

THE
REGISTRATION ACT

(ACT III OF 1877.)

As amended by

ACT XII OF 1879, ACT III OF 1885, ACT VII OF 1886

AND

ACT VII OF 1888.

WITH COPIOUS NOTES

OF

DECIDED CASES UPTO APRIL 1888;

WITH

AN APPENDIX CONTAINING ACT IV OF 1882,

ACT VII OF 1888, &c., &c.,

RULES UNDER THE TENANCY ACT (VIII OF 1885),

RULES AND NOTIFICATIONS MADE BY THE LOCAL GOVTS.,

TABLE OF FEES, &c., &c., AND A FULL INDEX.

BY

JIVAN KRISHNA GHOSH,

Pleader, District Court. ~~Calcutta~~ ^{Bur}.



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PREFACE.

THE Registration Act III of Act 1877 has been repeatedly amended by Act XII of 1879, Act III of 1885, Act VII of 1886 and Act VII of 1888. In suppression of the Rules of 1877 new Rules have been framed by the Local Governments under section 67; and a complete edition of the Act is a want which is felt daily not only by every member of the legal profession, but also by the public at large.

My object in bringing out this edition of the Act has been to remove this want. I have put in their proper places all the amendments made by different enactments, and collected all the rulings upon the Act, up to April 1888, and to make the work as complete as possible, I have also inserted in the Appendix the sections of Act IV of 1882, (which shall be read as supplemental to the Registration Act,) and several other Acts, as also the Rules made by the Local Government under sections 69 and 78, the Rules under the Tenancy Act VIII of 1885, and other Rules and orders on the subject.

J. K. G.

THE INDIAN REGISTRATION ACT, 1877.

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ACT No. III OF 1877.

As amended by Act No. XII. of 1879.

AND

Act No. VII of 1886.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN
COUNCIL.

*(Received the assent of the Governor-General on the
14th February, 1877.)*

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents: It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

1. This Act may be called "The Indian Registration Act, 1877:" Short title.

History of Registration given, and the provisions of different enactments relating to registration compared and discussed.

Balaram Nemchand v. Apvalad Dalu and others, (9 Bom. H. C. Rep., 121).

It extends to the whole of British India, except such districts or tracts of country as the Local Government may, from time to time, with the previous sanction of the Governor-General in Council, exclude from its operation; Local extent.

And it shall come into force on the first day of April 1877. Commence-
ment.

2. On and from that day, Act No. VIII of 1871 shall be repealed. Repeal of
enactments.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context—

“Lease.”

“Lease” includes a counterpart, kabūliyat, an undertaking to cultivate or occupy, and an agreement to lease :

Where a *doul darkhast* amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or to an agreement for a lease, and does not, therefore, require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered.

Syed Sufdar Reza v. Amzed Ali (I. L. R., 7 Cal., 703.) and *Maharaja Luchmissar Singh v. Mussamat Dakho* (I. L. R., 7, Cal., 708) followed.

Chooni Mundur v. Chundee Lall Dass (14 W. R., 178.) and *Bibee Meheroonnissa v. Abdool Gunnee* (17 W. R., 509). distinguished.

Lell Jha v. Negroo, (I. L. R., 7, Cal., 717).

Every lease, or agreement for a lease in writing, must be registered before being given in evidence. But a proposal in writing to take a lease of certain lands on certain terms, made by one person to another, need not be registered, unless the proposal in writing has been so accepted that the proposal and acceptance constitute a contract in writing.

Syed Safdar Reza v. Amzed Ali, (I. L. R., 7 Cal., (F. B.) 703.)

A Kobuliyat is not necessarily a mere counterpart of a lease.

Hur Chunder Ghose v. Wooma Soondaree Dassees, (23 W. R., 170).

"Signature" and "signed" include, and apply to the affixing of mark : "Signature."
"Signed."

"Immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass : "Immoveable property."

The term *immoveable property* is not identical with lands or houses. The term *immoveable property* comprehends certainly all that would be real property according to English law, and possibly more. *Maharana Fatesangji v. Kallianrayaji*, (10 Bom. H. C. Rep., 281).

"Moveable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property : "Moveable property."

"Book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book : "Book."

"Endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act : "Endorsement."
"Endorsed."

"Minor" means a person who, according to the personal law to which he is subject, has not attained majority : "Minor."

"Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot : "Representative."

"Addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father's name, or where he is usually described as the son of his mother, then his mother's name : "Addition."

"District Court." "District Court" includes the High Court in its ordinary original civil jurisdiction; and

"District" and "Sub-District" respectively mean a district and sub-district formed under this Act.

The District Courts mentioned in the Registration Act VII of 1871 (except where the High Court when exercising its Local Jurisdiction is said to be a District Court within the meaning of the Act) must, in the case of a regulation province be taken to import the ordinary Zilla Courts.

Reasut Hossein v. Hadjee Abdoollah (I. L. R. 2 Cal., 131.)

In the *Calcutta Gazette* of June 21, 1871, are published the Districts and Sub-Districts formed under Act VIII., 1871.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

Inspector General of Registration. 4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,

or, may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

Branch Inspector General of Sindh. The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may, from time to time, alter the limits of such districts and sub-districts. Districts and Sub-districts.

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 local official Gazette.

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

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively. Registrars and Sub-Registrars.

7. The Local 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 offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, Offices of Registrar and Sub Registrar.

and may authorize 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 duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices, and may, from time to time, Inspectors of Registration offices.

prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Military
cantonnments
may be declar-
ed sub-dis-
tricts or dis-
tricts.

9. Every military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Whenever the Governor-General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar of the district and Inspector General, and in the case of a district, what authorities shall be Inspector General, with reference to such cantonment and the Sub-Registrar or Registrar thereof.

Absence of
Registrar from
his district or
vacancy in his
office.

10. Whenever any Registrar, other than the Registrar of a district including a Presidency-town, 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, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district including a Presidency-town, 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 such absence, or until the Local Government fills up the vacancy.

11. Whenever 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, except those mentioned in sections 68 and 72.

Absence of Registrar on duty in his district.

12. Whenever 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 Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Sub-Registrar or vacancy in his office.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Appointments under section 10, 11 or 12 to be reported to Government.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Suspension, removal and dismissal of officers.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government, from time to time, deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

Remuneration and establishments of registering officers.

The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other lan-

Seals of registering officers.

guage as the Local Government directs :—“The seal of the Registrar (*or* of the Sub-Registrar) of . . .”

Register-
books.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Forms.

The books so provided shall contain the forms, from time to time, prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Fire-proof
boxes.

The Local 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.

PART III.

OF REGISTRABLE DOCUMENTS.

Documents
of which re-
gistration is
compulsory.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or Act No. XX of 1866, or Act No. VIII of 1871, or this Act, came or comes into force ; (that is to say),—

(a) Instruments of gift of immoveable property :

A *hibabilawaz* although made on the nominal consideration of “a than of cloth and natural love and affection” is merely a deed of gift and as such must be registered.

Golam Mostofa v. Goburdhone Molla (8 C. L. R., 441.)

Under Sects. 17 and 18 of Act XX. of 1866, all instruments of gift of immoveable property must be registered, whatever be the value of the property. *Protota Kolitah v. Mottea Kolitah*. (11 W. R., 334.)

(b) Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred Rupees and upwards, to or in immoveable property :

An agreement for the purchase and sale of certain immoveable property provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that if they should not approve of the title, the vendor should refund the earnest-money and pay all costs incurred by the purchaser in investigating the title. The purchaser's solicitors disapproved of the title, and the purchaser rescinded the contract. The agreement was not registered.

Held, that the agreement did not require registration.

Sreegopal Mullick v. Ram Churn Nusker. (I. L. R., 8 Cal, 886.)

A decree-holder purported to sell to A, by private sale, all his right, title, and interest in a mortgage decree obtained by him in a suit on a mortgage bond against the mortgagor. The deed of sale was not registered. Afterwards, by a registered deed of sale, A conveyed all his right, title, and interest in the same decree to B.

Held, that the right to execute the decree as a mortgage-decree did not pass to B. *Koob Lall Chowdhry v. Nityanund Singh*. (I. L. R, 9 Cal, 839.)

The strictest construction should be placed on the prohibitory and penal sections of the Registration Act, which impose serious disqualifications for non-observance of registration.

An instrument to come within S. 17 (b) of the Registration Act (III of 1877), must in itself purport or operate to create declare, assign, limit, or extinguish some right, title or interest of the value of Rs. 100 or upwards in immoveable property. To come within s. 17 (c), it must be on the face of it acknowledgment of the receipt or payment of some consideration on account of the creation, declaration, assignment, limitation or extinguishment of such a right, title or interest.

In a suit by a mortgagee for the sale of immoveable property mortgaged in certain simple mortgage-bonds for amounts severally exceeding Rs. 100, the defendant pleaded that he had made certain payments in respect of the bonds, and in support of his plea relied on indorsements of payment upon them, one of which was as follows:—"Paid on the 21st December Rs. 3,000." The other indorsements were in similar terms.

Held by the Full Bench (Straight, J., doubting) that the indorsements even if assumed to be receipts, did not fall within

s. 17 (b) of the Registration Act, inasmuch as a receipt, unless so framed and worded as to purport expressly to limit or extinguish an interest in immoveable property (which the indorsements did not), could not come within the section, and what ordinarily operated to limit or extinguish a mortgagee's interest in the mortgaged property was not the paper receipt, but the actual part payment of the mortgage debt.

Held also, that the indorsements did not fall within s. 17 (c) of the Act inasmuch as taken by themselves they were merely memoranda made by the mortgagee and could not be treated as acknowledgment, nor, even if assumed to be such, did they show, upon their face, that they were acknowledgments of the receipt or payments of any consideration for the limitation or extinguishment of any interest of the mortgagee in the mortgaged property.

Held, therefore that the indorsements did not require to be registered in order to make them admissible in evidence of the payments to which they related.

1. L. R. 1 Bom. 197; 2 Bom. 489; 4 Bom. 590; 4 Bom. 126; 14 Moo. I. A. 129. I. L. R., 6 All., 335; distinguished.

1. L. R., 1 All., 442, referred to.

Jwan Ali Beg v. Basa Mal, (I. L. R., 9 All., 108)

The obligor of a bond bearing date the 20th January, 1873, agreed to pay the obligee Rs. 80, together with interest on that amount at the rate of Rs. 2 per cent. per month, between the 2nd April, 1874, and the 1st May, 1874, and hypothecated immoveable property as collateral security for such payment. On the 15th February, 1879, the obligee sued the obligor on the bond to recover Rs. 196-8-0, being the principal amount and interest from the hypothecated property.

Held by the majority of the Full Bench (Stuart, C. J. dissenting), that, for the purpose of registration, the value, of the right assigned by the bond to the obligee in the property, should be estimated by the amount secured for certain by the hypothecation, and, that amount exceeding Rs. 100, the bond should have been registered.

Per Stuart, C. J.—That, for that purpose, the value of that right should be estimated by the principal amount of the bond and, that amount being under Rs. 100, the bond did not require to be registered. *Nanabin Lakshman v. Amant Babaji* (I. L. R. 2 Bom., 353), and *Narasaya Chetti v. Guruvappa Chetti* (I. L. R. 1 Mad., 378), followed.

Per Pearson, J., Oldfield, J., and Straight, J.—That a suit on a bond for money charged thereby on immoveable property must, where the bond is not admissible in evidence because it is unregistered, fail.

Himmat Singh v. Sewa Ram. (I. L. R., 3 All., (F. B.) 157.)

This Full Bench ruling has been overruled by another Full Bench ruling reported in I. L. R., 5 All., 447.

Held by the majority of the Full Bench (Straight and Oldfield, J.J. dissenting) that the principal sum secured by a mortgage of immoveable property is alone to be considered for the purpose of deciding whether the registration of the instrument of mortgage is optional or compulsory under the Registration Act, 1877.

The ruling of the Full Bench in *Himmat Singh v. Seva Ram*. (I. L. R., 3 All., 157,) overruled.

Held, therefore, where an instrument of mortgage by way of conditional sale, dated the 2nd July, 1871, secured the payment of a principal sum of Rs. 72, with interest at Rs. 2 per cent. per mensem, on the 12 May, 1873, the whole amount thus secured exceeding Rs. 100, that the registration of such instrument was optional and not compulsory.

Held by the Divisional Bench (Stuart, C. J. and Brodhrust, J.) that, under s. 50 of the Registration Act, 1877, an instrument the registration of which under the Registration Act, 1871, was compulsory and which was registered under that Act, took effect, as regards the property comprised therein, as against an instrument relating to the same property, the registration of which under the Registration Act, 1871, was optional, and which was not registered under that Act. *Habib-Ullah v. Nakhed Rai*. (I. L. R., 5 All.,) (F. B.), 447.

The Calcutta High Court has also held the same view in the Full Bench case reported in I. L. R., 9 Cal., 520.

An unregistered bond containing a personal undertaking to repay money borrowed, and also a hypothecation of land, above Rs. 100, in value as security, may be used in evidence to enforce the personal obligation. *Ulfutunnissa v. Elahijan Bibi*. (I. L. R., 9 Cal.,) 520 (F. B.)

The registration of a deed which does not necessarily create an interest in immoveable property of the value of Rs. 100, is not compulsory.

Darsan Singh v. Hanwanta (I. L. R., 1 All., 274) and *Rajpat Singh v. Ram Sukhi Kuar* (I. L. R., 2 All., 40) dissented from.

Nanabin Lakshman v. Anant Babaji (I. L. R., 2 Bom., 353) and *Narasaya Chetti v. Guruvappa Chetti*. (I. L. R., 1 Mad. 380) approved.

Sadagopayanagar v. Dorasami Sastri. (I. L. R., 5 Mad., 214.)

The words in s. 17 of the Registration Act. (VII of 1871) "present or future," "vested or contingent," point not to the value or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest created is of a value less than Rs. 100, registration is needless. *Narasaya v. Guruvappa*. (I. L. R., 1 Mad., 378.)

The registration of a bond hypothecating immoveable property to secure the repayment of Rs. 95-14-0, with interest at 18 per cent. per annum, the principal to be paid in four annual instalments, three of Rs. 23-5-4 and the fourth of Rs. 25-14-0, and the whole of the interest to be paid on the date of the last instalment, without any provision that the debtor should be at liberty to anticipate the payment of any instalment, is compulsory, inasmuch as the lowest sum which the debtor could compel the creditor to accept is in excess of Rs. 100.

The proper test for determining the value of the interest, created by a mortgage, for the purpose of registration, is the amount of the least sum recoverable and the consideration for the bond.

Although an unregistered mortgage bond which creates an interest in land in excess of Rs. 100 is of no effect as a mortgage, it may be received as evidence of the personal obligation.

Ayyenagar v. Aye (7 M. H. C. R., 296) followed.

Jagappa v. Latchappa. (I. L. R., 5 Mad., 119.)

For the purpose of registration the value of the interest created in immoveable property by a mortgage bond is that sum by the payment of which the interest could be determined.

Tiyagaraja Padyachi v. Ramanujam Pillai. (I. L. R., 6 Mad., 422.)

The consideration mentioned in a deed of sale by the parties thereto must be regarded as showing the value of the interest for the purposes of the Registration Act.

* *Vasudev Gurnput v. Rama Daxji*. (11 Bom. H. C. Rep., 177.)

A bond which secures by the hypothecation of immoveable property, the repayment after four months from the date thereof of a loan of Rs. 99-15-0 with interest at the rate of 12 per cent per annum comes under this section.

Dhurindro Sing, v. Nundo Lall Singh. (6 N. W. P., 257.)

Followed in the case of *Dashan Singh v. Hanwanta*. (I. L. R., 1 All., 274.)

Held, that a Sale-Certificate granted under s. 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, s. 17 (b). *Masarat-Un-Nissa v. Adit Ram*. (I. L. R., 5 All., 568.)

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

A receipt acknowledging as a fact part payment of a sum due under an hypothecation bond does not require Registration under s. 17, clause (c) of the Registration Act, unless the fact is referred to as a consideration for a contractual engagement, whereby the interest created by the prior registered instrument is limited or extinguished.

A mere receipt does not acknowledge the receipt or payment of a consideration, *Dalip Singh v. Durga Prasad*. (I. L. R., 1 All., 442), dissented from. *Venkatarama Naik v. Chinnatham-bi Reddi*. (7 M. H. C. Rep., 4.) approved.

Venkayyar v. Venkata Subayar. (I. L. R., 3 Mad., 53.)

J. T. passed a writing to V., under date the 28th April 1874, stipulating that the deed of sale of J. T.'s bungalow to V., for Rs. 4,300, which was to have been made that day, owing to certain circumstances therein mentioned, should be made and delivered by J. T. to V. 20 days thereafter. The writing further acknowledged the receipt by J. T. from V., of Rs. 100 as earnest money for the purchase of the bungalow, and concluded with certain penalties in the event of a default by either party. In a suit in the nature of a suit for specific performance, brought by V. to compel J. T. to execute the

deed of sale to V., and to register the same as promised in the writing of the 28th April 1874.

Held, that the writing required Registration under Act. VIII. of 1871, s. 17, clauses 2 and 3, as it distinctly acknowledged the receipt of Rs. 100 as part of the consideration for sale of the house to the Plaintiff for the sum of Rs. 4,300, and operated to create an interest in the house of the value of Rs. 100 and upwards. *Valaji Isaji v. Thomas*. (I. L. R., 1 Bom., 190.)

A document that passed from the mortgagee to the mortgagor and that stipulated or purported to contain a declaration to the effect that the mortgage was extinguished and a second mortgage was set up, is a registrable document.

Mahadnji v. Vyankaji Govind. (I. L. R., 1 Bom., 197.)

Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage moneys, and in default for the sale of the mortgaged property, and his heir afterwards executed an assignment of the decree, for valuable consideration, to the plaintiff, who proceeded to execute the decree by sale of the mortgaged property.

Held, that the assignment was a document of which the Registration was compulsory. *Gopal Narayan v. Trimbal Sadashiv*. (I. L. R., 1 Bom., 267.)

Receipts passed by a mortgagee for sums paid on account of the mortgage-debt, and exceeding Rs. 100 each, are not inadmissible in evidence for want of Registration under Act III of 1877, Sec. 17.

The technical term "consideration" implies that the person to whom the money is paid, himself limits or extinguishes his interest in the land in consideration of such payment. Such limitation or extinction (if there can be said to be any) as results from the payment on account of the mortgage-debt, is the legal consequence of such payment, and not the Act of the mortgagee.

The payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee. But it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose.

Money paid on account of a mortgage-debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage, and a receipt for such payment need not, therefore be registered under s. 17 cl. (b) of Act III of 1877. *Shidlingapa v. Chenbasapa*. (I. L. R., 4 Bom., 235.)

(1.) *Held*—That the plaintiff's letter offering to purchase the property in question and the letter of acceptance written on behalf of the vendor, by her attorneys, did not fall within cl. 2 of the 17th section of Act VII of 1871, and were admissible in evidence towards proof of the contract of sale, although not registered. The acceptance of the plaintiff's offer was conditional on his payment of the Rs. 1,000 as earnest-money, and, therefore, until that sum was paid, no estate, legal or equitable, in the property passed to the plaintiff.

(2.) That the receipt for Rs. 1,000 earnest-money fell within cl. (3) of s. 17 of Act VIII of 1871, as being an acknowledgment of the receipt or payment of consideration on account of the creation of a right, title or interest in immoveable property of the value of upwards of Rs. 100, and was, therefore, inadmissible in evidence, not having been registered; but that under s. 91 of Act I of 1872 oral evidence was admissible to prove the payment, notwithstanding the existence of the written receipt.

(3.) *The third clause of s. 17 of Act VIII of 1871 includes within its scope a payment of a part of the consideration as well as a payment of the whole of it.

Waman Ram Chandra v. Dhoudiba Krishnaji. (I. L. R., 4 Bom., (F. B.) 126)

Unregistered receipts given by a mortgagee to a mortgagor for sums paid on account of the mortgage-debt are not inadmissible in evidence under clause (c), section 17, of the Registration Act III of 1877. *Annappa v. Ganapati.* (I. L. R., 5 Bom., 181)

Held, that a document which acknowledges the receipt of consideration money for the conveyance of immoveable property must be registered under cl. 3, s. 17 of Act VIII of 1871. *Greenath Soor v. Nilkanto Dey*, (22 W. R., 309.)

(d) Leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Every lease, or agreement for a lease in writing, must be registered before being given in evidence. But a proposal in writing to take a lease of certain lands on certain terms, made by one person to another, need not be registered, unless the proposal in writing has been so accepted that the proposal and acceptance constitute a contract in writing. *Syed Sufdar Reza v. Amzad Ali.* (I. L. R., 7 Cal., (F. B.) 703; 10 C. L. R., (F. B.) 120.)

Where a *zur-i-peshgi* lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force, *held*, that such a lease came within the words "leases of immoveable property for any term exceeding one year" of which registration was compulsory. *Bhobani Mahto v. Shib Nath Para*, (I. L. R., 13 Cal., 113.)

In a suit for possession of certain property and for the execution of a certain *pottah*, it appeared that two of the defendants had executed an agreement which was duly registered, by which they acknowledged the receipt of a portion of the *salami*, and covenanted to execute a *pottah* on a certain day. This agreement was afterwards confirmed by two of the defendants who were minors when it was entered into: the confirmation was by deed which was duly registered. Subsequently all the defendants executed a document, which provided for the payment of a portion of the *salami* on the day when possession should be given as provided in the first agreement, and for the payment of the remainder by instal-

ments which were to carry interest. This document was not registered.

Held, that it was not a "lease or agreement to lease" within the meaning of s. 17 of the Registration Act, and was admissible in evidence. *Kedar Nath Mitter v. Surendro Deb Roy*. (I. L. R., 9 Cal., 865.)

Under clause (d), s. 17, of Act III of 1877, an agreement for a lease needs Registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail. *Parmanandas Jwandas v. Dharsey Virji*. (I. L. R., 10 Bom., 101.)

Leases for a term not exceeding five years, with a rent reserved not exceeding 50 rupees, being exempted by the local Government from registration.

Held, that a potta for one fasli to remain in force until another pottah is granted, with a rent reserved of 110 rupees, did not fall within the exception.

Held also, that such a pottah was a lease for a term exceeding one year, and not a lease for a year, and therefore subject to the general provision of clause (d), s. 17, of the Indian Registration Act, 1877. *Venkata Chetti v. Audian*. (I. L. R., 3 Mad., 358.)

The plaintiff sued in 1881 to recover certain land and arrears of rent from the defendant, alleging that the defendant's ancestor entered on the land as a tenant in 1865, under a lease for five years, which was not registered.

The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she would be ejected and claimed to deduct from the rent certain emoluments.

Held (1) That the plaintiff could not prove the tenancy alleged in the plaint inasmuch as the lease of 1865 was not registered, and, therefore could not eject defendant. *Naugali v. Raman*. (I. L. R., 7 Mad., 226.)

By an unregistered document A stipulated that B should enjoy certain land for a term of years in order that a debt and interest might be liquidated by receipt of profits, estimated at a fixed sum, and it was provided that if B's possession was disturbed in the meantime, A should pay the balance of the principal then due and interest from the date of the loan. B, having been ejected, sued A upon the covenant to pay.

Held, that, as the covenant to pay depended on the principal contract, which could not be proved for want of registration, B could not recover. *Venkatrayuda v. Papi Reddi*. (I. L. R., 8 Mad., 182.)

A petition by which a widow transferred her rights in certain property was held not to operate as transfer of the widow's rights in the absence of registration. *Kalee Das Gossain v. Mooktokesh Thakooranee*. (17 W. R., 218.)

A Kabuliyat in which a ryot agreed to hold land under a pottah for a specified year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year, and not one for more than one year, although a clause intervened between the

above clauses to the effect that the ryot would pay rent at the above rate year by year. *Jagdish Chunder Biswas v. Abedollah Mundle*. (14 W. R., 68)

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases executed in any district or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

Exception of Nothing in clauses (b) and (c) of this section applies to

*composition-deeds, and of transfers of shares and debentures in Land Companies.

(e) any composition-deed;

(f) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consists in whole or in part of immoveable property, or

* (ff) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable 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 immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or,

(g) any endorsement upon or transfer of any debenture issued by any such Company;

Documents merely creating right to obtain other documents.

(h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest;

Documents amounting to an equitable mortgage when creating an interest in land of the value of Rs. 100 or upwards, require registration under s. 17 of Registration Act, but documents when amounting merely to an agreement to mortgage, do not require registration under that section. Such documents are therefore available in evidence as agreements to mortgage without registration, but for the purpose of proving an equitable mortgage they must be registered before they are available in evidence. *Bengal Banking Corporation v. Mackerich.* (I. L. R., 10 Cal., 315.)

A wrote a letter to B stating that an agreement had been made between them that A should sell certain land to B for Rs. 4,500, that A had received 500 Rupees of this sum and was only entitled to receive the balance after executing the sale deed within a certain date, and had no connection whatever with the land.

Held, that the letter, not being registered, was not admissible in proof of the agreement to convey.

Ramasami v. Ramasami. (I. L. R., 5 Mad., 115.)

By an agreement, dated 2nd August, 1880, the defendant agreed to sell to the plaintiff a certain piece of land with a dwelling-house for Rs. 1900. At the time of the execution of this agreement the plaintiff paid the defendant Rs. 100 earnest money, and the agreement provided that the remaining Rs. 1800 should be paid within a month from the date of the agreement when the deed of conveyance of the property should be executed.

The plaintiff sued for specific performance, and tendered the agreement in evidence, although unregistered.

Held, that the document, although unregistered, was admissible in evidence under clause (h) of s. 17 of Act III of 1877. Being unregistered it could not create or assign the interest intended by the parties to be transferred, and being thus incapable of carrying out the primary intention of the parties, the agreement became one "merely creating a right to obtain another document which would, when executed," effect the desired purpose if the execution were accompanied with registration. The right given by the agreement was merely a right *in personam*, and the agreement was admissible in evidence to show the contract entered into for another conveyance, though not as a conveyance itself. *Burjorji v. Munchorji.* (I. L. R., 5 Bom., 143.)

An agreement, or "Bargain-paper," in writing, for the sale of a house by the defendants to the plaintiff, stated that the defendants had agreed to sell and the plaintiff to buy the house in question for Rs. 15,225, on the following conditions,—that the plaintiff should, on the execution of the bargain-paper, pay Rs. 1000 as earnest money, and that the defendants were duly to make out a good title to the house, and get approved by the plaintiff's solicitors, "as being of good title," a deed of sale thereof, prepared according to law, within two months, the cost incidental to the preparation of the deed to be borne jointly by vendor and vendee; that on the execution of such deed and delivery of possession of the house to the plaintiff, the balance of the purchase-money was to be paid; that, in

case a good title to the house could not be made out, the bargain-paper was to be null, and the earnest-money was then to be returned to the plaintiff with interest, and any solicitor's charges incurred were to be paid by the defendants.

Held, that the document was admissible in evidence, though unregistered, as coming within the provisions of clause (h) of section 17 of the Registration Act III of 1877.

Chunilal v. Bomanji. (1. L. R., 7 Bom., 310.)

Provision (h), (i), (j), (k) and (l), are new provisions introduced in the Act of 1877. Before this Act was passed the Courts of the country have almost uniformly *held* that it was not intended that compulsory registration under sec. 13 of Act XVI of 1864 should apply to deeds which are merely preliminary to the main contract or engagement, or that deeds which are steps in, or mere parts of, a transaction should be registered before they can be used as evidence. *Bunwaree Lall v. Sun-gum Lall.* (7 W. R., 280.)

Followed in *Goluk Kishore v. Nund Mohun.* (12 W. R., 394.)

See also 14 W. R., 174; 17 W. R., 509; 20 W. R., 150; 21 W. R., 315.

A *doul darkhast* being only a preliminary to a lease did not require registration. *Meheroonussa v. A Gunnee.* (17 W. R. 509)

(i) decrees and orders of Courts and awards.

In a case where a transferee of decree under s. 232 of the Civil Procedure Code (Act XIV of 1882), applied for execution of the decree, it was *held* that the decree was admissible, although not registered. *Purmanand Dass Jiwandas v. Vallabdas.* (1. L. R., 11 Bom, 506)

Sale Certificates granted under the provisions of s. 259 of Act VIII of 1859, are not documents the registration of which is compulsory under the provisions of s. 17 of the registration Act of 1871. *Porkash Chander Das v. Tara Chand Das.* (1. L. R., 9 Cal., 82.)

See the last note under sec. 17 (b).

A certificate of payment granted under the provisions of cl. 1 s. 15 of Reg. VIII of 1819, is admissible in evidence without being registered. *Abdool Aziz Biswas v. Radha Kanto Kobiraj.* (1. L. R., 5 Cal., 226.)

Held, that although four lots purchased by the plaintiff at an auction sale were included in one certificate of sale, such certificate, although one instrument in form, should, for the purpose of Registration, be regarded as four separate certificates of the four several lots.

Held, also, that the registered certificate of sale, though issued three years after the confirmation of sale, was valid and admissible in evidence. (*Devidds Jagjivan v. Pijada Begum.* (1. L. R., 8 Bom, 377.)

See also 20 W. R., 19.

(j) grants of immoveable property by Government;

(k) instruments of partition made by revenue officers ;

(l) certificates and instruments of collateral security granted under the Land Improvement Act, 1871.

*“(m) orders granting loans under the Agriculturists’ Loans Act, 1884, and instruments for securing the repayment of loans made under that Act.”

*“(n) 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 when the receipt does not purport to extinguish the mortgage.”

†“(o) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.”

Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered. Authorities to adopt.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),— Documents of which registration is optional.

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property :

A mortgage bond for Rs. 99, repayable in nine months and eleven days, with interest at the rate of 2 per cent. per mensem, does not require Registration, but a registered mortgage bond for Rs. 195. subsequently executed, will have priority over it. *Korban Ally Mirdha v. Sharoda Pershad Aich.* (I. L. R., 10 Cal., 82.)

See also notes under Sec. 17 (b).

* See Act No. VII of 1886, Sec. 3 and 4.

† See Act No. VII of 1888, Sec. 65.

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

See notes to Sec. 17 (c).

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 :

A *doul fehrist*, containing a list of the holdings and rates of rent of the ryots with their signatures, and specifying that these holdings were to continue for seven years, does not constitute a contract to cultivate for that period, and is admissible in evidence without being registered. *Kartick Nath Panday v. Khakun Singh*, (I. C. L. R., 328.)

A lease for one year certain containing an expression on the tenant's part, of readiness to hold the land longer at the same rent if the land-lord should desire it, is a lease for a term not exceeding one year, the registration of which is optional under s. 18 of the Indian Registration Act. *Apu Budgavda v. Nirhari*, (I. L. R., 3 Bom., 21)

Where a lease is for only one year, with option to the lessor to allow the lessee to continue his tenure on the old conditions after expiration of the year; *held*, that the absolute right of the lessee is restricted to one year, and that, therefore, the lease was for one year only and the registration of the same optional. *Mohunto S. P. Das v. Parasu Padhan*. (26 W. R., 98.)

A *Kabuliyat* dated the 6th May, 1880, and executed by the lessee of a house in favor of the lessors set forth that the house was let to the former at an annual rent of Rs. 3, for a term of one year. It also contained this stipulation:—"I (the lessee) do declare that I shall continue to pay the annual rent every year, and that if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court." The lease was not registered. In a suit by the lessors against the lessee for possession of the house and for Rs. 7-8 arrears of rent, the defendant pleaded that, according to the right construction of the lease, he was entitled to occupy the house and the lessors were not entitled to eject him therefrom, so long as he paid the annual rent of Rs. 3; that he had duly paid rent at the agreed rate from the 6th May, 1880, to the 6th May, 1884; and that under these circumstances, the plaintiffs were not entitled to either of the reliefs claimed.

Held, that the lease was for one year only, and, thus falling under s. 18 of Act III of 1877, it was admissible in evidence without Registration. *Khayali v. Husain Baksh*. (I. L. R., 8 All., 198.)

See also notes to sec. 17 (d).

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property :

(e) wills :

(f) all other documents not required by section 17 to be registered.

A *solanamah* which is in effect a deed of partition requires no Registration. *Nem Roy v. Lalman Roy.* (25 W. R., 376)

N. B.—Besides those enumerated the following were optionally registrable under Act VIII of 1871.

(1) Awards relating to immoveable property.

(2) Acknowledgments, agreements, appointments, articles of partnership, assignments, awards, bills of exchange, bills of sale, bonds, composition-deeds.

19. 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, 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 in language not understood by registering officer.

20. 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. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Documents containing interlineations, blanks, erasures, alterations.

Refusal by the executing party to initial an apparent alteration not materially affecting the instrument, unaccompanied by any suggestion that the alteration was made after execution, does not render the document non-registrable

In re T. Venkatasami Nair. (4 M. H. C R., 107.)

21. (a) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a

Description of parcels.

description of such property sufficient to identify the same.

(b) Houses in towns shall be described* as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers, if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

Documents
containing
maps or plans.

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

In consideration of a loan, A gave a bond, by which he covenanted "not to alienate the property of himself and his daughter or the rest of his own property, until the loan secured by the bond was paid." The bond was recorded under the Registration Act in the book numbered "four" required to be kept by the Act. A subsequently sold his immoveable property, and the conveyance was recorded in the book numbered "one," in which documents relating to immoveable property have to be recorded. In a suit by the bond-creditor against the purchaser seeking to establish a lien on A's immoveable property by virtue of the bond, - held that the general words used in the bond were not sufficient to give a lien upon any specific property, and that the fact that the bond had been recorded in book "four" showed that it was not the intention of the parties that the immoveable property of the debtor should be charged.

Dass Mone, Dasee v. Jonmenjoy Mullick. (I. L. R., 3 Cal., 333) followed

Raj Kumar Ramgopal Naran Sing, v. Ram Dutt Chowdhry. (5 B. L. R., 264) distinguished.

Najibulla Mulla v. Nasir Mistri, (I. L. R., 7 Cal., 196.)

See also note to s. 22.

22. Failure to comply with the provisions contained in section 21, clause (b), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to indentify such property.

Failure to comply with rules as to description of houses and land.

Where two instruments are contained in the same paper and relate to the same property and are both presented for registration, and in all other respects entitled to registration, it is not a sufficient ground for refusing registration that in one of the documents the property is described only by reference to the other.

In re I Venkatasani Nair (4 Mad H. C. Rep, 101.)

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution,

Time for presenting documents.

or, in the case of a copy of a decree or order, 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 :

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

By an agreement entered into between the parties, the vendor bound himself to execute within thirty days a deed of conveyance, and in default that the agreement should be considered as itself the deed of conveyance of certain lands mentioned in the agreement. The vendor having failed to execute such deed, the vendee, more than four months after the date of the agreement presented it for registration. *Held*, that the conduct of the parties concerned could in no way affect the period of limitation within which such agreement could have been registered under the Act, and that the agreement could not be registered.

Noban Nuzja V. Dhan Mohomed. (1, L. R., 5 Cal., 820.)

Seem that a certificate granted under s. 316 of the Civil Procedure Code is not an instrument, the Registration of which is compulsory.

Although that section says that a certificate granted thereunder shall bear "the date of the confirmation of the sale," that provision cannot alter the fact of execution or the time when execution does take place, which is the starting point from which the four months mentioned in s. 23 of the Registration Act begin to run.

Held, therefore, that a certificate granted under that section in respect of a sale which was confirmed on the 7th April 1880, which was registered within four months from the 10th May 1882, when it was executed, was registered within the time allowed by law.

The certificate showing that a document has been registered is conclusive proof that it has been registered according to law.

Husaini Begum v. Mulo. (I. L. R., 5 All., 84.)

When a document has been presented for registration in due time by one of the executants, but the others have failed to appear within the time prescribed, the registering officer must "refuse to register" as in cases falling under the latter clauses of s. 35, and must record the reason of his refusal.

The party desiring registration ought to apply to the Registrar before the period of registration has gone by, either to register or to refuse to register, so as to enable him, in case of refusal, to take further proceedings under S. 73. So soon as it appears that the prescribed time has gone by, and the executing parties have not appeared, the order of refusal should be made at once.

In re Butto Behary Bannerjee. (11 B. L. R., 20.)

But where a deed was not registered within four months owing to the seller's fraud,—*held* that such fraudulent vendor cannot benefit himself by pleading the provisions of s. 18 Act XVI of 1864 (s. 23 Act III of 1877) which direct that such documents should be presented for registration within four months from the date of execution.

Purgas Rai v. Juggun Sing. (N. W. P. H. C. R. 1867.)

Provision
where delay
in presenta-
tion is un-
avoidable.

24. If owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall

forthwith forward it to the Registrar to whom he is subordinate.

Where an application for registration of a sale-deed had been presented after the expiry of the period prescribed by law for registration, and had been dealt with under S. 24 of the Registration Act, and the Registrar had passed an order under that section directing that the document should be registered on payment of the prescribed fine, and such fine had been paid,—held that the requirements of the law had been complied with, and that it was not competent for successor in office of the Registrar, dealing with the document under S. 74 of the Registration Act, to go behind the order of his predecessor, nor was it for the Court, in a suit instituted under S. 77, to question the propriety of that order which was given in pursuance of a discretionary power allowed to a Registrar to accept documents for registration after the time prescribed.

Durga Singh v. Mothura Das, (I. L. R., 6 All., 460.)

See also 7 W. R., 150.

25. When a document purporting to have been executed by all or any of the parties put of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,

Documents
executed out
of British
India.

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Provision
where office is
closed on last
day of period
for presenta-
tion.

27. A will may at any time be presented for registration or deposited in manner herein-after provided.

Wills may
be presented
or deposited
at any time.

PART V.

OF THE PLACE OF REGISTRATION.

Place for registering documents relating to land.

28. Save as in this part otherwise provided, every document mentioned in section 17, clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

An instrument of mortgage on land which required to be registered was presented for registration to a Registrar within whose district no portion of the land was situate, and was registered by such Registrar. In a suit to enforce such mortgage it was objected that such instrument, not having been properly registered, could not be received in evidence. *Held* following the opinion of Broughton, J., in *Sheo Shunker Sahoy, v. Hirday Narain Sahu* (I. L. R., 6 Cal., at p. 29,) that, when a document which purports to have been registered is tendered in evidence, the court cannot reject it for non-compliance with the Registration Law. Moreover, that the mortgagor could not be allowed to take advantage of an objection which would not have been available but for his own wrongful act.

Har Sahai v. Chunni Kuar. (I. L. R., 4 All., 14.)

A Sub-Registrar in receiving a bond not at his public office was considered to have committed a grave error, but as he acted in good faith, it was held that his procedure although erroneous did not invalidate the registration of the bond.

Kalian Mal v. Bhagwanti. (7. N. W. P. C. R., 119.)

Place for registering other documents.

29. Every document, other than a document referred to in section 28 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 in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the

decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a) Any Registrar may, in his discretion, receive and register any document which might be registered by any Sub-Registrar subordinate to him. Registration by Registrar.

(b) The Registrar of a district including a presidency-town and the Registrar of the Lahore district may receive and register any document referred to in section 28 without regard to the situation, in any part of British India, of property to which the document relates. Registration by Registrar of Presidency-town and Lahore.

There are two classes of occasions on which it may fall to a Registrar to determine whether a document should be registered or not: one is, when the document is presented directly to himself in the first instance for Registration Sec. 32, (Sec. 30 of this Act); the other when the document having been refused by that officer, the matter is brought before a Registrar by way of appeal Sec. 83 (Sec. 73).

In re Brijonath Pyne. (12 W. R. 387.)

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit. Registration or acceptance for deposit at private residence.

But such officer may, on special 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.

Along with this Section read Sections 33 and 38 *post*.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to
present docu-
ments for re-
gistration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

Or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

See Note, Sec. 28, *ante*.

Powers-of-
attorney re-
cognizable for
purposes of
section 32.

33. For the purposes of section 32, the powers-of-attorney, next hereinafter mentioned, shall alone be recognized (that is to say),—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides :

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :

(c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of Her Majesty or of the Government of India :

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

Proviso as to persons infirm, or in jail, or exempt from appearing in Court.

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law from personal appearance in Court.

Sec. 640, exempts from personal appearance in Court women who according to the customs and manners of the country ought not to be compelled to appear in public.

Sec 641 Local Government may exempt certain persons from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or 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.

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.

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.

In the case of a purdah woman, when she questions the execution of a document alleged to have been registered by her under a power-of-attorney, there ought to be clear evidence,

not of the mere signature by the party, but that the secluded woman had the means of knowing what she was about.

Fuzzel Hossein v. Amjud Ali Khan. (17 W. R., 523.)

"If a man in Calcutta sells lands in Lahore, he can go before the Registrar in Calcutta, and can there execute a power-of-attorney in favor of the attorney of the vendee, who will then go to Lahore, and as the agent of the vendor register the deed there. To make the purchaser safe, he ought to require the vendor to admit the deed of sale before the Registrar, or get the vendor to execute an authenticated power. If the purchaser neglects the precaution and another man gets a subsequent deed of purchase registered first, it is the first purchaser's own fault if the latter obtains priority over him."—*Sheik Ruhumut-oolah v. Shurintoolah Kagchee.* (10 W. R. F. B., 51).

Enquiry before registration by registering officer.

34. Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88, and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents, authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

provided that if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

Under sec. 34, the Registering officer has nothing to do with the recitals or the possible operation of a deed. His enquiry is limited to the fact of execution, the identity of the executant, and the representative character of the person claiming to represent him.

In the matter of *Ram Chander Biswas, petitioner*. (16 W. R., 180).

See also *Motookdharee Lal v. Shaik Fazul Hosain*. (6 W. R., 131).

The Registering officer cannot refuse registration, on the ground that the full consideration mentioned in the deed presented for registration has not been paid.

In the petition of *T. Venkataswami Nasik*. (4 Mad. H. C. R., 101).

See also *In re Brindabun Chandra Shaw*. (1 B. L. R., O. J., 47).

Where a document is executed by one of two parties on behalf of himself and the other, it is sufficient, for the purposes of this section, that the person executing it appear before the registering officer.

Bissendoyal v. Schlarpfer. (22 W. R., 68).

35. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document;

Procedure on admission of execution.

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution;

or, if the person executing the document is dead, and his representative or assign

appears before the registering officer, and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

Procedure on
denial of exe-
cution, &c.

If any of the persons by whom the document purports to be executed deny its execution, or

if any such person appears to the registering officer* to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead*: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

The object of the Registration Act, which directs the registering officer to refuse to register a document if the person by whom it purports to be executed appears to be a minor, is, that if the registration authorities refuse to register on that ground, the question of minority may at once be brought into a Civil Court and there determined.

Chunee Mul Johary v. Brojo Nath Ray Chowdhury. (I. L. R., 8 Cal., 967).

At the registration of a bond executed by H and B, and by H on behalf of J, a minor, the minor was not represented for the purpose of registration by any one. *Held*, that the bond should not affect any immoveable property comprised therein in so far as J, was interested in the same.

Mahammad Ewady v. Brij Lal. (I. L. R., 1. All., 465,) and s. 35 of the Registration Act 1877 referred to.

Shankar Das v. Jograj Singh. (I. L. R., 5 All., 599.)

* Act No. XII of 1879, section 104.

Where the purchaser of the interest of a ryot in a *teagure*, after having obtained a *pottah* from the Zemindar, took him to the registering officer, and the Zemindar admitted the execution of the *pottah*, but did not assent to its being registered, and on that ground the registering officer withheld registration. *Held*, that it was the duty of the registering officer to register the *pottah* notwithstanding the executant's refusal of consent.

Magon Mallo v. Doola Gazeer Koolan. (19 W. R., 198.)

See notes under Secs. 23 and 34 *ante*.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court, as the Local Government from time to time directs in this behalf, to issue a summons requiring him to appear at the registration office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

Procedure where appearance of executant or witness is desired.

Where a deed of sale is presented for registration within the period required by s. 22 (s. 23 Act III of 1877) and is accepted by the registering officer, who, without the appearance of the vendors, registers it by mistake, and the registration is declared by a competent Court to be invalid, the registering officer may, although the period of four months has expired, proceed to compel the appearance of the vendors, and on their admission, register the deed. *Sah Makhum Lall Panday v. Sah Koondun Lall.* (24 W. R., 75).

Where an instrument the registration of which is compulsory has been destroyed accidentally by fire soon after its execution and before registration, the executant can be compelled to execute another instrument to the same effect as that which was destroyed and secondary evidence of the contents of the unregistered instrument is admissible.

Nynakka Routhen v. Varana Routhen. (5. Mad., H. C. R., 123).

The Act contains powers for compelling the attendance before the Registrar of persons whose presence is necessary for the registration of deeds; but there is no provision enabling registering officers to proceed of their own authority to register.

Koondun Lall v. Makhun Lall. (1, N. W. P. H. C. R., 168)

Where a man received purchase-money under a contract which required registration, he virtually agreed to register it and might be compelled to do so.

Prabhhooram Hazra v. T. M. Robinson. (11 W. R., 398).

See also *Monmotho Nath Dey v. Sree Nath Ghose.* (20 W. R., 107).

Officer or
Court to issue
and cause ser-
vice of sum-
mons.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons ex-
empt from
appearance at
registration-
office.

38. A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,

a person in jail under civil and criminal process,

and 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.

In every such case, the registering officer 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.

Law as to
summonses,
commissions
and witnesses.

39. The law in force for the time being as to summonses, commissions and compelling the attendance 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 any person summoned to appear under the provisions of this Act.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration, Persons entitled to present wills and authorities to adopt.

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. 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.

A Will or authority to adopt, presented for registration by any other person entitled to present it, shall be registered if the registering officer is satisfied,

(a) that the Will or authority was executed by the testator or donor, as the case may be ;

. (b) that the testator or donor is dead ; and

(c) that the person presenting the Will or authority is, under section 40, entitled to present the same.

A Sub-Registrar acting under s. 41 of the Registration Act, 1877, is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure.

In re Venkatachalu Pillai and others. (I. L. R., 10 Mad., 154.)

PART IX.

OF THE DEPOSIT OF WILLS.

42. 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 Deposit of wills.

his agent (if any) and with a statement of the nature of the document.

Procedure
on deposit of
wills.

43. On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 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 legible inscription which may be on the seal of the cover.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

Withdrawal
of sealed cover
deposited
under section
42.

44. 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.

45. If, on the death of a testator who has deposited a sealed cover under section 42, 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 No. 3.

Re-deposit.

When such copy has been made, the Registrar shall re-deposit the original Will.

Saving of
Act X of 1865,
section 259.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act, section 259, or the power of any Court by order to compel the production of any Will. But whenever any such order is made, the

Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

Sec. 259, Act X of 1865.—Every District Judge shall file and produce all original Wills of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established, and the Local Government shall make regulation for the preservation and inspection of the wills so filed as aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Effects of Registration :—

Registration can give no efficacy to a fraudulent and collusive deed.

Mitter Sein v. Narain Sing. (1 N. W. P. H. C. Rep., 206.)
See also 14 W. R., 226 ; 20 W. R., 110).

There is nothing in the Registration Act which renders a verbal contract between Hindoos invalid or inoperative.

Hurish Chunder Choudhury v. Rajender Koomar Ray Choudhury. (18 W. R., 293).

The mere registration of a document does not prevent a party from bringing a suit to contest the fact of its execution.

Prosonno Coomar Sandyal v. Mothoora N. Bannerjee. (15 W. R., 487).

Registration of a deed does not affect the question of *bona-fides*.

Bhoobun Chunder Bural v. Nagoree Dassia. (15 W. R. 15).

See also *Dooli Chand v. Ooda Kanam.* (18 W. R., 238).

47. 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 regis-
tered docu-
ment operates.

The plaintiff purchased certain land by a deed dated the 8th April, 1879. The deed was registered on the 26th August of the same year. The defendant purchased the same land by a deed, dated the 14th June 1879. It was registered on the same day. That deed recited that the land was in possession

of the plaintiff as tenant. Both the deeds were optionally registrable. The Sub-Judge rejected the plaintiff's claim, and awarded the land to the defendant. His decree was affirmed, in appeal, by the District Judge, on the ground that the defendant's deed was registered before the plaintiff's deed.

On appeal to the High Court,

Held, that the plaintiff was entitled to the land. Both the deeds having been registered according to law, they operated from their respective dates of execution as provided by s. 47 of Act III of 1877.

Santaya v. Narayan. (I. L. R., 8 Bom., 182).

Registered documents relating to property when to take effect against oral agreements.

48. All non-testamentary documents duly registered under this Act, and relating to any property whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property; unless where the agreement or declaration has been accompanied or followed by delivery of possession.

A, by an oral agreement, agreed to grant two Mokurari leases in favor of B, which were not however registered. Afterwards A granted two Mokurari leases of the same mouzas, upon terms more favorable to himself, to C and D, who at the time of such grant had notice of A's previous agreement with B.

Held, in a suit for specific performance brought by B against A, and to which C and D were added as defendants, that, notwithstanding the provisions of ss. 49 and 50 of Act III of 1877, B could obtain a decree for specific relief, and a declaration that the leases to C and D were void as against him.

Nemai Charan Dhabal v. Kokil Bag. (I. L. R., 6 Cal., 534).

Notwithstanding the provisions of s. 48 of the Registration Act, a party who purchases, even under a registered deed of sale, with notice of a prior agreement for sale of the same property, will not be allowed to retain the property as against the person claiming under the prior agreement.

Solano v. Lala Ram Lal. (7 C. L. R., 481) followed :

Fazladdeen Khan v. Fakeer Mahomed Khan. (I. L. R., 5 Cal., 336) distinguished.

Chunder Nath Roy v. Bhoyrab Chunder Roy. (I. L. R., 10 Cal., 250.)

Where a vendor in pursuance of an oral agreement to sell certain land directed the tenants of the land to pay, and the tenants agreed to pay rent to the purchaser :

Held, that such possession was given to the purchaser as would satisfy the conditions of s. 48 of the Indian Registration Act and enable him to resist the claim of subsequent registered purchaser,

Palani v. Selambara. (I. L. R., 9 Mad., 267.)