section 42 (corresponding to existing section 89).

Sections 26, 27, 28, 29 and 30 correspond to existing sections 58, 59, 60, 61 and 62, with verbal changes.

Sections 31-35 put together all the provisions which relate to the examination of executants or witnesses by a registering officer and his power to enforce their attendance.

Section 31 corresponds to existing section 63 with the change that in sub-section (2) it has been made obligatory on the part of the registering officer to record the substance of the statements made before him.

Sections 32, 33, 34 and 35 reproduce sections 36, 37, 38 and 39.

Section 36 combines in itself all the provisions contained in existing sections 64, 65, 66 and 67 which lay down the procedure to be followed where a document is registered at a place where the whole or a part of the property is not situate. Verbal changes have been made in order to bring the provisions into conformity with the new scheme under section 42 (corresponding to existing section 89).

Sections 37 to 41 include the provisions relating to the effects of registration and non-registration.

Section 37 corresponds to existing section 49 with the following changes:—

(a) The reference to the provisions of the Transfer of Property Act has become unnecessary, since clause (a) of section 3(1) as proposed by us, includes the documents which are required to be registered by the Transfer of Property Act.

(b) Clause (c) and the Proviso have been omitted, for the reason given in paragraphs 75 and 76.

Section 38 reproduces existing section 47.

Section 39 reproduces existing section 48 with the addition of a second Proviso, which refers to the provisions of section 27(b) of the Specific Relief Act.

Section 40 corresponds to existing section 50 with the following changes—

In sub-section (1), two Provisos have been added to reserve the rights conferred by sections 53A of the Transfer of Property Act and 27(b) of the Specific Relief Act. *In sub-section (2)* and the Explanation, verbal changes have been made.

Section 41 incorporates the provisions contained in existing section 87, with the addition of a new sub-section which makes it clear that any defect in or the want of authority of a person to present a document shall not, by itself, render invalid the registration of the document or the transaction effected by it.

Section 42 enlarges the scope of the existing section 89 and places it in a separate Part.

Sub-section (1) corresponds to existing section 89 with modifications.

Clause (a) combines sub-sections (1) and (3) of existing section 89.

Clause (b) relates to an instrument of partition which is mentioned in clause (viii) of sub-section (2) of existing section 17, while clauses (c) and (d) include the documents which are specified in clauses (xa) and (vii) of sub-section (2) of existing section 17.

Clause (e) corresponds to clause (vi) of sub-section (2) of existing section 17, including a reference to decrees which give effect to section 53A of the Transfer of Property Act.

Clause (f) contains a new item relating to a security bond executed in favour of a court or a public officer, because it is also a transaction affecting immovable property, which should be on the register.

Clause (g) corresponds to clause (1) of sub-section (2) of existing section 17, with the changes indicated in Paragraph 33.

Clause (h) refers to a certificate of sale which is mentioned in sub-sections (2) and (4) of existing section 89 as:

well as in clause (xii) of sub-section (2) of existing section 17.

Sub-sections (2), (3) and (4) are new.

Sub-section (2) has been inserted to include a plaint and a memorandum of appeal relating to immoveable property and a schedule of such property attached by a court or a public officer.

Sub-section (3) states what steps shall be taken by the registering officer who receives any such document or copy as mentioned in the preceding sub-sections.

Sub-section (4) is intended to fill up the lacuna in the definition of "notice" in section 3 of the Transfer of Property Act and also to provide that the filing of a copy of a document under section 42 shall have the same effect as registration.

Sections 43 to 47 correspond to the provisions relating to the deposit of Wills and contained in existing sections 42 to 46, with the following changes:

In *Section 43*, which corresponds to existing section 42, a new sub-section has been inserted, requiring the testator to endorse on the cover of a deposited Will the name and address of the person to whom the original document should be delivered after the testator's death.

In *section 46*, *sub-section (1)* corresponds to sub-section (1) of existing section 45. *Sub-sections (2) and (3)* are new and provide for the disposal of the sealed covers.

Sub-section (2) of existing section 45 has been omitted as a re-deposit has become unnecessary in view of the procedure for destruction which has been provided in the new *section 48*.

Sections 49 to 60 correspond to the provisions relating to the registration officers and their office establishment.

Section 49 reproduces existing section 3.

Section 50 reproduces existing section 5.

Section 51 combines existing sections 6 and 7.

Section 52 reproduces existing section 8.

Section 53 incorporates that portion of sub-section (1) of section 69 which deals with the power of superintendence belonging to the Inspector-General.

Section 54 reproduces existing section 68 which deals with the power of superintendence belonging to the Registrar.

Section 55 combines the provisions of sub-sections (1) and (2) of existing section 10 with the omission of reference to the Judge of the District Court in sub-section (1) of existing section 10.

Section 56 corresponds to existing section 11 with the omission of the exception mentioned at the end of the existing sub-section.

Section 57 reproduces existing section 12.

Section 58 corresponds to existing section 13 with the omission of sub-section (2), which is considered unnecessary.

Section 59 combines existing sections 14 and 16.

Section 60 reproduces existing section 15.

Sections 61 to 65 include the provisions relating to registered books and indexes.

In *Section 61*,—

Sub-section (1) corresponds to sub-section (1) of existing section 51 with consequential changes which are necessary owing to the substitution of 'reference' for an order of refusal.

Sub-section (2) corresponds to sub-section (2) of existing section 51 with changes which are necessary in view of the provisions in section 42.

Sub-sections (3) and (4) reproduce sub-sections (3) and (4) of existing section 51.

Sub-section (5) is new. It provides for copying and authentication of books when they are in danger of being damaged.

Sub-section (6) incorporates the provisions in sub-section (2) of existing section 52.

Sections 62 and 63 reproduce existing sections 53 and 54, respectively.

Section 64 corresponds to existing section 55, with consequential changes. At the end of the section, a new sub-section has been inserted, providing for the copying of indexes when they are in danger of being damaged.

Section 65 reproduces existing section 57 with a consequential change in sub-section (1).

Sections 66 to 68 reproduce the provisions in existing sections 78 to 80, with the substitution of the Union Government instead of the State Government, in section 66 (corresponding to existing section 78).

Sections 69 to 72 correspond to existing sections 81 to 84 with changes in sub-section (1) of section 71 (which corresponds to existing section 83) to indicate that there should be no prosecution for an offence under the Act on private complaint.

Sections 73 to 78 contain the residuary and miscellaneous provisions.

Section 73 corresponds to existing section 88 with the inclusion of the presiding officer of a Court in clause (a), and the Union Government in clause (d) of sub-section (1).

Section 74 corresponds to existing section 85 with the additional requirement of notice

Section 75 reproduces existing section 86.

Section 76 corresponds to the existing section 69 relating to the rule-making power, with the following changes:

It is provided, in a new sub-section, that instead of the Inspector-General the State Government is to have the power to make the rules.

Sub-section (2) reproduces the several clauses of sub-section (1) of the existing section 69 with the following changes: Clause (a) has been omitted because the reference to "territorial divisions" has been omitted from sub-section (3) of section 7 (corresponding to sub-section (3) of existing section 21). Clause (d) has been omitted in view of the changes made with respect to fines in sections 10 and 18 (corresponding to existing sections 25 and 34).

Clauses (h), (i) and (k) are new. They are consequential to the changes made in the several substantive provisions mentioned therein.

Sub-section (3) reproduces sub-section (2) of existing section 69, with the omission of the requirement of approval since, under the revised section, the rules will be made by the State Government itself.

Section 77 corresponds to existing section 90 and section 78 corresponds to existing section 91, with verbal changes.

APPENDIX III
COMPARATIVE TABLES

TABLE A

Showing the sections in the existing Act and the corresponding sections in Appendix I

Existing section	Corresponding section (if any) in Appendix I	Existing section	Corresponding section (if any) in Appendix I
1	2	1	2
1(1)	1(1)	17(2)(ix)	42(1)(a)
1(2)	1(2)	17(2)(x)	42(1)(a)
Prov	Omitted	17(2)(xa)	42(1)(c)
1(3)	1(3)	17(2)(xi)	3(2)(c)
2(1)	2(1)	17(2)(xii)	42(1)(h)
2(2)	2(3)	Expl.	3(1), Expl. (ii)
2(3)	2(4)	17(3)	3(3)
2(4)	Omitted	18(a), (b), (c), (cc), (d), (e)	Omitted
2(5)	2(5)	18(f)	4
2(6)	2(7)	19	5
2(6A)	2(8)	20	6
2(7)	2(9)	21	7(1)(2)(3)(4)
2(8)	2(10)	22(1)	Omitted
2(9)	Omitted	22(2)	Proviso to 7
2(10)	2(12)	23	8(1)
3	49	23A	Omitted
4(Repealed)	..	24	9
5	50	25	10
6	51(3)	26	11
7	51(1)(2)	27	8(2)
8	52	28	12(1)
9(Repealed)	..	29(1)(2)	12(3)
10(1)(2)	55	30(1)	Omitted
11	56	30(2)	13
12	57	31	14
13(1)	58	32(a)	15(a)(i)
13(2)	Omitted	32(b)	15(a)(ii)
14	59(1)	32(c)	15(a)(iii)
15	60	33	16
16	59(2)(3)(4)	34(1)	18(1)
17(1)(a)	Omitted	34(2)	18(2)
17(1)(b)	3(1)(b)	34(3)(a)	20(1)(b)(i)
17(1)(c)	Omitted	34(3)(b)	19(a)
17(1)(d)	3(1)(c)	34(3)(c)	19(b)
17(1)(e)	3(1)(d)	34(4)	18(3)
Prov.	3(1)(c), Prov.	34(5)	18(5)
17(2)(i)	42(1)(g)	35(1)	19, 20(2)
17(2)(ii)	Omitted	35(2)	20(1)
17(2)(iii)	3(2)(a)	35(3)	21(1)
17(2)(iv)	3(2)(b)	Proviso 1	Omitted
17(2)(v)	3(2)(e)	Proviso 2	21(1) Prov.
17(2)(vi)	42(1)(e)	36	32
17(2)(vii)	42(1)(d)	37	33
17(2)(viii)	42(1)(b)	38	34

1	2	1	2
39	35	69(1)(e)	75(2)(c)
40	12(2);15(b)(c)	69(1)(f)	75(2)(d)
41(1)	24	69(1)(g)	75(2)(e)
41(2)	19(c)	69(1)(gg)	75(2)(f)
42	43(1)	69(1)(h)	75(2)(g)
43	44	69(1)(i)	75(2)(j)
44	45	69(1)(j)	75(2)(l)
45(1)	46	69(2)	76(3)
45(2)	<i>Omitted</i>	70	<i>Omitted</i>
46	47	71(1)	21(2)
47	38	71(2)	<i>Omitted</i>
48	39	72	<i>Omitted</i>
49	37	73	<i>Omitted</i>
Prov.	<i>Omitted</i>	74	22(1)
50	40	75(1)(2)(3)	22(2)(3)(4)
51	61(1)(2)(3)(4)	75(4)	20(3), (22(5))
52(1)(a)(b)	17	76(1)(a)	<i>Omitted</i>
52(1)(c)	25	76(1)(b)	22(6)
52(2)	61(6)	76(2)	22(7)
53	62	77	23
54	63	78	66
55	64	79	67
56 (Repealed)	..	80	68
57	65	81	69
58	26	82	70
59	27	83	71
60	28	84	72
61	29	85	74
62	30	86	75
63	31	87	41(1)
64	36(1)	88	73
65	36(2)(3)	89(1)	42(1)(a)
66	36(4)	89(2)	42(1)(h)
67	36(4)	89(3)	42(1)(a)
68	54	89(4)	42(1)(h)
69(1)	53,76(2)	90	77
69(1)(a)	76(2)(a)	91	78
69(1)(b)	76(2)(b)	92 (Repealed)	..
69(1)(c)	<i>Omitted</i>	93 (Repealed)	..
69(1)(d)	<i>Omitted</i>		

TABLE B

Showing the sections in Appendix I and the corresponding sections in the existing Act

Section in Appendix I	Contents	Corresponding section in the existing Act.
1	2	3

PART I

PRELIMINARY

1	Short title, extent and commencement	1
2	Definitions	2
	(1) "addition"	1(1)
	(2) "affect immovable property"	<i>New</i>
	(3) "book"	1(2)
	(4) "district" and "sub-district"	1(3)
	(5) "endorsement" and "endorsed"	1(5)
	(6) "execution"	<i>New</i>
	(7) "Immovable property"	1(6)
	(8) "India"	1(6A)
	(9) "lease"	1(7)
	(10) "minor"	1(8)
	(11) "prescribed"	<i>New</i>
	(12) "representative"	1(10)

PART II

REGISTRABLE DOCUMENTS

3	Documents of which registration is compulsory	17, modified
	Sub-sec. (1):—	
	cl. (a)	<i>New</i>
	cl. (b)	17(1)(b)
	cl. (c)	17(1)(d)
	cl. (d)	17(1)(e)
	Expl. (i)	<i>New</i>
	Expl. (ii)	Expl. to 17(2)
	Sub-sec. (2):—	
	cl. (a)	17(2)(iii)
	cl. (b)	17(2)(iv)
	cl. (c)	17(2)(xi)
	cl. (d)	<i>New</i>
	cl. (e)	17(2)(v)
	cl. (f)	<i>New</i>
	Sub-sec. (3)	17(3)
4	Documents of which registration is optional	18(1), modified

PART III

REGISTRATION

CHAPTER I.—Conditions of admissibility for registration

5	Documents in language not understood by Registering Officer	19
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1	2	3
6	Documents containing interlineations, blanks, erasures or alterations	20
7	Description of property and maps or plans	21 and 22, modified
	Sub-sec. (1)	21(1)
	Sub-sec. (2)	21(2), modified
	Sub-sec. (3)	21(3), modified
	Sub-sec. (4)	21(4)
	Proviso	22(2), modified
CHAPTER II.— <i>Presentation</i>		
8	Time for presenting documents	23 and 27
	Sub-sec. (1)	23
	Sub-sec. (2)	27
9	Documents executed by several persons at different times	24
10	Extension of time for presentation	25, modified
11	Documents executed out of India	26
12	Place of presentation	28, 29 and 40 (1), modified
	Sub-sec. (1)	28, modified
	Sub-sec. (2)	40, in part
	Sub-sec. (3)	29, modified
	Sub-sec. (4)	<i>New</i>
13	Registration by Registrars in certain cases	30(2), modified
14	Presentation at private residence	31
15	Persons to present documents for registration	32 and part of 40
	cl. (a)	32
	cl. (b)	40(1), in part
	cl. (c)	40(2), in part
16	Powers-of-attorney recognisable for purposes of Section 15	33
17	Duties of Registering Officers when document presented	52(1)(a)(b)
CHAPTER III.— <i>Procedure for registration</i>		
18	Appearance of parties	34, modified
	Sub-sec. (1)	34(1)
	Sub-sec. (2)	34(2)
	Sub-sec. (3)	34(4)
	Sub-sec. (4)	<i>New</i>
	Sub-sec. (5)	34(5)
19	Enquiry before registration	34(3)(b)(c), 35(1)(a), 41 (2)
	Para. I	35(1)(a), in part
	cl. (a)	34(3)(b)
	cl. (b)	34(3)(c)
	cl. (c)	41(2)
20	Procedure on admission of execution etc.	
	Sub-sec. (1) :—	
	cl. (a)	<i>New</i>
	cl. (b)(i)	34(3)(a)
	cl. (b)(ii)	<i>New</i>
	Sub-sec. (2)	35(1), modified
	Expl.	<i>New</i>
	Sub-sec. (3)	35(2), modified 75(4), in part

1	2	3
21	Procedure on denial of execution etc.	35(3), and 71
	Sub-sec. (1) :—	
	cls. (i)-(iii)	35(3)(a)—(c)
	cls. (iv)-(v)	New
	cls. (a), (b)	35(3), modified
	Sub-sec. (2) :—	
	cls. (a), (b)	71(1), modified
	cls. (c), (d), (e)	New
22	Procedure before the Registrar	74 75, 76 modified
	Sub-sec. (1)	74, modified
	Sub-sec. (2)	74, (1)
	Sub-sec. (3)	75(2), modified
	Sub-sec. (4)	75(3)
	Sub-sec. (5)	75(4), in part
	Sub-sec. (6)	76(1)(b), modified
	Sub-sec. (7)	76(2)
23	Suit in case of order of refusal by Registrar	77, modified
	Sub-sec. (1)	77(1)
	Sub-sec. (2)	77(2)
	Proviso	New
24	Registration of Wills and authorities to adopt	41(1)
<i>CHAPTER IV.—Procedure on admitting to registration</i>		
25	Copying of the documents or memorandum	52(1)(c)
26	Particulars to be endorsed on documents admitted to registration	58
27	Endorsements to be dated and signed by the Registering Officer	59
28	Certificate of Registration	60
29	Endorsements and certificate to be copied and document returned	61
30	Procedure on presenting a document in language unknown to the Registering Officer	62
<i>CHAPTER V.—Power to examine and enforce the appearance of executants and witnesses.</i>		
31	Power to administer oaths and record substance of statements	63
32	Procedure where appearance of executant or witness is desired.	36
33	Officer or court to issue and cause service of summons	37
34	Persons exempt from appearance at Registration Office	38
35	Law as to summons, commissions and witnesses	39
<i>CHAPTER VI.—Procedure where a document is registered at a place where the whole or part of the property is not situated</i>		
36	Procedure where document relates to land in several district and sub-districts	64, 65, 66 and 67
	Sub-sec. (1)	64, modified
	Sub-sec. (2)	65(1)
	Sub-sec. (3)	65(2)
	Sub-sec. (4) :—	
	cl. (a)	66(1)(67)
	cl. (b)	66(2), 67
	cl. (c)	66(3)
	cl. (d)	66(4), modified

CHAPTER VII.—*Effects of Registration and Non-Registration*

37	Effects of non-registration	49, modified
38	Time from which registered document operates	47
39	Registered documents relating to property when to take effect against oral agreements	48
	Proviso	<i>New</i>
40	Certain registered documents relating to land to take effect against unregistered documents	50
	Sub-section(1)	50(1)
	Proviso 1,2	<i>New</i>
	Sub-section (2)	50(2)
	Explanation	Expl. to s. 50, modified.
41	Irregularities not affecting validity of registration	87
	Sub-section (1)	87
	Sub-section (2)	<i>New</i>

PART IV

FILING OF DOCUMENTS AND COPIES IN BOOK I

42	Copies of orders certificates etc., to be sent to registering officers	89, modified, 17(2)(i), (vi)—(xa), (xii), modified.
	Sub-section (1):—	
	cl. (a)	89(1)(3), 17(2) (ix)(x)
	cl. (b)	17(2)(viii)
	cl. (c)	17(2)(xa)
	cl. (d)	17(2)(vii)
	cl. (e)	17(2)(vi) modified
	cl. (f)	<i>New</i>
	cl. (g)	17(2)(i), modified
	cl. (h)	89(2),(4), 17 (2) (xii). [¶]
	Sub-sections(2)—(4)	<i>New</i>

PART V

DEPOSIT AND DESTRUCTION OF WILLS

43	Deposit of Wills	42, modified
	Sub-section (1)	42
	Sub-section (2)	<i>New</i>
44	Procedure on deposit of Wills	43
45	Withdrawal of sealed cover	44
46	Proceedings on death of depositor	45 (1)
	Sub-section (1)	45
	Sub-section (2)	<i>New</i>
47	Saving of certain enactments and powers of courts	46
48	Destruction of Wills	<i>New</i>

PART VI

REGISTRATION ESTABLISHMENT

CHAPTER I.—*Registration Officers and Registration Office Establishment*

49	Inspector-General of Registration	3
50	Districts and sub-districts	5
51	Registrars and Sub-Registrars and their offices	6 & 7
	Sub-section (1)	7(1)
	Sub-section (2)	7(2)
	Sub-section (3)	6
52	Inspectors of Registration Offices	8
53	Powers of Inspector-General to superintend Registration Offices	69(1), in part
54	Powers of Registrar to superintend and control sub-Registrars	68
55	Absence of Registrar of vacancy in his office	10
56	Absence of Registrar on duty in his district	11
57	Absence of Sub-Registrar or vacancy in his office	12
58	Reports to State Government of appointments under sections 55, 56 and 57	13(1)
59	Establishments for Registration Offices	14 & 16
	Sub-section (1)	14
	Sub-section (2)	16(1)
	Sub-section (3)	16(3)
	Sub-section (4)	16(4)
60	Seal of Registering Officers	15

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61	Register Books to be kept in the several offices	51, modified, 52(2)
	Sub-section (1)	51(1), modified
	Sub-section (2) :cl. (a)	51(2), modified
	cl. (b)	<i>New</i>
	Sub-section (3)	51(3)
	Sub-section (4)	51(4)
	Sub-section (5)	<i>New</i>
	Sub-section (6)	52(2)
62	Entries to be numbered consecutively	53
63	Current indexes and entries therein	54
64	Indexes to be made by registering officers and their contents	55, modified
	Sub-section (1)	55(1)
	Sub-section (2)	55(2), modified
	Sub-section (3)	55(3), modified
	Sub-section (4)	55(4)
	Sub-section (5)	55(5)
	Sub-section (6)	55(6)
	Sub-section (7)	<i>New</i>
65	Registering officers to allow inspection of certain books and indexes and to give certified copies of entries	57

CHAPTER III.—*Fees for Registration, Searches and Copies*

66	Fees to be fixed by Union Government	78
67	Publication of fees	79
68	Fees payable on presentation	80

PART VII

PENALTIES

69	Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure	81
70	Penalty for making false statements, delivering false copies of translations, false personation, and abetment	82
71	Registering Officer to commence prosecutions	83
72	Registering Officers to be deemed public servants	84

PART VIII

MISCELLANEOUS

73	Registration of documents executed by Government Officers or certain public functionaries	88
74	Destruction of unclaimed documents	85
75	Registering Officer not liable for things bonafide done or refused in his official capacity	86
76	Power of State Government to make rules	69, modified
	Sub-section (1)	<i>New</i>
	Sub-section (2)	69(1), modified
	Cl. (a)	69(1)(a)
	Cl. (b)	69(1)(b)
	Cl. (c)	69(1)(c)
	Cl. (d)	69(1)(f)
	Cl. (e)	69(1)(g)
	Cl. (f)	69(1)(gg)
	Cl. (g)	69(1)(h)
	Cl. (h)	<i>New</i>
	Cl. (i)	<i>New</i>
	Cl. (j)	69(1)(i)
	Cl. (k)	<i>New</i>
	Cl. (l)	69(1)(j)
	Sub-section (3)	69 (2), modified
77	Exemption of certain documents executed by or in favour of Government	90
78	Inspection and copies of such documents	91

APPENDIX IV

SUGGESTIONS IN RESPECT OF OTHER ACTS

I. *Civil Procedure Code*.—(1) Order 21, Rule 16 should be amended to make it obligatory on the part of the assignor of an executable decree to report the fact of assignment to the court, after notice to the judgement-debtor, within three months from the date of assignment. [Para. 32].

(2) Suitable provision should be made in Order 41, rule 1 of the Code requiring that where the subject-matter of appeal is immovable property, the memorandum of appeal shall contain a schedule of such property, with a description sufficient to identify it. [Para. 103].

II. *Evidence Act*.—In view of the recommendation that at least one attesting witness should be examined by the registering authority at the time of registration of a document, consequential amendment should be made in section 68 of the Evidence Act. [Para. 66].

III. *Insolvency Acts*.—Appropriate amendment should be made in the Law of Insolvency to settle the conflict of decisions relating to fraudulent preference. [Para. 73].

IV. *Transfer of Property Act*.—(1) The Act should be extended to the whole of India. [Para. 30].

(2) The definition of "immovable property" in section 3 of the Act should be amended so as to bring it into conformity with the definition proposed for the Registration Act. [Para. 21 (B)].

(3) The definition of 'notice' in section 3 of the Act should be amended to provide that the filing of a document or a memorandum in Book 1, would be equivalent to registration for purposes of notice under the Transfer of Property Act. [Para. 104].

(4) While revising the Act, it is to be considered whether it should be provided that any transaction affecting immovable property, irrespective of the value of the

property or consideration, shall be effected by only a registered instrument. [Paras. 16, 26].

V. *Hindu Law*.—(1) It should be provided that, unless conferred by will, an authority to adopt shall be made only by a registered document. [Para. 44].

(2) It should be provided that the age of majority for the purpose of conferring an authority to adopt should be the same whether the authority is conferred by will or a deed. [Para. 45].

(3) It may be provided in the Hindu Adoptions and Maintenance Act, 1956 that adoptions under the Act shall be made only by a registered document. [Para. 46].

VI. *General Clauses Act*.—A definition of the word "resides" may be included in the General Clauses Act on the lines of Explanation I to section 20 of the Code of Civil Procedure, 1908. [Para. 22].

NOTE BY DR. N. C. SEN GUPTA

I. REGISTRATION BY PANCHAYATS

I regret that I cannot agree with the opinion of my colleagues against providing for registration by Panchayats in a limited number of cases at the discretion of the State Government which I had made and which is dealt with in paragraph 18 of the Report. The principal reason assigned for holding this opinion that it is not practicable does not convince me. I may point out that my suggestion was that in a limited number of cases where the document relates to the land wholly within the jurisdiction of the Panchayat and which are acceptable to both the parties, the State Government may authorise the Executive Officer of such Panchayats, as they think fit, to register the document. I pointed out that there would be some advantages of having such documents registered by presentation to the Panchayats where the State Government considers it practicable. I did not contemplate that the Panchayat should have any power to refuse registration. In cases where the document is not admitted, the person presenting it would be referred to the Sub-Registrar and where the document is registered, the Panchayat would enter the particulars of the document in a general register of documents received and after making an endorsement of registration send it over to the Sub-Registrar who will take further steps.

The advantages of this procedure would be—

1. In respect of transfers of land within the jurisdiction, it would provide the Panchayat with a record of all transactions recorded in their office.
2. When an execution of a document is admitted, this procedure would obviously simplify the process of registration, particularly as the Panchayat is generally likely to know the executant personally.
3. The chance of falsely alleging or denying execution where the document is presented as soon as possible after execution to a Panchayat who is near at hand would be smaller, and
4. Incidentally it could possibly add to the revenues of the Panchayat to some extent.

It has been said in the report—(1) The members of the Panchayats have no knowledge or experience of the procedure to be

followed in the registration of documents. (2) If the experiment were to be tried, it would entail considerable expense for providing the staff and equipment necessary to register the documents and to maintain several books and indexes as required by law. Upon the suggestion as made by me above, these arguments would be of no avail. For (1) in the first place, the certificate of registration of a document on admission of parties known to the Panchayat does not require much expert knowledge or experience, (2) the maintenance of the several registers would be made by the Sub-Registrar when the document after registration is forwarded to him. (3) The cost of maintenance of a staff for this purpose would surely not be excessive and, whatever the cost, against it would be set off the reduced cost in the Sub-Registrar's office by reduction of work.

It is, however, said that the offices of the Sub-Registrars are so distributed in the districts as to be within any easy reach of persons intending to register documents and no special inconvenience is noticed in that behalf. I think that this dictum is not founded upon any investigation. The offices of the Sub-Registrars are not always very near at hand and are sometimes 7 or more miles away without any Railway communication and the necessity of a long journey often delays the registration of documents after execution.

Further, it is open to the State Government, if it thinks fit, under section 6 of the Act to appoint particular officers of the Panchayat as Sub-Registrar under special rules.

During the discussion on this matter it was apparently suggested by the Chairman that somehow this is not in accordance with Article 40 of the Constitution. I do not see how this suggestion in any way conflicts with Article 40 which is only a directive principle recommending that the Panchayat may be utilised to function as units of self-Government. I should think that that is precisely what is intended to be done by my suggestion. I think, therefore, that power should be given to the State Governments to authorise an officer of the Panchayat to act as *ex-officio* Sub-Registrar in respect of documents relating to lands within their jurisdiction under special rules to be framed by the State Government.

II. "COUNTERPART" OF LEASE

In Section 3, Sub-section (2) clause (d) appears to be mis-conceived. The definition of 'lease' in the Transfer of Property Act has been adopted and therefore the agreement to lease has been omitted from the definitions. Under the Transfer of Property Act, a lease is an instrument which is to be executed by both parties. There cannot, therefore, be a counter-part to such a lease. There may be a duplicate or copy. Therefore, there does not seem to be

any justification for saying that the counter-part of a lease which has been registered need not be registered. This clause should be omitted. I am not satisfied with the reasons given for refusing to accept my suggestion. An agricultural lease is no doubt exempted from the provisions of the Transfer of Property Act,—so that there may be agricultural leases which need not be in writing and also leases which are in writing but not registered. But if for that reason an exemption has to be made, it ought to be expressly made, for instance, by a clause in the proposed section 3,—a second proviso to the effect that leases for agricultural purposes shall not be compulsorily registerable—unless so required by the State Law.

With regard to the non-applicability of the Transfer of Property Act to some areas, such as, the Punjab, I am afraid, there is misconception. In order to make this definition applicable, it is not necessary that the Transfer of Property Act should be applicable in any particular area. By the force of this definition itself, for the purposes of registration, the definition of the Transfer of Property Act must be deemed to be incorporated in the present Act and the fact that the Transfer of Property Act does not apply would be absolutely immaterial. I do not understand how a counter-part can be regarded as a 'lease'. A Kabuliot, a Pattah or an Amalnama, which were considered to be lease under sec. 2(7), were so considered because the execution of a lease by both the lessor and the lessee was not then required. Now if it does not create any interest in immovable property by itself, there is no reason why it should be registered at all.

Further, a counter-part implies the existence of another document of which it is a counter-part. I could have understood it if a 'lease' is executed in two counter-parts, both together may have to be registered.

The effect of this definition by including counter-part of leases within the definition of 'Lease' is to make a counter-part of the lease even when it is governed by the Transfer of Property Act registerable, which I think would not have been contemplated. Because such a counter-part would simply not be a lease at all under the Transfer of Property Act.

III. AUTHORITY TO ADOPT.

Section 17 clause (3) requires an instrument giving the authority to adopt a son after the first day of January, 1872 to be registered and it has been incorporated in the proposed section 3 subsection (3). This, however, should be deleted now as under the Hindu Adoption Act, the adoption by a woman after the death (or even before the death) of husband, does not require the authority of the husband or anybody else.

It has been suggested that the position that a widow does not need the authority of the husband to adopt has not been made clear by the Hindu Adoptions and Maintenance Act. I have read section 8 and other provisions of that Act carefully. I do not agree that the matter is at all in doubt having regard to the provisions of section 5(1).

IV. "REPRESENTATIVE" OF MINOR.

Section 2(12) gives a new definition of the term "*Representative*". In the Act, as it is, the word "representative" is not exhaustively defined. It only states that it "includes" the guardian of a minor and a committee or other Curator or a lunatic or idiot.

That clause has been proposed to be modified substantially. In the case of a minor the representative is said to include, in the absence of the guardian, (i) "any other near relation of the minor", (ii) if the minor is adopted any near relation within the adoptive or natural family and (iii) if the minor is widow, any near relation in the family of the father or husband being in each case a relation not having any interest adverse to that of the minor.

I regret that I cannot agree to this change. The question of the meaning of the word "Representative" arises principally under section 32 (also section 34) of the present Act and under the proposed section 15 which provides that a document may be presented for registration by the representative or assign of any party to the document. Under the present Act that representative is said to include the guardian of a minor. That does not mean that the minor may not be represented by anyone else and the Judicial Committee has observed in one case that the definition of a representative does not make it *equal* to a guardian, but says that it includes a guardian and in particular circumstances of the case it might be that in the absence of a legally appointed guardian, the particular relation could be regarded as a representative. But to say that it might be presented by "any near relation" is going too far. The degree of nearness of the relationship is not specified. Therefore, it comes to this that practically any relation may come forward and present the document although the minor concerned is living with another relation who looks after all his affairs. In the next place, the presentation of a document is a responsible act which binds the person on whose behalf it is presented and section 32 as well as the proposed sec. 15 require that where it is not presented by the executant or representative it should be presented by a person under a legal power of attorney. That it should be left virtually to any relation in the case of a minor to present it would make the provisions altogether too wide. In explaining this provision in page 10 of the report, reference is made to the Privy Council decisions in 52 Madras 175 referred to above which only said that

in the particular circumstances of the case where there was no one else, the natural father of the boy given in adoption validly presented the document for registration.

With reference to the suggestion of a *de facto* guardian being substituted for a near relation, reference is made to the fact that in Muhammedan Law according to Imamandi's case, a *de facto* guardian was not capable of disposing of the property of the minor. With regard to Hindu Law it has been pointed out that there are authorities to say that a certain acts of a *de facto* guardian may validly bind the minor. But under the Hindu Minority and Guardianship Act of 1956 it has been provided that a *de facto* guardian is not entitled to deal with the property of a minor. Therefore, it is said that the suggestion could not be accepted.

Now if *de facto* guardian is to be rejected on the ground that under the law, a *de facto* guardian cannot deal with the property of a minor, how is a near relation in a better position? There is no law which says that any relation or a "near relation" can dispose of the property of a minor. It is only in peculiar circumstances when the minor was living under the care of a particular person, that the decisions under the Hindu Law recognise the power of the *de facto* guardian to bind the minor. But a relation or a near relation is nobody, and under Mohammedan he is of course nobody, unless appointed guardian by Court.

I am of opinion that the definition should be left as it is and the responsible act of presenting a document for registration should not be left at large, as suggested by the amendments. Nevertheless, there may be special circumstances in representation by a particular relation with whom and under whose care the minor is living and in such cases, the decision of the Privy Council would be sufficient to enable the Court to say that there is a good presentation.

Incidentally I may note that in discussing this matter the report refers predominantly to the authority to adopt. It has been overlooked, I am afraid that, under the Hindu Law of Adoption, as now enacted, no authority to adopt would ever require registration for women are capable of adopting without any authority to adopt.

If an amendment is at all considered necessary, it would be enough to add to the definition of "representative" a clause saying that where a minor has not a legal guardian, any person who may in the circumstances be regarded as a *de facto* guardian may present a document for registration. The fact that under the Muhammedan Law as well as under the Hindu Minority and Guardianship Act, a *de facto* guardian cannot dispose of the property of a minor would not affect the right of such a person to present a document for

registration if that is expressly provided in this Act. It would be a special provision which would override the general Law.

V. SECTION 28: PROPOSED SECTION 12

I am afraid, I cannot quite agree to the proposed amendment of section 28 by making it possible for registration of a document to be valid, because a property purports to be included in the document, "whether the parties intend to transfer it or not and even if it is insignificant in existence or value". The reasons given do not appear to be convincing.

In the first place, the Act which says that the Registrar should have jurisdiction only if there is some property affected by the document within his jurisdiction would stultify itself if it is said at the same time that the registration would be good where a document is registered without such jurisdiction; because the property sought to be included in the document was not intended to be transferred or that the property does not exist. Secondly, such registration would be valid according to the summary of the principles, if the Registrar *bona fide* believes that the property exists within his jurisdiction even if it ultimately turns out that the property was non-existent or fictitious. An exception is made where it is proved that the parties thereby intended to defraud a third party. The *bona fide* belief of the Registrar may be difficult to prove at a time when the matter comes before the Court. And when the matter is before the Court, and upon the evidence it is proved that the property sought to be transferred is non-existent or fictitious, it would be against all principle to say that the registration would nevertheless be valid. The exception in the case of fraud on third party is no protection. There can seldom be any honest reason for not registering a document where it ought to be registered. But at the same time it would be difficult to prove that there was an intention of defraud a third party. In any event it is also against principle. Where the deed obviously includes property which it is proved does not exist, why should the person who challenges the deed be required to adduce evidence of a suppressed intention to defraud a third party. One should think that the mere fact that the Act was sought to be defrauded would raise a presumption against the *bona fides* and it would be on the person who insists upon the validity of the deed to prove *bona fides*.

The next principle namely that parties to the registration should not be entitled to impeach the registration is understandable, on the basis of the principle of estoppel. But the parties to such an instrument do not always deal with one another at arm's length and the purchase may perhaps have taken the document in good faith upon the representation of the vendor that this property does exist and belongs to him without further enquiry. Where estoppel

can be established, assuredly, the party against whom it is established cannot take advantage of his false representation. But apart from that, it cannot be laid down as a general proposition that none of the parties to the transaction who may not have been dealing with one another at arm's length should not be allowed to challenge the transaction on the ground of want of jurisdiction in any case.

Looking at the proposed section, as amended, I think the proper way to attain the objects sought would be to alter the first proviso by saying that after the document is registered, the party thereto on whose representation the non-existent or fictitious property has been included shall not be permitted to challenge the validity of the registration by reason of the property being made the basis of the jurisdiction of the Sub-Registrar. It will be noticed, however, that the section, as now drawn up, does not quite accord with the proposals in paragraph 67 of the report inasmuch as the registration is valid only if the property specified in the document or any of the items specified in the document is situated within the jurisdiction of the Registrar. It does not speak of the Sub-Registrar being *bona fide* of the opinion that the property exists.

One of the reasons assigned for the amendment proposed in paragraph 56 is that there is no machinery provided under the Act for an elaborate enquiry by the Sub-Registrar to verify whether the property comprised in the deed exists within his jurisdiction. That is perfectly true. But that is no reason for saying that a document which is proved to be without jurisdiction should nevertheless become valid. It is quite true that the Registrar cannot make any elaborate enquiry to find out whether the property comprised in the deed exists within his jurisdiction. That would be a matter for the Court to determine when the document is challenged, and the Court can have no difficulty in determining this fact upon evidence adduced. The present registration law does not require the Registrar to make enquiry as to the existence of the property; he will register a document if a property is stated to be within his jurisdiction. The question whether it is so or not would be a matter to be decided in a suit where the document is challenged. In other words, the present Act does not require the Sub-Registrar to come to any judicial finding with regard to the existence or non-existence of the property. That would be left to be determined in a suit, where the deed is challenged. I do not understand my colleagues to suggest that in every case the Registrar will scrutinise all the properties and come to some finding as to whether the property exists or not. Registration of documents might be indefinitely delayed if this was to be done by the Sub-Registrar in the case of every document brought before him.

My colleagues seem to assume that in every case where the validity of the registration is challenged, by reason of fictitious

property being included, the property may have been so included for registration in an office near at hand. I do not see any justification for holding this view. There is no difficulty about registering a document by a power of attorney or taking out a commission to examine the executant. Why should people who want to register a document enter into the shady device of including fictitious property when it could be otherwise duly registered by a mere power of attorney. I think, therefore, that the reasons given in paragraphs 55 and 56 are by no means convincing.

Looking at the cases where the registration has been invalidated for the properties being not in fact in existence or within the jurisdiction, quite a number of them are cases where fictitious property has been included not for the convenience of registration but to create jurisdiction of the Original Side of the High Court within whose jurisdiction the property meant to be transferred does not lie. One would think that this for one is not a device which should receive encouragement from the legislature.

VI. PROPOSED SECTION 20.

The amendments made in sections 34 and 35 by the proposed section 20, in my opinion, require too much of the Sub-Registrar. Section 20(1) (a) requires that the Registrar shall read over the document to the executants etc. This might make the burden of the Sub-Registrar excessive. Many of the documents presented for registration are exceedingly prolix and as the proposed clause stands, the Registrar will have to read the whole of it including the Schedules which may run to fifty pages, for instance. At this rate a reasonably busy Sub-Registrar will find it impossible to get through his work for the day. I think where the executants are literate and admit the execution, no question of reading over should arise. In other cases there must be an endorsement or solemn affirmation by a person who has read over and explained the document and that would be sufficient. The utmost that can be expected of the Registrar is to state the nature of the document whether, for instance, it is a mortgage or a Deed of Partition or Conveyance and to ask whether the document purporting to be such has been executed.

Then under section 20(b) (ii), the Registrar is expected to be satisfied that the document requiring to be attested has been attested according to law. That is a function which cannot be expected to be duly performed by the Sub-Registrar in many cases. Whether a particular attestation is a proper and legal attestation is a question which ought to be left to the Court to decide when the matter comes up before it. If there are the required number of witnesses signing as such, the Registrar may proceed on the basis that there has been proper attestation, without deciding the question as to whether that is proper attestation. That would imply the Registrar to take

evidence as to whether the witnesses signed after the executant and whether they saw the executant sign or got his admission and whether the executant say the witnesses signing. It is not necessary for the purposes of registration that these things should be determined by the registering officer. If the Registrar accepts the attestation after being satisfied, as required by the proposed section, it would not shut out the question of attestation if the matter comes before the Court. There the fact has got to be established on evidence. It is true that where a document has been registered, there will be a presumption that if the document requires attestation, it has been attested, but only a presumption, and the whole thing is left open for the Court to decide. I do not see what useful purpose can be served by putting further burden on the Registrar when, if the document is disputed in court, it will have to be established by evidence and there would be no presumption of attestation arising if the dispute is raised.

It may be noted that the question whether upon the facts proved a document can be held to have been legally attested is one which may have to be determined not upon the statement of the attesting witness alone but very often after an elaborate examination of witnesses to the circumstances of execution. The weighing of the evidence of, may be a number of witnesses and the determination of the question of law whether the circumstances proved constitute legal execution and attestation is not within the province of the registering officer, and, as my colleagues emphasise in another connection, there does not exist the machinery for an elaborate investigation of this matter.

Under sub-section (2), Explanation, it is, however required in order to prove attestation that one attesting witness at least be called for the purpose of proving due execution, if such attesting witness is alive. If the document is disputed in Court, it cannot be proved unless one attesting witness at least comes before the Court, if one is alive. But why should the attesting witness be required to attend before the Registrar also. It may be difficult in many cases to get witnesses to attest document if it means that he has also to go to the Registrar at the time of registration, and as I have suggested, it serves no useful purpose. I think, therefore, that these amendments should not be made.

I could understand, and probably even support a proposal that attesting witness should be required to sign a proper attestation clause, a form of which may be set out in the Act. A declaration or a solemn affirmation in the attestation clause signed by the witness ought to suffice for registration without any necessity of dragging him before the Sub-Registrar.

VII. PROPOSED SECTION 21.

The amendments made in section 34(3) by the proposed section 21 also require further consideration.

Under the present law, a document can be refused registration if its execution is denied or if the executant is found by the Registrar to be a disqualified person. Clauses (iv) and (v) provide that if the executant of the document does not appear before the Registering Officer within the time allotted or if the attestation of the document is not proved where attestation is necessary, registration would be refused and in the case of absence of attesting witnesses, the provision is that there shall be a reference to the Registrar.

If a document has been executed by a person but he does not present it for execution within the time, the law allows the person in whose favour the document has been executed to present it for registration. The document may be registered, under certain circumstances, even though the executant does not appear. The executant will, of course, be called upon to appear and admit or deny the execution, but if the executant does not appear within time, it would be unfair to the person in whose favour the document has been executed and who has taken all the necessary steps for registration to be refused. It is not clear whether, if the executant does not appear within the time allowed, any further extension of time for his appearance can be given. The utmost that can be suggested is that in such a case, the matter would be referred to the Registrar who has the necessary power to register a document in such circumstances after taking evidence. See proposed section 22 corresponding to section 74. It is still more unfair that merely because attesting witnesses do not appear though both the parties to the document appear, there should be a reference to the Registrar. The attesting witness has no interest in the transaction and he may easily fail to appear to even deliberately refuse to appear. There is no reason why the parties to the Deed should suffer on this account. I think these amendments should not be made. I am afraid my colleagues mix up the authentication of the execution of the document, which is the proper function of registration with a decision about its validity.

VIII. SECTIONS 48 and 50 (PROPOSED SECTIONS 39 and 40).

I do not agree to the suggestions in paragraphs 74 and 77 of the Report. The proposals there only mitigate the mischief of sections 48 and 50 which, in my opinion, ought to be omitted altogether. Section 48 is a survival of the Act of 1866 and section 50 of the Acts of 1864, 1866 and 1871 and successive amendments have been made in the original sections in order to provide against the operation of the section in certain specific cases. The last of the amendments in

section 48 introducing a proviso was made only in 1929. What is now proposed is to add further exceptions in the case where, under sec. 27(b) of the Specific Relief Act, earlier oral agreements prevail over a subsequent registered document. We are left, therefore, in this section with a very tenuous survival of the original section which was enacted at a time when registration of documents was optional and not as provided in section 17 of this Act and the other Acts. Now section 17 is proposed to be expanded so as to include virtually all documents relating to immovable property, excepting a few, and there does not seem to be any justification for providing for priority of registered documents over unregistered ones, which *ex hypothesi* are in themselves perfectly good and effective instruments.

On principle, this seems to be wrong. The prior document or oral agreement, where permissible, transfers a right to the transferee. Therefore, as a matter of substantive law, the transferor would have no right to transfer the same by any subsequent document. If he makes a subsequent transfer and offers it for registration and gets it registered, he is simply transferring something which he has not got. Therefore, there can be no question of the prior transfer being superseded by the subsequent transfer which, in point of principle, was an absolute nullity.

And of course we have got to consider the door to fraud that this may open. A man may have transferred a small property *bona fide* to another on receipt of proper consideration, deferring only delivery of possession—by mutual consent or from considerations of convenience. Under section 50, even delivery of possession would be no protection. These sections would leave it open for a fraud being perpetrated upon the original transferee by getting a new registered document executed for the same purpose in favour of somebody else and it will be remembered that neither this section nor any other law specifically provides for any re-imbusement of the first transferee for the costs incurred by him.

Again, the unregistered instrument may be in respect of a small part, valued at less than Rs. 100, of a much larger property and a subsequent instrument for transfer of the entire property is made. The retention of this section means that the good title obtained by the first instrument would be extinguished by the subsequent document.

On the other hand, I can hardly imagine any real advantage by retaining these sections, when, under the law as proposed, virtually every document of importance would be compulsorily registrable. I do not understand either that these sections are intended to be applied to nullify gifts under the Mahomedan law which are even now valid if made by word of mouth followed by possession, by the mere execution of a subsequent registered deed.

Considering, therefore, that the sections are against all principles and likely to open the door to fraud in the few cases in which the sections would be applicable now, I think the only feasible course is to repeal these sections altogether which are really, anachronisms, so that the principle of priority as between two valid documents being determined solely by priority in time should have full force.

In my opinion, therefore, the proposed sections 39 and 40 should be deleted altogether.

IX. PROPOSED SECTION 42—(2), (3) & (4)

FORWARDING OF PLAINTS & MEMORANDA OF APPEAL.

I find it difficult to understand the necessity of forwarding the complaints or Memoranda of Appeal to the Registrar. The filing of a complaint does not affect title to any immovable property, and the record made under the proposed section from the complaint would be of no use whatsoever except to show that a suit has been filed claiming a right in respect of the property. If it is only for the purpose of giving notice to any party dealing with the property that there is a suit pending which might affect his title under the proposed deed, it is superfluous, as the doctrine of *lis pendens* is, for very good reason, not dependent upon notice. In the next place, so far as Memoranda of Appeal are concerned, it is even more useless. The Memorandum of Appeal does not necessarily contain any description of the property involved which is only to be found in the complaint or the decree, if any. By itself it will convey nothing with respect to the property which is the subject matter of the appeal. I should think, therefore, that the provision with regard to this document is unnecessary and will encumber the records of the Registration Office. It is enough that decrees in suits are sent to the Registrar.