

THE
REGISTRATION MANUA

COMPRISING

THE INDIAN REGISTRATION ACT, 1866,

AND

ACT No. XXVII OF 1868,

WITH NOTES INCORPORATING THE DECISIONS OF THE
SUPERIOR COURTS UP TO DATE ;

ALSO

The Registrar General's Rules, the Table of Fees,
and Lists of Districts and Sub-Districts
in Bengal and the N. W. P.

WITH APPENDICES AND AN INDEX.

TO WHICH IS ANNEXED

THE NEW GENERAL STAMP ACT, 1869.

BY

H. BEVERLEY,
REGISTRAR GENERAL OF BENGAL.

CALCUTTA :
W. NEWMAN AND CO.
1869.



CALCUTTA
THOMAS & SMITH, CITY PRESS,
12 BENTINCK STREET.

Ms. Tanp 1/19/28
Dec. 10. 01. 11

CONTENTS.

	<i>Page.</i>
The Indian Registration Act, 1866	1
Act No. XXVII of 1868	78
Registrar-General's Rules	81
Table of Fees	111
Appendix I.—A List of Districts and Sub-Districts in Bengal	117
Ditto in the North-Western Provinces	142
Appendix II.—A List of Recognized Holidays	147
Appendix III.—Rules for the Service of Process	148
Appendix IV.—Extracts from the Civil Procedure Code	153
Index	157
The General Stamp Act, 1869	173

PREFACE.

MR HEELEY'S Registration Manual has long been out of print, and alterations in the law and rules have made a new Edition necessary. With the view of making it more generally useful, I have incorporated all the more important decisions of the superior Courts, which bear upon the registration of assurances in this country. These rulings are now becoming numerous, nearly a hundred cases being cited in the present volume. My thanks are due to Mr. Branson for considerable assistance afforded me in their collection.

As Schedule A. of the Stamp Duties now in force will be superseded by the new Stamp Act on the 1st of January next, I have thought it advisable to append that Act to the present edition.

H. B.

LIST OF CASES CITED.

Ambikacharn Kundú v. Dharm Dás Kundú	...	...	40
Amjad Ali v. Alá Bakhsh	...	...	2
Amrit Singh v. Kailás Kunwar	...	...	38, 40
Anand Chandra Chaudhuri v. Chandranáth Ráy	...	...	41
Bama Sundarí Dási v. Mádhav Chandra Gahu	...	...	74
Banwárf Lal v. Sangam Lal...	..	...	12, 37
Bhairab Chandra Misr v. Ranchandra Bhattachárjya	...	...	40
Bhairab Náth Khetri v. Kishori Mohan Saha.	See <i>Addenda</i> .		
Bhímal Mahton v. Musammát Alimissa <i>alias</i> Begam Ján	..	...	66
Brajanáth Páin v. Amala Dási	...	21, 25, 52, 61, 64	
Brindában Chandra Sáhá v. Nabadwíp Chandra Sáhá	...	25, 60	
Budhú Mahton	...	...	65
Bushell v. Bushell	...	...	39
Chetambaram Chetty v. Karunalyavalangapuly Taver	...	...	37
Dharamdás Bhavánidás	...	...	66
Fakírchánd Govindrám v. Kahándás Bhagvándás	...	...	41
Ford v. White	...	...	39
G Narasanna v. R. Gavappa	...	...	41
Ganpat Bajáshet v. Khándu Changshet	...	...	39
Gaur Mohan Dás v. Rámrúp Majumdár	...	...	44
Gaur Prasád v. Nandú Sing	...	...	52
Gobind Chandra Ráy v. Purna Chandra Sen	...	...	37
Gopal Prasád v. Nandarání	...	...	12
Gopináth Dobay v. Qází Ramzán Alí	...	...	43
Grija Singh v. Gridhári Singh	...	...	38, 74
Grish Chandra Datta v. Bazal-ul-Haq.	See <i>Addenda</i> .		
Guru Dás Dán v. Kusum Kumar	...	...	37
Guru Dás Datta v. Dwárkanáth Máuná	...	...	60, 64
Harnamgír Guru Dhanpatgír v. William Spiers	...	...	40
Hicks v. Powell.	See <i>Addenda</i> .		
Híráchand Babají v. Bhaskar Ababhat Shende	...	...	40,
Jugtl Sahj	...	...	46

Kailás Chandra Chatárjī v. Gopál Chandra Chatárjī	..	38
Kálícharn Giri Gossain v. Lálá Madan Kishor	..	35
Kanhya Lál v. Buddhan	... ..	42
Kárú Lál Thákur v. Dhunal Mandal	... ..	74
Kesab Lál Mitra v. Musabdí Mandal	..	45
Kripanáth Talápátra v. Bhasái Mullah	... ..	53
Krishnasámi Pillái v. Venkatachella Aiyar	..	39
Kristo Kishor Ghose v. Brajanath Majumdár	... ..	45
Lachmípat Singh Dogar Ráy Bahádur	... ..	44
Le Neve v. Le Neve	... ..	30
Mahárájá Maheswar Bakhsh Singh v. Bhikha Chaudhuri	... ..	39
Manmohini Dási v. Bishtamahí Dási	... .. 16, 65,	66
Mansúr Ali v. Azmat Ali	... ..	37
Mantareswara Aiyar v. Kamala Náikar	... ..	44
Matukdhári Lál v. Shaikh Fazl Husain	... ..	25
Mír Habíb-us-Subhán v. Mir Husain Ali	... .. 43, 45,	53
Mufazzal Husain v. Gholam Ambiah	... ..	37
Muleshapa bin Karvirapa v. Busapa bin Ningapa	... ..	38
Musammát Batúl v. Musammát Wazíran	... ..	40
Musammát Qabúlan v. Shamshír Ali	... ..	36
Nagindás. In the goods of	... ..	34
Nritya Gopal Chandra v. Dwárkanáth Mallik	... ..	40
Parabhúdás Hírachánd v. Dhondú	... ..	40
Prahlád Misr v. Udit Narain Singh	... ..	38
Protono Kolita v. Mottea Kolita	... ..	12
Pursotum Runchord v. Jágjivan Mayaram	... ..	39
Queen v. Ahsanullah and others	... ..	71
Queen v. Durgacharn Basu	... ..	69
Queen v. Lathí Bewa and others	... ..	70
Queen v. Parmanand Bárik	... ..	54
Queen v. Salimuddin and others	... ..	70
Rádhiká Prasád Chandra v. Rám Sundar Kar	... ..	14
Rájchandra Bandú v. Rajeswarí Dási	... ..	69
Rájmohan Mukárjī v. Nilmoni Mitra	... ..	42, 45
Rámchánd Kúmar v. Madhusúdan Majumdár	... ..	37
Rámchandra Pál v. Bechárám De	... ..	66
Rám Gopál Law v. Richard Blacquiére	... ..	44

Rámesar Mahton <i>v.</i> Kalyánaswarí Debya	...	...	65
Rám Kúmár Mandal <i>v.</i> Brajahári Mridha	...	..	12
Rám Lál Singh <i>v.</i> Thákar Dyál	..	...	64, 66
Rám Narain Biswás <i>v.</i> Srínáth Poddar	..	...	44
Rám Tanu Sircar <i>v.</i> Gaur Chandra Saimá Sircar	..	...	12
Rás Behárf	...	...	45
Reg. <i>v.</i> Ravlojírav bin Hanmantráv	..	...	71
Rudiyaporáyil Mamy <i>v.</i> Madarat Amman Kuttu	...	...	44
Saiad Farzand Alí <i>v.</i> Saiad Abd-un-Rahím	...	...	40
Saiad Nazar Alí <i>v.</i> Saiad Imdád Alí	...	...	38
Saiad Rezá Alí <i>v.</i> Bhukan Khán	..	...	36
Salgrám Misi <i>v.</i> Musammát Jánki	..	...	65
Shaikh Rahmatullah <i>v.</i> Shaikh Sharatullah Qází	...	...	36, 63
Shaikh Unai <i>v.</i> Abdul Ghafúr	...	...	12
Shankar Bápú <i>v.</i> Vishnu Naráyan	..	..	36
Srínáth Bhattachárjja <i>v.</i> Ramkomal Gangulí	..	...	40, 41
Sríram Ráy Chaudhurí <i>v.</i> Kalímuddín Mullah		..	44
Sundar Jagjivan <i>v.</i> Gopál Eshvant	..	..	39
Tulsí Saho <i>v.</i> Mahadeo Dás	...	..	63
Udaychánd Mandal <i>v.</i> Nitai Mandal	.	12, 20,	42
Ujjal Mandal <i>v.</i> Húsatullah Mandal		.	16, 66
Umáchan Mukarjí <i>v.</i> Harichan Pasu	.	..	3, 42
Wyatt <i>v.</i> Barwell	...	.	30

ADDENDA ET CORRIGENDA.

THE following note should be appended to Section 3 —

In *Hicks v. Powell* (17 Weekly Reporter 449) one Clark of Madras had transferred real property in 1865 upon certain trusts to the plaintiffs, the deed containing a covenant for further assurance. This deed was not registered, and Clark shortly after went to England. In August 1866 Clark mortgaged the same property to defendant, and this mortgage was duly registered by his agent at Madras. Clark died soon after. In 1867 the plaintiffs filed a bill claiming priority and praying for the enforcement of the covenant for further assurance. *Giffard, V. C.* dismissed the bill on the ground that the unregistered deed was wholly inoperative in India, and that it was legal for Clark to execute the subsequent mortgage.

In appeal it was urged that Act XVI of 1864, which was in force at the time the deed was executed, did not make an unregistered deed inoperative, but simply debarred it from being received in evidence in India. The deed was, however, admissible in England.

In giving judgment, *Lord Hatherley, J. C.* held that irrespective of the repeal of Act XVI of 1864, the Court of Chancery could not reasonably declare rights which could not be conferred in India, simply because the case happened to be tried in England. It would be a narrow construction, regard being had to the whole policy of the Act, to say that Section 13 related simply to the question of evidence.

But Act XX of 1866, which is now in force and which by Section 49 declares certain unregistered deeds to be wholly inoperative, repealed Act XVI of 1864 entirely and absolutely as to things not done under it while it was in force. "All things duly done under that Act are to be considered as having been done under this Act. Therefore any due registration under that Act shall be treated just as if the registration had been under this Act. Then the 49th Section says that no property shall be affected by any deed, unless registered in accordance with the provisions of this Act. That would have excluded all deeds executed under the Act of 1864 and duly registered under that Act, because they would not be duly registered under the provisions of this Act, but having reference to the other clause, they say—'with reference to all things which have not been done hitherto—'As to them, we will treat the Act as gone.' No effect is to be given to anything under the Act of 1864, unless it is something duly done under that Act.

"Everything duly done under that Act is saved and treated as if done under this Act; and thereupon it is competent to enact that nothing shall be valid unless done under this Act. There will be no hurt therefore to anybody who has duly complied with existing registrations, but with regard to everything else, that all things must be done under this Act.

"I find here the defendants claiming under this Act under an instrument duly executed under this Act, and I am asked to displace them in favor of persons claiming under a certain equity, which, they say, subsisted when the Act of 1864 passed; but they claim under a deed which ought to have been registered under the Act of 1864, and they have not complied; they are not therefore within the saving clause of things duly done under that Act, for they did nothing. * * * *

"I am far from saying I disagree with the Vice-Chancellor even upon the reasonable construction of the first Act, but I do not think it necessary to rest on that. I think upon the second Act the thing has become so abundantly clear, that the appeal fails and must be dismissed with costs."

The principle laid down in the above case as to the effect of Section 3 of Act XX of 1866, was also affirmed by the High Court of Calcutta in the late case of *Grish Chandra Datta v. Bazal-ul-haq* (3 Bengal Law Reports, A. C. 68),* in which *Peacock, C. J.* held that even when a petition had been presented under Section 52 of Act XVI of 1864, the decision, if passed after Act XX of 1866 came into force, would be subject to the provisions of that Act.

The decision in *Bhumal Mahton v. Musammât Alimissa alias Begam Jan*, referred to in the note to Section 84, would scarcely seem to be in accordance with this principle.

In the note to Section 17 insert after the 23rd line on page 12 -

This would appear to have been overlooked in the late case of *Bhaisabnâth Khettî v. Kishori Mohan Saha*. (3 Bengal Law Reports, App. 1.)

In the foot-note (7) on the same page, read 9 W. R. 425.

The case of *Brâjanâth Pân v. Amala Dâs*, referred to on pages 21, 25, 52, 61 and 64, will be found reported in 3 Bengal Law Reports, O. C. 60.

On page 37 insert after the 6th line --

This view was also held in *Mark Ridded Currie v. S. V. Mutu Ramen Chetty*. (3 Bengal Law Reports, A. C. 126)

THE INDIAN REGISTRATION ACT, 1866.

ARRANGEMENT OF SECTIONS.

PART I.

Preliminary.

1. Short Title.
2. Interpretation Clause.
3. Laws repealed.
4. Power to invest Head Executive Officer of Territories under immediate administration of Government of India with authority vested by this Act in Local Governments.

PART II.

Of the Registration Establishment.

5. General Registry Office.
Branch General Registry Office.
6. Formation and alteration of Districts and Sub-Districts.
7. Establishment of Registry and Sub-Registry Offices.
8. Appointment of Registrars and Sub-Registrars.
9. Appointment of Deputy Registrar General to perform duties of Registrar General, except those mentioned in Sections 80 and 83, during his absence on duty.
10. Provision for cases of absence of a Registrar from his District or vacancy in his Office.
11. Provision for case of Registrar's absence from Office on duty in his District.
12. Provision for cases of absence of Sub-Registrar or vacancy in his Office.
13. Appointments under Section 9, 10, 11 or 12 to be reported to Local Government.
Local Government may suspend, remove or dismiss any person appointed under this Act.

14. Remuneration and establishments of Registering Officers.
15. Seals of Registering Officers.
16. Register Books—Forms—Fire-proof boxes.

PART III.

Of Registrable Documents.

17. Instruments of which the registration is compulsory.
Exception of composition-deeds.
And of transfers of shares and debentures in Land Companies.
18. Documents of which the registration is optional.
19. Documents in language not understood by Registering Officer.
20. Documents containing interlineations, blanks, erasures or alterations.
21. Description of parcels in instruments relating to immovables.
Documents containing maps or plans.

PART IV.

Of the Time of Registration.

22. Time for registering instruments of which the registration is compulsory.
23. Time for registering documents of which the registration is optional.
24. Provision where delay in registering is unavoidable.
25. Provision for last day of period for registration falling on a holiday.
26. Wills or Authorities to adopt may be registered or deposited at any time.
27. Alteration of Act No. XIV of 1859, Section 1, Clause 10.
28. Saving of time prescribed by Statute for registration of instruments.

PART V.

Of the Place of Registration.

29. Place for registering instruments relating to immovables.
30. Place for registering other instruments.

31. Registration by Registrar General of instruments referred to in Section 29.
32. Registration by Registrar.
33. Registration or acceptance for deposit at private residence.

PART VI.

Of the Presentation of Instruments for Registration.

34. Persons to present documents for registration.
35. Powers of Attorney recognizable for purposes of Section 34. Proviso as to persons infirm, or in jail, or exempt from appearing in Court.
36. Enquiry before registration by the Registering Officer

PART VII

Of the Enforcement of Attendance of Executants and Witnesses.

37. Procedure where attendance of executant or witness is desired.
38. Revenue Officer to issue and cause service of summons
39. Persons exempt from attendance at Registration Office.
40. Law as to summonses, Commissions and witnesses in Civil suits to apply to summonses Commissions and witnesses under this Act

PART VIII

Of sending to a Registry Office Memoranda of Decrees and Orders affecting Immoveable Property.

41. Memorandum of decree affecting registered document relating to immoveable property to be sent to Registrar within whose District the document was originally registered.
42. Memorandum of decree affecting immoveable property to be sent to Registrar in whose District such property is situate.
43. Costs of registration of memoranda of decrees and orders.

PART IX

Of the Presentation and Deposit of Wills and Authorities to adopt.

44. Persons entitled to present for registration Wills and Authorities to adopt
Presentation or deposit of Wills and Authorities to adopt.

- 45. Withdrawal of sealed cover deposited under Section 44.
- 46. Proceedings on death of depositor.
Re-deposit.

PART X.

Of the Effects of Registration and Non-Registration

- 47. Time from which registered document operates
- 48. Registered instruments relating to property to take effect against oral agreements.
- 49. Effect of non-registration of documents required to be registered.
- 50. Registered instruments relating to immoveables, of which the registration is optional, to take effect against unregistered instruments.
- 51. Period of limitation in suits under a registered written contract for money lent, or interest, or breach of contract.

Special Registration of Obligations for Payment of Money

- 52. Record of agreement that amount secured by an obligation may be recovered summarily.
- 53. Enforcement of such agreement. Stamp on petition Decree
- 54. Power to order obligation to be deposited in Court
- 55. Court may, under special circumstances, set aside decree

PART XI

Of the Duties and Powers of Registering Officers.

(A) As to the Register Books and Indexes

- 56. Register Books to be kept in the several Offices
- 57. Documents to be copied according to order of presentation
- 58. Entries to be numbered consecutively.
- 59. Current Indexes and entries therein.
- 60. Indexes to be made by Registering Officers.
Extra particulars in Indexes
- 61. Two copies of entries in Indexes Nos I and II to be sent by
Sub-Registrar to Registrar

62. One of each pair of copies received by Registrar from Sub-Registrar to be filed in Registrar's Indexes, and the other to be sent to General Registry Office with a copy of entries in Registrar's Indexes.
63. Copies sent by Registrar to be filed in Indexes of General Registry Office.
64. Annual alphabetical Index to entries in Indexes.
65. Registering Officers to allow inspection of certain Books and Indexes and to give certified copies of entries.

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

66. Particulars to be endorsed on documents admitted to registration.
67. Such endorsements to be dated and signed by Registering Officer.
68. Certificate showing that document has been registered, and number and page of book in which it has been copied.
69. Endorsements and certificate to be copied.
Document to be returned.
70. Procedure on presentation of a document in a language unknown to the Registering Officer
71. Power to administer oaths.
Record of substance of statements.

(C) Special Duties of Sub-Registrar.

72. Procedure on Sub-Registrar's registration of document relating to immoveable property situate in several Sub-Districts.
73. Procedure on Sub-Registrar's registration of document relating to immoveable property situate in several Districts.

(D) Special Duties of Registrar.

74. Procedure on registering instruments under Section 32.
75. Procedure on receipt of memorandum under Section 41.
Procedure on receipt of memorandum under Section 42.
76. Registration of Wills or Authorities to adopt.
77. Procedure on deposit of Wills and Authorities to adopt.

(E) Of the Registrar General.

78. Procedure on registration in General Registry Office.

(F) Of the Controlling Powers of Registrars and Registrars General.

79. Registrar to superintend and control Sub-Registrars.
 80. Powers of Registrar General.
 Power to frame Rules.
 81. No order to cancel registration.

PART XII.

Of Refusal to Register.

82. Reasons for refusal to register to be recorded by Registrar or Sub-Registrar.
 83. Registrar may alter or revise orders of Sub-Registrar refusing registration.
 84. Procedure where Registrar or Registrar General refuses to register or direct registration of documents falling under Section 17 or Section 18, Clauses 1, 2, 3 and 4.
 Petition.
 To be verified and stamped.
 Document admissible in evidence.
 Court to fix day for hearing petition and copy thereof to be served.
 Court may order document to be registered.
 Provision for case in which the Judge is the Registering Officer.
 85. Registering Officer not to be liable for anything *bonâ fide* done or refused in his official capacity.

PART XIII.

Of the Fees for Registration, Searches and Copies.

86. Fees for registration, searches and copies to be fixed by Local Government.
 Table of Fees.
 87. Fees and penalties to be credited to Government.

PART XIV.

Miscellaneous.

88. Nothing done by Registering Officer to be invalidated by defect in his appointment or procedure.
89. Registration of instruments executed by Government Officers or certain public functionaries. .
90. Penalty for incorrectly copying, endorsing, translating or registering documents with intent to injure.
91. Penalty for making false statements before Registering Officer.
92. Penalty for delivering false copy or translation.
93. Penalty for false personation.
94. Penalty for abetment of offences under this Act.
95. Registering Officer may institute prosecutions.
96. Registering Officers to be deemed Public Servants.
97. References to Act No. XVI of 1864 to be read as if made to this Act.
98. Commencement of Act where Act No. XVI of 1864 is in force.
Power to extend Act to other Territories.
99. Repeal of Rules relating to registration in certain Territories.
100. Time for registering instruments executed in such Territories before extension of this Act.
101. Recognition, in Territories in which Act No. XVI of 1864 is not in force, for three months, of powers of attorney not duly executed.
102. Registers kept under former enactments to be transferred to Registrar of the District.

SCHEDULE. Form of petition under Section 84.
Form of verification.

ACT No. XX OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General
on the 2nd April 1866.)*

AN ACT TO PROVIDE FOR THE REGISTRATION OF ASSURANCES.

Preamble. WHEREAS it is expedient to consolidate and amend the laws relating to the Registration of Assurances ; it is enacted as follows :—

PART I.

PRELIMINARY.

Short Title. 1. This Act shall be called “The Indian Registration Act, 1866.”

Interpretation clause. 2. In this Act—unless there be something repugnant in the subject or context—

“British India” denotes the Territories which are or may become vested in Her Majesty or Her successors by the Statute 21 and 22 Vic., cap. 106, entitled “An Act for the better government of India,” except the Settlement of Prince of Wales’ Island, Singapore and Malacca :

“Year” and “Month” “Year” and “Month” respectively
mean a year or month reckoned accord-
ing to the British Calendar .

“Section” “Section” denotes a Section of this
Act

“Lease” includes a counterpart, a kabúliyat, an under-
taking to cultivate or occupy, and an
“Lease” agreement to lease, but not a pattá
or muchalká, as respectively defined in Section 3 of Act
No VIII of 1865 of the Governor of Fort St George in
Council, executed in the Madras Presidency .

Under Act XVI of 1864 the High Court held that a kabúliyat was not a
“lease” within the meaning of Section 13 of that Act *Amyad Ali v. Ala*
Bakshi (1)

In the Stamp Act a “counterpart” is defined to mean “the duplicate of
a conveyance, settlement, mortgage deed or lease, such duplicate not being
executed by the grantor, settlor, mortgagor or lessor, but by some other
party to the instrument it includes a kabúliyat”

“Will” “Will” includes a codicil and every
writing making a voluntary posthu-
mous disposition of property .

“Instrument” “Instrument” does not include a
Will nor an Authority to adopt :

“Obligation” denotes any instrument by which one person
(hereinafter called the obligor) binds
“Obligation” himself absolutely or conditionally to

pay money to another person (hereinafter called the obligee), and includes a Bond, a Bill of Exchange, a Hundi and a Promissory Note :

An Obligation may also pledge immoveable property as collateral security, *Umácharn Mukúrji v. Haricharn Basu.* (1)

"Signature"
"Signed."

"Signature" and "signed" include
and apply to the affixing of a mark :

"Immoveable Property" includes land, buildings, rights
"Immoveable Pro- to ways, lights, fisheries or any other
perty." 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 :

"Moveable Property" includes standing timber, growing
"Moveable Property." crops, grass, fruit upon trees, and pro-
perty of every other description, except
immoveable property :

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

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

See Rule 58.

“Representative” includes the guardian of an Infant and the Committee or other legal curator of a Lunatic or Idiot.

See Rule 44

“Oath” includes a solemn affirmation

“Imprisonment” means imprisonment of either description as defined in the Indian Penal Code

“Person” includes any Company or association or body of persons, whether incorporated or not

“Addition” means the place of residence, and the profession, trade, rank or title (if any) of a person described

Under Rule 57 the “Addition” is made to include the father’s name, when necessary

Number
Gender
Words in the singular number include the plural, words in the plural number include the singular, and words importing the masculine gender include females,

And in any part of British India in which this Act operates,

“Local Government” denotes the person authorized by law to administer the Executive Government in such part
“High Court” denotes the highest Civil Court of Appeal therein.
“District Court” means the principal

Civil Court of original jurisdiction in a District, and includes the High Court in its ordinary original Civil jurisdiction ; and "Civil Court" includes a Revenue Court, but not a Court for the relief of insolvent debtors :

For the ordinary Civil jurisdiction of the High Court of Bengal, see Section 12 of the Letters Patent constituting that Court, and for a Court for the relief of insolvent debtors. see Section 18 of the same Letters Patent.

"General Registry Office." "General Registry Office" includes a Branch General Registry Office :

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

3. Acts No. XVI of 1864 and No. IX of 1865 are hereby repealed, except in so far as the former Act rescinds other Acts or Regulations, and except as regards things duly done and penalties incurred under the Acts hereby repealed or either of them. And all things duly done under the same Acts or either of them shall be considered as having been done under this Act.

The Acts and Regulations rescinded by Act XVI of 1864 are enumerated in the Schedule annexed to that Act, and contain, in a word, all previous laws or portions of laws relating to the registration of deeds in this country.

4. It shall be lawful for the Governor-General of India in Council, by an order to be published in the *Gazette of India*, to declare that in any Territory under the immediate administration of the Government of India, the Head Executive Officer of such Territory shall exercise all or any of the powers vested by this Act in the local Governments,

Power to invest Head Executive Officer of Territories under immediate administration of Government of India with authority vested by this Act in local Governments.

and thereupon such Officer shall, for the purposes of this Act, be the local Government of such Territory.

The Territories under the several Chief Commissioners are "under the immediate administration of the Government of India."

PART II.

OF THE REGISTRATION ESTABLISHMENT.

5. The local Government shall establish within the Territories subject to such Government, at such place as it shall think fit, an Office to be called the General Registry Office, and shall appoint an Officer to the charge of such Office, who shall be the Registrar General of the Territories for which he is appointed. The local Government may also, with the previous sanction of the Governor General of India in Council, establish a Branch General Registry Office, and appoint a Branch Registrar General; and every act done by or before any Branch Registrar General so appointed shall have the same effect as if done by or before a Registrar General: provided that such Branch Registrar General shall not exercise the power to frame rules conferred on the Registrar General by Section 80. Any Registrar General or Branch Registrar General may hold simultaneously any other office under Government.

The General Registry Office for the Lower Provinces of the Presidency of Bengal is at Calcutta, and for the North-Western Provinces at Allahabad.

6. For the purpose of this Act the local Government shall form Districts and Sub-Districts, and shall prescribe and from time to time may alter the limits of such Districts and Sub-Districts. A Sub-District may be contermin-

Formation and alteration of Districts and Sub-Districts.

ous with a District, or may be situate partly in one District and partly in another.

The Districts and Sub-Districts formed under this Section together with the limits thereof, and every alteration of such limits shall be notified by the local Government in the Official Gazette immediately after every such formation or alteration. Every such alteration shall take effect on such day after the notification as shall be mentioned therein.

For the present limits of Districts and Sub-Districts in Lower Bengal and the North-West Provinces, see Appendix I

7. The local Government shall establish in every District an Office to be styled the Registry Office, and in every Sub-District an Office to be styled the Sub-Registry Office.

8. The local Government may appoint such persons, whether Public Officers or not, as it may think proper, to be Registrars of the several Districts, and to be Sub-Registrars of the several Sub-Districts, formed as aforesaid, respectively.

9. During the absence on duty of the Registrar General or Branch Registrar General from the place where the General Registry Office is established, it shall be lawful for him to appoint the Registrar of such place, or with the previous sanction of the local Government such other person as he shall think fit, to perform the duties of the Registrar General, except those mentioned in Sections 80 and 83. A Registrar so appointed shall perform such duties in addition to his own duties as

Registrar. During such absence the Registrar or other person so appointed as aforesaid shall be styled the Deputy Registrar General or Deputy Branch Registrar General, as the case may be, and may use the Seal of the Registrar General or Branch Registrar General, as the case may be.

10. In case of the absence from his District, or of a vacancy occurring in the Office of any Registrar other than the Registrar of a District including a Presidency Town, any person whom the Registrar General shall appoint in his behalf, or, in default of such appointment, the Judge of the District Court, shall, during such absence or vacancy, be the Registrar. In case of the absence of the Registrar of a District including a Presidency Town, or of a vacancy occurring in the Office of any such Registrar, it shall be lawful for the Registrar General to appoint any person whom he may think proper to conduct the duties of the Office of such Registrar.

Provision for cases of absence of a Registrar from his District or vacancy in his Office.

See Rule 1.

In a *special* Registration District, including more than one Zillah and more than one District Court, a question may arise as to which Judge should act as the Registrar's *locum tenens* during his absence.

11. In case of the absence of any Registrar from his Office on duty in his District, it shall be lawful for him to appoint any Sub-Registrar in his District to perform, during such absence, all the duties of a Registrar except those mentioned in Sections 79 and 83.

Provision for case of Registrar's absence from Office on duty in his District.

See Rule 2.

(This Section refers to the Registrar's absence on duty in his District ; if he leaves his District, his *locum tenens*, if not specially appointed by the Registrar General, will be the District Judge, under Section 10.

12. In case of the absence of any Sub-Registrar, or of a vacancy occurring in the Office of any Sub-Registrar, any person whom the Registrar of the District shall appoint in this behalf shall, during such absence or vacancy, be Sub-Registrar.

Provision for cases of absence of Sub-Registrar or vacancy in his Office.

See Rules 3, 4 and 5.

13. All appointments made under Section 9, 10, 11 or 12 shall be reported to the local Government by the Registrar General or Branch Registrar General, as the case may be. Such report shall be either special or general, as the local Government shall direct; and the local Government shall have power to suspend, remove or dismiss any persons appointed under the provisions of this Act, and to appoint other persons in their stead.

Appointments under Section 9, 10, 11 or 12 to be reported to local Government.

Local Government may suspend, remove, or dismiss any person appointed under this Act.

See Rule 6.

14. It shall be lawful for the local Government, with the previous sanction of the Governor-General of India in Council, to assign such salaries as such Government may from time to time deem proper, to the Registering Officers appointed under this Act, or to provide for the remuneration of such Officers by fees, or partly by fees and partly by salaries. It shall also be lawful for the local Government, with the like sanction, to allow such establishments for the several Registration Offices as may be necessary for the purposes of this Act.

Remuneration and establishments of Registering Officers.

See Rule 7.

15. The Registrar General, Branch Registrar General, and the several Registrars and Sub-Registrars, shall use a seal bearing the following inscription in English and in such other language as the local Government shall direct :
 “The seal of the Registrar General (or of the Branch Registrar General, or of the Registrar, or of the Sub-Registrar) of .”

See Rule 112

16. The local Government shall provide for the Office of every Registering Officer such Books as may be necessary for the purposes of this Act. The Books so provided shall contain such forms as shall from time to time be prescribed by the Registrar 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 shall be issued. The local Government shall further supply the Office of every Registrar with a fire-proof box.

See Rule 110.

PART III.

OF REGISTRABLE DOCUMENTS.

17. The instruments next hereinafter mentioned shall be registered, provided the property to which they relate shall be situate in a District in which, and provided they shall have been executed on or after the date on which the

Instruments of, which the registration is compulsory.

said Act No. XVI of 1864 or this Act shall have come or shall come into operation , (that is to say) :—

1. Instruments of gift of immoveable property :

2. Instruments (other than an instrument of gift) 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 :

3. 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

4. Leases of immoveable property for any term exceeding one year :

Provided that the former part of this Section shall not apply to any Composition-deed nor to any instrument relating to shares in

Exception of Composition-deeds. .

And of transfers of shares and debentures in Land Companies.

a Joint Stock Company, notwithstanding that the assets of such Company shall consist in whole or in part of immoveable property, nor to any endorsement upon transfer of any debenture issued by any such Company. Provided also that, so far only as regards the Territories respectively under the Governments of the Lieutenant Governors of Bengal and the North-West Provinces, the local Government may, by order published in the Official Gazette, exempt from the operation of the former part of this Section any leases of immoveable property, executed in any particular District or part of a District, the terms granted by which

shall not exceed two years, and the annual rents reserved by which shall not exceed fifty rupees.

This Section defines the instruments the registration of which is compulsory in order to their being admissible in evidence under Sec. 49. Speaking generally, registration is compulsory in the case of deeds of gift, and of all other instruments affecting immoveable property of the value of Rupees one hundred and upwards, and of all leases for a term exceeding one year. For the exemption of settlement papers and certain other documents from compulsory registration, see Act XXVII of 1868, *post*

Instruments of gift of immoveable property must be registered, whatever the value of the property. *Protana Kolita v Mottea Kolita*. (1)

In *Udaychand Jání v Nidú Mandal* (2) it was ruled that the registration of a bond or other obligation, in which immoveable property is hypothecated as collateral security is not compulsory under this Section. Such an instrument falls under Clause 7 of Section 18. See also *Gopal Prasad v. Nandardasi*. (3)

"It was not intended that compulsory registration under Section 13 of Act XVI of 1864, (which corresponded to this Section,) 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." *Banwari Lal v. Sangam Lal* (4) See also *Rám Tanú Sarmá Sucúr v. Gaur Chandrá Sarmá Sucúr*. (5) But it is to be observed that under this Act a lease by the definition (Section 2) includes an agreement to lease.

A lease for no definite time, but fixing an annual rent (সন বসন), falls within Clause 4, and must be registered in order to be admissible in evidence. *Rám Kumár Mandal & others v. Brajahári Mridha* (6) And this Clause has no reference to the one that immediately precedes it, which refers to instruments not being deeds of gift or leases, in which a question of valuation comes in. So far as leases are concerned, the question is one of time and not of value. *Shaukh Umar v. Abdul Ghafúr*. (7)

A lease of a ghat or ferry is a lease of immoveable property.

The last clause of the proviso was introduced to save the necessity for registering certain indigo leases, which, though for one season's crop only, extended over a portion of two years. By a Notification in the *Calcutta Gazette*,

(1) 11 W R 334

(5) 3 W R 64

(2) 9 W R 111

(6) 2 Bengal Law Reports, A. C. 73.

(3) 1 Bengal Law Reports, A. C 192

(7) W. R. 425.

(4) 7 W. R. 280.

dated the 16th August 1866, leases of the nature described in the proviso, which may be executed in the Districts of Gya and Shahabad, are exempted from the compulsory provisions of this Section.

Documents of which, the registration is optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act ; (that is to say) :—

1. 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 a value less than one hundred rupees to or in immoveable property :

2. 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 :

3. Leases of immoveable property for any term not exceeding one year, and the pattás and muchalkás referred to in Section 2 :

4. Awards relating to immoveable property :

5. Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property :

6. Wills or Authorities to adopt a son :

7. Acknowledgments, Agreements, Appointments, Articles of Partnership, Assignments, Awards, Bills of Exchange, Bills of Sale, Bonds, Composition-deeds, Conditions of Sale, Contracts, Covenants, Grants, Instruments of Dissolution of Partnership, Instruments of Partition, Powers of Attorney, Promissory Notes, Releases, Settlements, Writings of Divorcement, and all other documents not hereinbefore mentioned.

With regard to Clauses 1, 2, and 3, see Section 50.

The insertion of a covenant of renewal in a lease or *amalnāmah* for the term of one year does not thereby make it liable to be registered under Section 17. *Raddhika Prasāda Chandra v Rām Sundar Kar.* (1)

The registration of Powers of Attorney under Clause 7 is not to be confounded with their authentication for the purposes of this Act under Sec. 35. See Rule 23.

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.

For the languages which are to be taken as commonly used in the several Districts of Bengal, see Rule 9.

A Registering Officer cannot refuse to register a document which is in a language commonly used in the District, merely because he does not understand that language.

For the mode of procedure in the case of documents presented under this Section, see Section 70

20. It shall be in the discretion of the Registering Officer to refuse to accept for registration any document in which any interlineation, blank, erasure or alteration shall appear, unless the persons executing the document shall attest with their signatures or initials such interlineation, blank, erasure or alteration; and it shall be the duty of the Officer registering such document, at the time of registering the same, to make a note in the Register of such interlineation, blank, erasure or alteration.

See Rule 10.

The reason for refusing to register under this Section need not be recorded under the strict wording of Section 82, but it is very desirable that it should

(1) 1 Bengal Law Reports, A. C. 7.

be recorded in every case. See Rule 75, Cl. 2. If the interlineations, &c., are properly attested by the executants, registration cannot be refused under this Section.

The importance of noting in the Register the occurrence of interlineations, &c., in the original document, should not be overlooked.

21. No instrument relating to immoveable property shall

be accepted for registration unless it shall contain a description of such property sufficient to identify the same.

Description of parcels in instruments relating to immoveables.

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 occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

No document containing a map or plan of any property

comprised therein shall be accepted for registration unless it be accompanied

Documents containing maps or plans.

by a true copy of the map or plan, or, in case such property shall be situate in several Sub-Districts, by such number of true copies of the map or plan as shall be equal to the number of such Sub-Districts, and, in case the property shall be also situate in several Districts, by such further number of true copies of the map or plan as shall be equal to the number of such Districts.

See Rule 11. The description must be sufficient to identify the property.

The number of copies of the map or plan required is equal to the number of copies of the document, which are required for other Districts and Sub-Districts under Sections 72-74.

PART IV.

OF THE TIME OF REGISTRATION.

22. Subject to the provision contained in Section 24, no instrument of the kinds mentioned in Section 17, Clauses 1, 2, 3 and 4, shall be accepted for registration unless presented for that purpose to the proper Officer within four months from the date of its execution ; provided that, were there are several persons executing it at different times, the instrument may be presented for registration and re-registration within four months from the date of each execution.

Time for registering instruments of which the registration is compulsory.

It is to be observed that the period of limitation refers to the presentation of a document, there is no limit to the time within which it may be registered. In *Manmohini Dasi v. Bishtamahí Dasi* (1) it was ruled that there was nothing in Act XVI of 1864 to oblige or empower a Registering Officer to register a deed after expiry of the time specified in Section 18, whether under decree of Court or otherwise, except in cases falling under Section 15. A regular suit could only be brought under Section 15, if registration had been refused, but even if registration had not been refused by a Registering Officer, a Court might issue a decree to enforce registration provided that the decree were passed within four months from the date of the execution of the deed *Ujpal Mandal v. Hírásatullah Mandal* (2)

The following opinion of the Advocate General of Madras refers to the execution of grants of Waste Lands —

“If the deed is in fact executed by Government and by the grantee on the same day, then that date would be the proper one to enter both in the top of the deed and in the attestation clause, but where the parties reside at different places, the grantee perhaps being in England, this cannot be done. Only for the Registration Act, no difficulty would arise. The date of the deed is wholly immaterial, since it takes effect from delivery and not from execution, and the insertion of a false or even of an impossible date is harmless. Where different persons execute at different dates, the practice of conveyancers is to date the document on the day of the first execution, the party who executes first being in general the vendor. But the Registration Act XX of 1866,

(1) 7 W R 112

(2) 7 W R. 150.

Section 22, makes the date of execution to be the period from which the time for registration counts, and where there are several persons executing at different times, a fresh period for registration starts from each execution. I presume the practice is not to seal the grant until the signature of the grantee has been affixed. Where this course is adopted, the date at the top should be the date of his signature, and then the attestation clause by him would agree. The date at which the seal of Government is affixed should also be mentioned, which will enable the grantee to have his full period of four months for re-registration. If however the seal of Government is affixed first, then the indenture should be dated from that day, and the attestation clause by the grantee should be altered so as to accord with the true date of his signature.

"In advising upon this question before, I said nothing as to the necessity for registration within four months of the first signature. It is quite clear that if the grantee (for instance) execute first, the Government must register the document within four months, if they want to prevent him from backing out of his agreement. But supposing no registration took place upon his signature, and then the Government executed the document, and the grantee presented the indenture for registration for the first time within four months after the last execution, but more than four months after the first execution, the question would arise whether the document could then be accepted. It will be observed that the Act speaks of registration and re-registration, not of registration simply. It is not necessary to offer a positive opinion upon the point, but as a matter of precaution, it would be well to register the first signature at once, if there is any chance that the four months may expire before the second signature is obtained.

23. Subject to the provision contained in Section 24, no

document of any of the kinds mentioned in Section 18 (other than a Will or Authority to adopt a son), shall be accepted for registration unless presented for that purpose to the proper Officer within two months from the date of its execution; provided that, where there are several persons executing it at different times, the document may be presented for registration and re-registration within two months from the date of each execution.

Time for registering documents of which the registration is optional.

Explanation —The date of execution of a document means the day on which it purports to have been executed.

24. If any instrument shall, owing to urgent necessity or unavoidable accident, not have been presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, it shall be lawful for the Registrar, in cases where the delay in presentation shall not exceed four months, to direct, that on payment as a penalty of a sum not exceeding twenty times the amount of the proper registration fee, such instrument shall be accepted for registration.

See Rule 14.

The penalty herein mentioned is to be considered independent of the ordinary fee for registration.

25. Whenever the last day of any period hereinbefore provided for the registration of any document shall fall on a Sunday or other holiday declared as hereinafter mentioned, such last day shall, for the purposes of this Act, be deemed to be the day immediately following such Sunday or other holiday.

See Rule 15 and Appendix II.

26. Any Will or Authority to adopt a son may at any time be registered or deposited in manner hereinafter provided.

27. In Act No. XIV of 1859, Section 1, Clause 10, the last Clause shall be read as if for the words "within six months from the date thereof," the words "within the

Alteration of Act No. XIV of 1859, Section 1, Clause 10.

time prescribed in that behalf by 'The Indian Registration Act, 1866,' " were substituted.

The clause referred to runs as follows :—

"To suits brought to recover money lent on interest or for the breach of any contract, in cases in which there is a written engagement or contract, and in which such engagement or contract could have been registered by virtue of any Law or Regulation in force at the time and place of the execution thereof, the period of three years from the time when the debt became due or when the breach of contract in respect of which the action is brought first took place unless such engagement or contract shall have been registered *within six months from the date thereof.*"

28. Nothing in this Act shall be taken to alter the time

Saving of time prescribed by Statute for registration of instruments.

within which any certificate or other document must be registered under the provisions of "The Bankrupt Law Consolidation Act, 1849," Section 143, or any other Act of the Parliament of the United Kingdom of Great Britain and Ireland

The Section referred to runs as follows —

CXLIII. "That where, according to law, any conveyance or assignment of any real or personal property of a bankrupt would require to be registered, enrolled or recorded in any Registry Office in England, Wales or Ireland, or in any Registry Office, Court or other place in Scotland, or in any of the dominions, plantations or colonies belonging to her Majesty, then in every such case the certificate of the appointment of assignees of the estate and effects of the bankrupt shall be registered in the Registry Office, Court, or place wherein such conveyance or assignment would require to be registered, enrolled or recorded, and such Registry shall have the like effect to all intents and purposes as the registry, enrolment or recording of such conveyance or assignment would have had; and the title of any purchaser of any such property for valuable consideration without notice of the bankruptcy, who shall have duly registered, enrolled or recorded his purchase deed previous to the registry hereby directed shall not be invalidated by reason of such appointment of assignees, or of the vesting of such property in them consequent thereupon, unless the certificate of such appoint-

ment shall be registered as aforesaid within the times following; that is to say, as regards the United Kingdom of Great Britain and Ireland, within two months from the date of such appointment, and as regards all other places, within twelve months from the date thereof."

PART V.

OF THE PLACE OF REGISTRATION.

29. Save as in this Act otherwise provided, every instrument mentioned in Section 17, Clauses 1, 2, 3 and 4, and Section 18, Clauses 1, 2, 3 and 4, 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 instrument relates is situate.

The exceptional provisions are contained in Sections 31, 32 and 33.

An obligation in which immoveable property is simply hypothecated as collateral security does not fall within the scope of this Section. See *Udaychand Jáná v. Nútáí Mandak*. (1)

30. Every instrument other than an instrument referred to in the last preceding Section, may be presented for registration in the Office of the Sub-Registrar in whose Sub-District the instrument was executed, or in the Office of any Sub-Registrar under the local Government at which all the persons executing and claiming under the instrument shall desire the same to be registered.

31. The Registrar General may in his discretion receive and register any instrument referred to in Section 29, without regard to the situation in any part of British India of the property to which the instrument relates.

Registration by Registrar General of instruments referred to in Section 29.

32. Any Registrar may in his discretion receive and register any instrument which might be registered by any Sub-Registrar subordinate to him. He shall also register Wills and Authorities to adopt. The Registrar of a District including a Presidency Town shall be deemed to be a Sub-Registrar within the meaning of this Act for such portion of his District (if any) as shall not have been formed into a Sub-District.

See Rule 16.

No part of the District of Calcutta (which is continuous with the original jurisdiction of the High Court) having been formed into a Sub-District, the Registrar of Calcutta must be deemed to be a Sub-Registrar for the purposes of this Act. See Section 83. See *Brājanāth Pān v Amala Dāsi*.

33. In ordinary cases the registration or deposit of documents under this Act shall be made only at the public Office of the Officer whose duty it shall be to register the same; but any such Officer may on special cause being shown attend at the residence of any person intending to register any document, or of any person desiring to deposit a Will or Authority to adopt a son, and register or accept for registration or deposit such document, Will or Authority.

Every Sub-Registrar so attending shall within twenty-four hours report to the Registrar to whom he is subordinate the fact of the attendance and his reason therefor.

See Rule 17.

For "special cause" a Registering Officer may attend at a private residence to register or accept for registration any document, or to accept a sealed cover for deposit under Section 44; and it is to be observed that under the Section this duty cannot be delegated to another

PART VI.

OF THE PRESENTATION OF INSTRUMENTS FOR REGISTRATION.

34. Subject to the provisions of the last preceding Section, 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 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.

Persons to present documents for registration.

The persons authorized to present a document for registration are thus :—

- (1) An Executant, or
- (2) his representative or assign, or
- (3) the agent of any of them, (1) or (2).
- (4) A Claimant under the document, or
- (5) his representative or assign, or
- (6) the agent of any of them, (4) or (5).

35. For the purposes of the last preceding Section, the powers of attorney next hereinafter mentioned shall alone be recognized ; (that is to say) :—

Powers of attorney recognizable for purposes of Section 34.

(a.) If the principal at the time of executing the power of attorney resides in any part of British India in which this Act operates, 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 the Judge of the District Court within the local limits of whose jurisdiction the principal resides :

(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.

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.

Provided that persons who by reason of bodily infirmity are unable without risk or serious inconvenience to attend as next herein-after mentioned, and persons who are in jail under civil or criminal process, and persons exempt by law from personal appearance in Court, shall not be required to attend at the Office of the Registrar or Sub-Registrar, or in the Court of the Judge, for the purpose of executing any such power of attorney as is mentioned in Clauses (a) and (b) of this Section ; but in every such case the Registrar or Sub-Registrar or Judge (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 Judge may either himself go to the house of the person purporting to be the principal

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

or to the jail in which he is confined and examine him, or issue a Commission for the examination of such person.

See Rules 18—26.

All powers of attorney which are intended to be used for registration purposes, must be executed in the presence of a certain public officer, according as the case falls under clause (a), (b) or (c). If the principal does not appear personally before such officer, other evidence of his execution of the power cannot be received by him, except in the cases detailed in the proviso to this Section. In these cases it is not absolutely imperative upon the Registrar, Sub-Registrar or Judge to visit a private residence or jail or to issue a Commission, if he is otherwise satisfied of the fact of the voluntary execution of the power.

36. Subject to the provisions contained in this Section and in Sections 76, 80, 84 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. He shall thereupon enquire whether or not such document was executed by the persons by whom it purports to have been executed, and, in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

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 persons they represent themselves to be, and if they all admit the execution of the document ;

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

Or, if the person executing the document shall be dead, and his representative, assign or agent shall not appear before

the Registering Officer, or shall refuse to admit the fact of execution, but such Officer shall nevertheless be satisfied of the fact of execution ;

The Registering Officer shall register the document as directed in Section 68.

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, whether summoned or not under Section 37, present in his Office.

See Rules 45, 46, 47 and 48.

The Registering Officer to whom a deed is presented for registration has nothing whatever to do with its recitals or its possible operation as regard third parties who are not parties to it. *Matukdhari Lal v. Shaikh Fazl Husain* (1). He has no power to refuse to register a deed, on the ground that the full consideration therein mentioned has not been paid. *Brindaban Chandra Saha & Nabadwip Chandra Saha* (2). But he is to register the document as directed in section 68, and section 68 requires that the provisions of sections 66 and 67 as well as of section 36 shall have been complied with. Section 66 requires the signature of every person admitting the execution of the document to be endorsed upon it, and without such signature, therefore, the Registering Officer cannot register the document. *Brayanath Poon v. Amala Das*.

The Advocate General of Bengal is of opinion that under this Section all the persons who have executed the document must appear at one and the same time to admit their execution.—“In my opinion *all* the parties who, when the document first has to be registered, (in other words, when the enquiry as to execution takes place,) appear on the face of the document to have executed it, must be present ; and the Registrar cannot register the document as to one of such parties on one day and as to another on another. I consider that the words “from time to time” in Section 66 refer to a case where the

(1) 6 W. R. Misc. Rul. 131.

(2) 1 Bengal Law Reports, O. C. 47.

parties execute at different times, and there is registration and re-registration. As to time, the matter appears to me to stand thus —the document, when it has been executed by any one party to it, must be *presented* within four months from the time of such execution, and when it is presented, the Registrar will see how many parties have executed. The Act does not provide any time within which the registration of these parties' execution is to take place, and I see no objection to the Registrar appointing any day for that purpose most convenient to them. If he sees reason to take proceedings under Part VII of the Act, he may fix a day on which the parties are to appear and admit execution, in person or by attorney, sufficiently distant to allow time for such proceedings.

"At the same time it is to be observed that this course always involves the ultimate necessity of the parties appearing simultaneously to admit execution. I see no reason why this should be required so far as regards fraud, and I think an alteration of Section 36 would be very desirable."

Rule 75, clause 11, is based on the following opinion of the Advocate General of Bengal, dated 25th June 1867 —

"In my opinion, when a Registrar is satisfied that a person who appears before him as an executing party is a minor, or of unsound mind, registration may and ought to be refused by the Registrar.

"The Registrar's duty is not 'to carry out the expressed wishes of the persons who appear before him,' but to satisfy himself that the document tendered has been really executed by the person by whom it purports to have been executed. He has to deal quasi-judicially with questions as to the identity of the person who appears and admits execution, the authority of the representative or agent, and (when none such appears) the sufficiency of such other proof as may be offered of the fact of execution. In the case supposed, the person who appears and admits the execution is also evidently a person who is legally incapable of execution, and in such a case I consider that the Registrar ought not to act on the admission. If, on examining the party who admits the execution, the Registrar satisfies himself that the party did not know what he was doing, there would in point of law be no admission of the document.

"Of course, I do not mean that the Registrar should act on mere suspicion as to a person's competency, or institute any enquiry in a case when the fact of incompetency is not obvious."

PART VII.

OF THE ENFORCEMENT OF ATTENDANCE OF EXECUTANTS
AND WITNESSES.

37. If any person presenting any document for registration shall desire the attendance of any person whose presence or testimony is necessary for the registration of such document, the Registering Officer may, in his discretion, call upon the Revenue Officer in whose jurisdiction the person whose attendance is so desired may be, to issue and serve a summons requiring him to attend at the Registration Office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named in such summons.

For the issue of summonses and Commissions, see Rules 27—39.

38. The Revenue Officer, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause the same to be served upon the person whose attendance is so required.

For the rules for the service of process by the Revenue Courts, see Appendix III.

39. Any person who by reason of bodily infirmity is unable without risk or serious inconvenience to attend in the Registration Office, and any person who is in jail under civil or criminal process, and any person exempt by law from personal appearance in Court and who would but for the provision next hereinafter contained be required to attend in person at the Registration Office, shall not be required so to attend,

Procedure where attendance of executant or witness is desired.

Revenue Officer to issue and cause service of summons.

Persons exempt from attendance at Registration Office.

but 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.

40. 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.

See Appendix IV.

PART VIII

OF SENDING TO A REGISTRY OFFICE MEMORANDA OF DECREES AND ORDERS AFFECTING IMMOVEABLE PROPERTY.

41. When any Civil Court shall by a decree or order declare any document relating to immoveable property, which shall have been registered under this Act, to be invalid, or when any Civil Court shall pass a decree or order affecting any such document, and such last mentioned decree or order shall create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immoveable property to which it relates, such Court shall cause a memorandum of the decree or order to be sent to the Registrar within whose District the document was originally registered.

This Section refers to decrees and orders of the Civil Courts which affect registered documents relating to immoveable property, and not only such

decrees and orders as invalidate such documents, but all such as "create, declare, transfer, limit or extinguish any right, title or interest under such documents to or in the immoveable property to which they relate."

Under Section 2 a "Civil Court" includes a Revenue Court.

For the form of Memorandum, see Rule 65, and for the Registrar's procedure see Section 75.

42. When any Civil Court shall by a decree or order

Memorandum of decree affecting immoveable property to be sent to Registrar in whose District such property is situate.

create, declare, transfer, limit or extinguish any right, title or interest of any person to or in any immoveable property situate in any part of British India in which this Act shall operate,

such Court shall cause a memorandum of the said decree or order to be sent to the Registrar or to every Registrar within whose District the whole or any part of such immoveable property is situate, and such memorandum shall so far as may be practicable describe the property in manner required by Section 21.

This Section refers to decrees and orders of the Civil Courts which affect the right, title and interest in immoveable property directly, and not as founded upon some registered document.

For the form of Memorandum, see Rule 65, and for the Registrar's procedure see Section 75.

43. The costs of and attending the registration under

Costs of registration of memoranda of decrees and orders.

Sections 41 and 42 of any memorandum of a decree or order shall be costs in the cause, and shall be paid by the

Court to the Registrar or to such other person and in such way as the local Government shall direct in that behalf.

The more important provisions of the High Court's circular No. 24, dated 19th June 1866, on this subject are appended here for facility of reference.

"Para. 4 * * It should be noted that a Memorandum sent under Section 42 should, as far as practicable, describe the property in the manner required by Section 21. The Court trust that they may receive no complaint of a non-observance of this provision of the law; for, unless the Memorandum contains a proper description of the property, the purposes for which it is required are entirely defeated, and the Memorandum is useless.

"5. Whenever a judgment is recorded in English, the Memorandum to be sent to the Office for registration should be invariably drawn up in that language; for it is evident that the substance of decrees or orders passed by a Judge, of the nature of those entered in such Memorandum, can be best expressed in the language in which the original judgments were delivered.

"6. Subordinate Courts should keep a copy of every Memorandum sent to the District Registrar, and the High Court is pleased to direct that, in forwarding the records of appealed cases, all Courts of first instance, and all subordinate Courts of Appeal, shall attach to the judgment appealed against a copy of the Memorandum (or Memoranda) sent in for registration.

"7. In connection with Section 43, which, it will be observed, is an entirely new provision of the law, the High Court desire to point out that the costs of registration should be entered in every decree or order registered under Sections 41 and 42.

"10. Civil Courts should bear in mind such charges, and at the time of the execution of any such decree or order should be careful to see that the Government dues are deducted from the moneys realised in execution before any payment is made to the judgment-creditor. The dues should be deposited in Court, and they should be made over, without delay, to the district Registrar or Registrars, as may be. The High Court take this opportunity of impressing on all Judges the necessity for guarding against any loss by fraud or embezzlement.

"12. In those districts in which the Bengali language is used, the names of persons and places in the Memoranda should be written in the Bengali character; but in those districts in which the proceedings are drawn up in the Persian character, the names of persons and places should be written in Hindee over the corresponding names in Persian, for it is possible to read a name written in Persian character in half a dozen different ways, and there is no certainty as to the orthography.

"13. With the view of ensuring the performance of the duties connected with the preparation of these Memoranda, the High Court request that every Civil Court, in recording its judgment and decree or order in a case requiring

registration, will enter the words "and a copy of the Memorandum A (or B), as required by Section 41 (or Section 42) of Act XX of 1866, shall be forwarded to the Office (or Offices) of the Registrar (or Registrars) of

" 15. The High Court trust that, under the supervision of District Judges, the duty of preparing and forwarding Memoranda to Registration Offices has been regularly and punctually performed by all the Civil Courts. If it has, in any instance, been neglected, such neglect should be at once reported to the High Court, and measures should be taken, without delay, to bring up any arrears.

" 16. The High Court also desire to remind all Civil Judges that the provisions of Section 41, 42, 43, Act XX of 1866, will apply only to decrees and orders passed subsequently to the 1st May 1866, those of a prior date being governed by the provisions of Act XVI of 1864, and that its terms apply to original as well as to appealed suits, in which the decree or order passed concerns a registered document relating to immoveable property, or creates, declares, transfers, limits, or extinguishes any right, title, or interest of any person to or in any immoveable property situate in any part of British India in which Act XX of 1866 shall operate.

" 17. With a view of ensuring uniformity of practice, the Court is pleased to issue the following rules regarding the preparation of Memoranda of Registration :—

A. In decrees of a Court of first instance dismissing a plaintiff's claim to any right, title, or interest to or in any immoveable property, no Memorandum need be prepared.

B. In decrees of an Appellate Court affirming the decree of a Court of first instance dismissing *in toto* a plaintiff's claim to or in immoveable property, no Memorandum need be prepared.

C. In decrees of a Court of first instance decreeing either wholly or in part a right, title or interest in immoveable property claimed by the plaintiff, a Memorandum must be prepared as to the property decreed if, on appeal, the decree be affirmed without alteration or modification, no Memorandum need be forwarded.

D. In decrees of an Appellate Court in which the decree of the lower Court is modified or reversed, wholly or in part, a Memorandum as to the part so modified or reversed, should be prepared and forwarded.

E. When a decree of a Court of first instance declares a registered document relating to immoveable property invalid, or when such Court passes a

decree affecting such document, and such decree shall create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immoveable property to which it refers, or to any part thereof, a Memorandum should be prepared.

F. When a decree of an Appellate Court simply affirms the order of a Court of first instance on points relating to a registered document of immoveable property, no Memorandum need be prepared; but if such decree modifies or in any way varies or reverses that of the lower Court, a Memorandum relating to the portion of it so modified, varied or reversed should be prepared.

G. When a decree has been passed by a Court of Justice in a suit instituted under Section 230 of Act VIII of 1859, in favor of the applicant as plaintiff, either wholly or in part, a Memorandum should be prepared of the property decreed; and if on appeal, that decree be wholly or partially varied or reversed, a Memorandum shewing such variation and reversal should be prepared; but if the decree of the first Court be affirmed, no Memorandum is necessary.

H. When a sale of immoveable property made in execution of a decree has been confirmed by the Court under Sections 256 and 257 of Act VIII of 1859, a Memorandum of sale and confirmation should be prepared; and if, on appeal, that sale should be reversed, a Memorandum of such order of reversal should be prepared by the Appellate Court.

I. When, under Act X of 1865, probate is granted or refused by a District Judge of a will containing words sufficient to pass immoveable property, a Memorandum should be prepared.

J. If, on a review of a judgment, a Court should set aside, modify or in any way interfere with the decree as originally passed, then, if a Memorandum of the original decree has been forwarded to the proper Registration Office, a Memorandum should also be forwarded, notifying the extent of the modification or reversal made by the order passed in review.

K. No Memorandum need be prepared of orders passed by any Court under Act XXVII of 1860, nor those passed under Act XIX of 1841, nor those under Section 2 of Regulation I of 1798, and Sections 7 and 8, Regulation XVII of 1806, nor of Act XL of 1858, nor of those passed under Section 15 of Act XIV of 1859, nor under Sections 246 and 269 of Act VIII of 1859, nor in short of any other order passed with reference to immoveable property in any of the miscellaneous cases entered in the Monthly Statement No. 2 which have not been explicitly mentioned in these rules.

PART IX.

OF THE PRESENTATION AND DEPOSIT OF WILLS AND
AUTHORITIES TO ADOPT.

44. The testator or any person claiming as executor or

Persons entitled to
present for registration
Wills and Authorities to
adopt.

Presentation or depo-
sit of Wills and Authori-
ties to adopt.

otherwise under a Will, may present to any Registrar for registration such Will, and the donor or donee of any Authority to adopt, or the adoptive son, may present to any Registrar for registration such Authority. Any person entitled to present for registration any such Will or Authority may either personally or by a duly authorized agent present to a Registrar such Will or Authority open, and any testator or donor of such Authority may either personally or by duly authorized agent deposit with any Registrar the Will or Authority in a sealed cover superscribed with the name of the depositor and the nature of the document.

It is to be observed that a sealed cover purporting to contain a Will or an Authority to adopt can only be deposited by the testator or donor, as the case may be. But a claimant under a Will, or the donee or adoptive son under an Authority, may present the Will, or Authority, open for registration.

An Authority to adopt must bear a stamp of eight Rupees under the new Stamp Act.

For the procedure see Sections 76 and 77.

45. If the depositor of any such sealed cover shall wish

Withdrawal of sealed
cover deposited under
Section 44.

to withdraw the same, it shall be lawful for him to apply to the Registrar in whose Office such cover shall have been deposited, that the same be delivered to him; and the Registrar, if he shall be satisfied as to the identity of the depositor with the applicant, shall deliver the cover accordingly.

46. If on the death of the depositor of a sealed cover under Section 44, application be made to the Registrar in whose Office such cover was deposited to open the same, the Registrar, if he shall be satisfied that the depositor is dead, shall, in the presence of the person making such application, open the cover, and shall copy at the expense of the applicant the contents thereof in his Book No 4. When such copy shall have been made the Registrar shall re-deposit the original Will or Authority.

"The High Court on the Original Side has decided that under Section 237 of the Succession Act, a Registrar must deliver up a deposited Will to the Court, when application is made for probate, and, of course, after probate, the document becomes a record of, and would be preserved by, the Court. And in the same way a District Judge, after admitting a Will to probate, must keep it among the records of his Court, whether it has been registered or not." Extract from an Opinion of the Advocate-General, dated 24th August 1867

A testator deposited his Will in a sealed cover with the Registrar of Assurances at Bombay under Section 44 of Act XX of 1866, and upon his death his Executors applied to the Registrar to deliver over to them the Will, in order to enable them to apply to the High Court for probate thereof. The Registrar gave a copy of the Will under Section 46 of the Act, but refused to part with the original. On application by the Executors for a citation to the Registrar-General to bring the Will into Court, and deposit it with the Ecclesiastical Registrar, it was held that the original should be brought into Court where alone the *factum* of the Will could be tried and determined, and that a copy authenticated under Section 60 of the Act was not sufficient. But the Registrar-General should not, after the death of the depositor of a Will, part with it otherwise than by order of the Court.

Westrop, J. The Registrar General should make a copy of the Will for his archives, and make a note on it that the original has been removed into this Court by its order to that effect, and it would be well that he should file the order in his Office with that copy. *In the goods of Nagundas (deceased)* (1)

A Registrar would, however, only make a copy of the Will, if the sealed cover had been opened on application; if no such application were made, and the order of the Court was received to produce the cover, it would be produced *unopened*.

If a Will is required by a Court for inspection only, it should be returned to the Registrar for re-deposit.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

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 registered document operates.

The bare fact of the deed not being registered would not annul a sale, if by mutual agreement, a sale had already been made. *Hali Charn Giri Gossain v. Lala Motian Kishor* (1).

48. All instruments duly registered under this Act and relating to any moveable or immoveable property, shall take effect against any oral agreement or declaration relating to the same property.

Registered instruments relating to property to take effect against oral agreements.

49. No instrument required by Section 17 to be registered shall be received in evidence in any Civil proceeding in any Court, or shall be acted on by any Public Servant as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act.

Effect of non-registration of documents required to be registered.

A brought a suit in the Munsiff's Court against *B* and *C*, alleging that they had sold outright to him by *saf kibala* certain landed property for Rs. 300,

which was only paid; that the *kibala* was executed; that possession was given to him; that *B* and *C* set up before the Registering Officer fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money was still unpaid; that therefore the Registering Officer refused to register the deed; that, in fact, there was no such stipulation as set up by *B* and *C*; and that the whole of the purchase-money was paid; and it was stated in the conclusion of the plaint that the suit had been instituted to set aside the fraudulent objections, and to establish the full title of *A*, as purchaser. *Held* (*Mitter J.* dissenting) that the suit would not lie. The unregistered deed could not be admitted in evidence, nor could parol evidence be given of the contract under which *A* alleged that he acquired his title. *A* ought to have proceeded under Section 83 of the Act. *Shaukh Rahmatullah v. Shaukh Sharifatullah Qázi* (1). So in *Shankar Bápú v. Vishnu Naráyan* (2), which was a suit brought against a principal and two sureties to recover the amount advanced on a bond by which certain immoveable property was mortgaged, one of the sureties contended that he was discharged from his liability in consequence of the plaintiff's neglect to have the bond registered; and the plea was held to be valid, as for want of registration the mortgage bond could not be admitted in evidence to prove the contract.

And where a lease was inadmissible in evidence, because it had not been registered, it was held that secondary evidence of its execution could not be given. *Musammát Qabúlan v. Shamshár Ali* (3).

But if the execution of the lease were admitted, its non-registration would be no bar to the decision of the suit on its merits. In *Sarad Rezá Ali v. Bhákan Khán* (4), the defendant in a suit for rent admitted the plaintiff's right as landlord and did not dispute the correctness of the rent, but pleaded payment. It was held that the non-registration of the *kabúliyat* was no ground for dismissing the suit, which could have proceeded, whether the *kabúliyat* was or was not produced. The objection as to non-registration could only arise, when the document was tendered in evidence on any disputed point. So in a suit upon a *rázínámah* the execution of which was admitted by the defendants, and which purported to create an interest in immoveable property, the Civil Judge had dismissed the suit, because the document had not been registered in accordance with Act XVI of 1864, Section 13; but the Madras High Court held that, the existence of the agreement not having been disputed, its production was not necessary, and that the plaintiff was entitled to whatever

(1) 1 Bengal Law Reports, F. B. 58.

(3) 11 W. R. 16.

(2) 4 Bombay II. C. Reports, A. C. J. 79.

(4) 7 W. R. 334.

relief the effect of the plaint and answer taken together would entitle him on the admission of the defendant. *Chedambaram Chetty v. Karunalya-valangapuly Taver* (1).

And this Section does not contemplate the compulsory registration of a deed which is merely preliminary to the main contract, as an agreement to sell certain property. See *Bamwási Lal v. Sungam Lal* (2).

50. Every instrument of the kinds mentioned in Clauses 1, 2 and 3 of Section 18 shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property, whether such other instrument be of the same nature as the registered instrument or not.

Registered instruments relating to immoveables, of which the registration is optional, to take effect against unregistered instruments.

The practical distinction between the two classes of deeds, viz., those the registration of which is compulsory under Section 17, and those the registration of which is optional under Section 18, Clauses 1—3, amounts to this, that the former, if unregistered, cannot be received in evidence at all, while the latter may be received in evidence notwithstanding the want of registration, though they must give way to registered documents of subsequent dates relating to the same property. *Mansúr Ali v. Azmat Ali* (3). See also *Guru Dás Dán v. Kusum Kumári Dasi* (4). In *Mufazzal Husain v. Ghulám Ambíah* (5), it was held that an unregistered contract of sale, though not such as absolutely to require registration under Section 49 in order to be admissible in evidence, and yet sufficiently complete to pass rights of property from the vendor to the purchaser, cannot have any priority over another authentic instrument of conveyance executed subsequently and duly registered. And in *Rámchandra Kúmar v. Madhusúdan Majumdar* (6), it was laid down that in order to prevent the operation of this Section, it is necessary to show that the registered deed was fraudulently executed, and that the purchaser was wilfully and intentionally a party to the fraud of the vendor, or at least that the second deed was executed without valuable consideration. See also *Gobind Chandra Ráy v. Purna Chandra Sen* (7). But although

(1) 3 Madras H. C. Reports, 342.

(2) 7 W. R. 280.

(3) 9 W. R. 282.

(4) 9 W. R. 547.

(5) 10 W. R. 196.

(6) 7 W. R. 119.

(7) 10 W. R. 36.

an instrument may have been duly registered under this Act, it will not take effect against an unregistered instrument executed before the 1st January 1865 merely by reason of the registration. This Section is not to be construed as vitiating all titles acquired prior to the passing of the Act, unless the instruments on which they rest have been registered. Had such been the case, the registration of old deeds would have been made compulsory, and it would have been declared expressly that, unless registered, instruments registered under this Act would take effect against them. *Grya Singh v. Girdhari Singh* (1). See also *Amrit Singh v. Karlas Kunwar* (2).

The old law affecting the priority of registered over unregistered deeds was laid down in Act XIX of 1843, Section 2*. The following decisions on the subject may be found useful.

If a vendor sells the same property to two parties, and it is found that they both bought *bonâ fide* the second conveyance, if registered, will take precedence of a former conveyance which has not been registered. *Saïad Nizâr Ali v. Saïad Indad Ali* (3). See also *Mulshappa bin Kuvvappa v. Busappa bin Nangappa Shetowncher* (4). Similarly the title acquired by purchase at a sale in satisfaction of a registered mortgage has precedence over a similar title acquired at a sale in satisfaction of an unregistered mortgage, although the latter mortgage may be of an earlier date. *Prahlad Misr v. Udit Narain Singh* (5). Nor can a person claim under a prior verbal contract to the detriment of a party holding *bonâ fide* under a subsequent registered deed. *Kailas Chandra*

(1) 1 Bengal Law Reports, A C 14

(3) 1 W R 206

(2) Englishman, 16th June 1869

(4) 1 Bombay II C Reports, 10

(5) 1 Bengal Law Reports A C 197

* And it is hereby enacted that from the first day of May last past, every deed of sale or gift of lands, houses, or other real property, a memorial of which has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift of the same property which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed, and that from the said day every deed of mortgage on land, houses and other real property as well as certificate of the discharge of such incumbrances, a memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage, any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding. Provided always, that nothing in this Section contained shall be construed to extend to any deed or certificate made before the said first day of May last past.

Chatarji v. Gopal Chandra Chatarji (1). But owing to the peculiar wording of Act XIX of 1843, a registered deed of sale does not take effect against a prior unregistered mortgage. *Maharaja Maheshwar Dakhsh Singh v. Bhikha Chaudhuri* (2). The case of *Ganpat Bajashet v. Khanda Changshet* (3), however, is to the opposite effect, and in *Sundar Jagjivan v. Gopal Eshvant* (4), it was ruled that a registered mortgagee, although without possession, was entitled to priority over a subsequent unregistered purchaser. See also *Pursotum Runchord v. Jagjivan Mayaram* (5). The two former decisions may also have been grounded on the wording of Section 6. Regulation IX of 1827 of the Bombay Code.

It will be observed that the Act gave this precedence to a registered deed, notwithstanding that notice of the prior deed was provid. See *Krishnasami Pillai v. Venkatachella Aiyar* (6). "Until the passing of the repealed Act I of 1843, Clause 3, Section 6, Regulation 17 of 1802* subjected the Indian Regulation to the construction put by Lord Hardwicke in *Le Neve v. Le Neve* (2 W. & T. L. C. 23) upon the English Act. The construction was that the Act was made for the protection of *bona fide* purchasers, that he who takes with notice is a *mala fide* purchaser, and the Registry Act will not, therefore, give him priority over the purchaser under an unregistered conveyance prior in point of time. Several eminent Judges, Sir W. Grant in *Wyatt v. Barwell* (19 Ves. 435), and Sir J. Romilly, M. R., in *Ford v. White*, (16 Bea. 120) have lamented that the policy of the Registry Act was so infringed by this decision. The doctrine of that case was, however, embodied in the original Regulation, but the Clause containing it was expressly repealed by Act I of 1843, and Act XIX of 1843, which repealed Act I of 1843, expressly provided in Section 2, in language quite unmistakable, that a registered deed of sale though subsequent in date, should invalidate a prior deed of sale unregistered, and further went on to provide that it should do so, despite any knowledge or notice alleged to be had by any party to such unregistered deed. The meaning is perfectly clear, though the language is not free from objection. By invalidating the deed, of course, is meant invalidating it as against the registered purchaser, and the effect therefore is to do what the Irish Act is decided to have done, give to each deed priority according to its appearance on the register. (*Bushell v. Bushell*, 1 Sch. & Lef. 98.)"

And the words "any knowledge of notice of such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate

(1) 1 W. R. 206.

(4) 1 Bombay H. C. Reports, A. C. J. 68.

(2) 5 W. R. 61.

(5) 1 Bombay H. C. Reports, 60.

(3) 4 Bombay H. C. Reports, A. C. J. 69. (6) 3 Madras H. C. Reports, 89

* Corresponding with Clause 3, Section 6, Regulation 36 of 1793 of the Bengal Code.

notwithstanding," refer not only to the mortgages and certificates mentioned in that part of the Section which immediately precedes these words, but extend also to the deeds of sale or gift which are mentioned in the earlier part of the Section. *Srinath Bhattacharyya v. Ramkomal Ganguli* (1).

But Act XIX of 1843 was not intended to give a registered deed priority over a previous unregistered deed, under which enjoyment had actually taken place. *Saiad Farzand Ali v. Saiad Abdur Rahim* (2). And see *Bhairab Chandra Misr v. Ramchandra Bhattacharyya* (3). A registered *kibala* would have no legal advantage over a previous unregistered *kibala*, if it could be shown that the vendor had not only sold and parted with his rights in the property, but had also made over possession to the first purchaser. *Musammât Batûl v. Musammât Wastran* (4). Nor will a registered sale invalidate an unregistered sale of an earlier date, when the original vendor is dead, and the second vendors are the persons who, but for the first sale, would have inherited the property. *Ambikacharn Kundû v. Dharm Dâs Kundû* (5). See also *Anrit Sing v. Kaulas Kunwar* (6). And in *Hîrâchand Bâbâjî v. Bhaskar Abâbhat Shende* (7), it was held that a mortgagee in possession could recover the amount of his mortgage in preference to a subsequent purchaser of the same property under a registered deed. The principle in all these cases seems to be that non-registration cannot prejudice a title-deed, under which possession has actually been acquired before the execution of the second transaction. The following case would seem to be to the contrary effect. In *Parabhûdîs Hirâchand v. Dhondû* (8) it was held that the preference given under Act XIX of 1843 to the latter of two deeds of sale of immoveable property, when registered, over the earlier unregistered deed, is not confined to cases in which the first deed has not been carried into effect; as every duly registered deed of sale, if authentic, invalidates any other deed of sale which may not have been registered. But in this case it is to be remarked that the fact of possession appears to have been disputed. See, however, *Harnamgîr Guru Dhanpatgîr v. William Spiers* (9), in which it was ruled that a registered *miraspatra* was entitled to precedence over an unregistered *miraspatra* of a prior date accompanied with possession.

And this provision of the statute law has not been allowed to sanction fraud. The benefit of priority over an unregistered deed of sale does not extend to a document which, although in form a deed of sale, is in truth a fraudulent deed of gift. *Nritya Gopal Chandra v. Dwarkanath Mallik* (1¹). The words "provided

(1) 8 W. R. Priv. Co. 43.

(2) 4 W. R. 30.

(3) 1 Hay 261.

(4) 8 W. R. 300.

(5) 11 W. R. 129.

(6) Englishman, 16th June 1869.

(7) 2 Bombay H. C. Reports, 207.

(8) 2 Bombay H. C. Reports, 233.

(9) 2 Bombay H. C. Reports, 213

(10) 1 W. R. 314.

its authenticity be established to the satisfaction of the Courts" in Section 2 Act XIX of 1843 point not merely at the exclusion of a forged deed from the benefit of the Act, but of a deed tainted by fraud, although in other respects genuine. *Srinath Bhattadcharya v. Ramkomal Ganguli* (1). See also *G. Narasanna v. R. Gavappa* (2). Registration is a condition without which a genuine transaction may be made invalid; not a means whereby a fictitious and fraudulent transaction may be rendered operative.

In *Fakirchand Govindram v. Kahanadas Bhagvandas* (3) the question arose whether a certificate of sale was a document of such a character as to be entitled to priority by virtue of registration over an unregistered lease. It was ruled that such a certificate came within the class of documents described in Regulation IX of 1827, Section 3, Clause 2, as "judicial processes," which may at the option of the holder be registered, but the force and effect of which "are in no way to depend on their being registered."

It may be observed, however, that Act XIX of 1843 does not apply to the case of a lease. *Anand Chandra Chaudhuri v. Chandanath Ray* (4).

51. Suits to recover money lent or interest, or for the breach of any contract, may be brought within six years from the time when the cause of suit arose, in every case in which there is an engagement or contract in writing, provided that such engagement or contract be duly registered under this Act.

Period of limitation in suits under a registered written contract for money lent, or interest, or breach of contract.

See Section 1, Clause 10, of Act XIV of 1859, quoted in the note to Section 27.

SPECIAL REGISTRATION OF OBLIGATIONS FOR PAYMENT OF MONEY.

52. Whenever the obligor and obligee of an obligation shall agree that, in the event of the obligation not being duly satisfied, the amount secured thereby may be recovered in a summary way, and shall at

Record of agreement that amount secured by an obligation may be recovered summarily.

(1) 3 W. R. Priv. Co. 43.

(2) 3 Madras H. C. Reports 270.

(3) 3 Bombay H. C. Reports, A. C. J. 167.

(4) 5 W. R. 20

the time of registering the said obligation apply to the Registering Officer to record the said agreement, the Registering Officer, after making such enquiries as he may think proper, shall record such agreement at the foot of the endorsement and certificate required by Sections 66 and 68, and such record shall be signed by him and by the obligor, and shall be copied into the Register Book No. 1 or No. 6, as the case may be, and shall be *prima facie* evidence of the said agreement.

For the definition of an "obligation" see Section 2. A contract to pay money on a certain day with interest is an "obligation," although by the same instrument land is pledged as security for the payment of the debt, and a Subordinate Judge is acting within his jurisdiction in enforcing such a contract in the summary manner allowed by Section 53. *Umacharn Mukarji v Haricharn Basu* (1). Similarly, in the case of *Kanhya Lal v Buddhan* (2), the High Court at Agra remarked—"In our judgment, the provisions of the Act concerning special registration are generally applicable to obligations for the payment of money. Whether or not the instrument creating such an obligation provides also for the hypothecation or charge of specific property, moveable or immoveable, belonging to the debtor, is immaterial. It is, we think, not the less an obligation within those Sections of the Act by reason of its containing other provisions for the security of the obligee. The recorded agreement of the parties in the case referred to us shows that it was their intention that the obligation should be capable of being summarily enforced under the Act, so far as it relates to the amount thereby secured, and the Act contains nothing to prohibit such an agreement, or to confine the provisions of the Sections relating to the 'Special Registration of obligations for the payment of money' in the manner suggested."

Of course a summary decree would only be granted "for payment of money." See *Rajmohan Mukarji v Nilmoni Mittra* (3).

Such a document, that is, an obligation with immoveable property hypothecated as collateral security, would nevertheless be registered in Book 1. It does not fall under Section 17, *Udaychand Jenu v. Nuts Mandal* (4), but it would

(1) 11 W. R. 60.

(2) Small Cause Court Reference.

(3) 11 W. R. 223.

(4) 9 W. R. 111.

seem to come under the class of "all other documents mentioned in Section 18, Clause 7, which relate to immovable property," referred to in Section 56.

As to the power to act by attorney under this Section the Advocate General writes :—

"I am of opinion that the obligee's presence is unnecessary, the agreement is entirely on the obligor's part, as it is perfectly optional with the obligee whether he will act upon it. Moreover, the signature of the obligor only is required to the record. I am further of opinion that an Attorney, under a Power from the obligor, may record the agreement; but the Power must convey an express authority so to do, one for execution or registration of the Bond does not imply such an authority"

But *Norman, J.*, held, in *Goplnáth Dobay v Qází Rámzán Ali* (1), that the obligor could not act by attorney under this Section.

For the form of agreement see Rule 73. It is not necessary that it should be recorded in the handwriting of the Registering Officer *Mír Habīb-us-Subhán v Mír Husain Ali*. (2) But it should be recorded in a language known to the obligor.

53. Within one year from the date on which the amount becomes payable, or, where the amount is payable by instalments, within one year from the date on which any instalment becomes payable, the obligee of any such obligation registered with such agreement as aforesaid, whether under the said Act No. XVI of 1864 or under this Act, may present a petition to any Court which would have had jurisdiction to try a regular suit on such obligation for the amount secured thereby, or for the instalment sought to be recovered.

The petition shall, where a stamp is required by law, bear a stamp of one-fourth the value prescribed for a plaint in such a suit, and may be amended by permission of the Court, and the

(1) 7th August 1867.

(2) 5 W R., S C. C. Ref. 14.

statements in the petition shall be verified by the petitioner in manner required by law for the verification of plaints.

On production in Court of the obligation and of the said record signed as aforesaid, the petitioner shall be entitled to a decree for any sum not exceeding the sum mentioned in the petition, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by the Court.

Such decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure.

No proceedings can be taken under this Section, when the original bond or other obligation is lost *Sriám Ráy Chaudhuri v. Kálmuddin Mullah* (1) Neither can an application be entertained at the suit of the assignee of the obligee *Gaur Mohan Dás v. Ramráp Majumdar* (2) Nor can it be enforced against the heir or representatives of the obligor. *Rudiyaporayal Mamy v. Madarat Ammun Kuttu* (3), and see *Ram Narain Biswas v. Srinath Poddar* (4) In *Rangopal Law v. Richard Blacqueret* (5) a promissory note, which had been specially registered, was renewed in consideration of an assignment by way of additional security of certain landed property, and it was held that the note was not merged in the assignment, but that a summary application would lie upon the note, notwithstanding the assignment. If under the terms of a bond, a fixed amount of interest is payable at the end of every month, the obligee is entitled to move for execution in respect of each instalment of interest due *Mantaleswara Aiyar v. Kamala Náilar* (6) But a summary decree under this Section cannot be granted for the whole amount of a bond, because default has been made in the payment of two successive instalments, even though such a condition may be contained in the bond *In the matter of Lachmípat Singh Dogra Ráy Bahádúr and others* (7) And the Court can only give a decree for the sum mentioned in the obligation with interest and costs. It has no power to grant a decree declaratory of the obligee's right

●

(1) 9 W. R. 477.

(4) 9 W. R. 498.

(2) 1 Bengal Law Reports, A. C. 42

(5) 1 Bengal Law Reports, O. C. 35

(3) 3 Madras H. C. Reports, 206.

(6) 3 Madras H. C. Reports, 68

(7) 2 Bengal Law Reports, O. C. 151.