

CONFIDENTIAL



LAW COMMISSION OF INDIA

THIRTY-FOURTH REPORT

INDIAN REGISTRATION ACT, 1908

SEPTEMBER 1967

GOVERNMENT OF INDIA ● MINISTRY OF LAW

Shri P. Govinda Menon,
Minister of Law,
New Delhi.

CHAIRMAN,
LAW COMMISSION,
5, Jor Bagh, New Delhi—3.
December 15, 1967.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the 34th Report of the Law Commission on the Indian Registration Act, 1908.

2. The circumstances in which the subject was taken up for consideration are stated in the first few paragraphs of the Report.

After the subject was taken up, a draft Report was prepared.

3. The draft Report was discussed at the following meetings of the Commission :—

- (i) 82nd meeting of the Commission on the 1st and 2nd February, 1967;
- (ii) 83rd meeting of the Commission on 22nd to 25th February, 1967;
- (iii) 84th meeting of the Commission on 30th and 31st March, 1967;
- (iv) 85th meeting of the Commission on 24th to 28th April, 1967; and
- (v) 86th meeting of the Commission on the 15th May, 1967.

The draft Report was revised in the light of the decisions taken at these meetings.

4. The comments of the State Governments, High Courts and other interested persons and bodies on the earlier Report (6th Report) had been forwarded to us by the Ministry of Law, and have been considered by us while preparing this Report. This Report has not, therefore, been circulated to State Governments etc. for comments. A Press Communique inviting views of the public on the subject was also considered unnecessary for the same reason.

(ii)

5. It may not be out of place to mention here, that preparation of this Report has involved strenuous labour, having regard to the fact that material in the case-law was studied afresh, and the views of State Governments, High Courts, Officers of the Registration Department, and other interested persons and bodies, raised numerous points, a large number of which were new.

6. I would again like to express my appreciation and also that of the Commission for the work done by our Secretary Mr. P. M. Bakshi in making available the material for the report and in preparing the report.

Yours sincerely,
J. L. KAPUR.



सत्यमेव जयते

EXPLANATION OF ABBREVIATION USED

Mulla (1963)=Mulla, The Indian Registration Act (1963).



REPORT ON THE INDIAN REGISTRATION ACT, 1908

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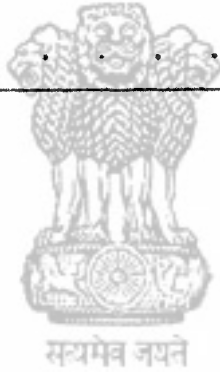
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Report on the Indian Registration Act, 1908

1. The circumstances leading to the preparation of this Report may be briefly stated. The Law Commission had submitted to the Government of India a Report¹ on the Indian Registration Act, 1908. The Government of India circulated that Report for comments to State Governments, High Courts and other interested persons and bodies. Genesis of the Report

As the comments received by the Government of India revealed disagreement with the recommendations made on the earlier Report on several points, the matter was referred to this Commission again, for giving its opinion in the light of those comments. That is the genesis of this Report.

2. In our consideration of the subject we had to carry our study beyond and behind the Sixth Report, as, without such study, it was not possible to appreciate many of the points which we had to consider. Moreover, several of the comments raised points on which the Sixth Report had not suggested changes. It was for this reason that we had to make a *de novo* examination of the Act. We have, however, been cautious in suggesting amendments of a radical nature, except where we felt that the matters were important enough to justify their being raised by us. Scope of the Report

As a matter of form, however, we have related our discussion to the clauses in the Bill appended to the Sixth Report. This appeared to be a convenient course, as the "comments" were grouped clause-wise, and we have followed that course in this Report, except in the later portions² of this Report where it was impracticable to do so.

3. We now proceed to examine in detail, clause by clause, the comments received³ on the earlier Report, and to indicate our recommendation thereon. Comments considered

A suggestion has been made for exempting the Government from the operation of the Act. This will be considered later⁴. Exemption for Government

A suggestion has been made that the title of the Act should be changed to the "Registration of Documents" Act. We do not accept the suggestion. It is true, that the object Short title

1. Sixth Report (Registration Act). (July, 1957).

2. Portions dealing with omitted sections, suggested new provisions and later suggestions.

3. The clauses referred to are the clauses of the Bill appended to the Sixth Report.

4. See discussion under clause 77.

of the Act is registration of documents; see the preamble, long title and heading to Part III (before section 17). Registration under the Act is different from "registration" under the Societies Registration Act, the Partnership Act, the Companies Act, etc. However, we do not see any need for any such purely verbal change¹.

Clause 1(2)

Existing section 1(2), proviso, empowers the State Government to exclude any districts or tracts of country from the operation of the Act. This was proposed to be deleted in the Sixth Report. The reason given for the deletion of this proviso in the earlier Report², was:—

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

The comments received, however, press for its retention. It would appear, (from these comments) that in backward tracts, or in far-flung, snowbound areas, people may not be able to understand the effect of non-registration, or may sometimes find it impossible to come for registration in the harvest season. The proviso would be necessary to avoid hardship in such cases.

There is some force in this objection, and we recommend that the existing proviso should be retained³.

Clause 2(1),
—"addition",

(a) Definition of "addition" proposed in the Sixth Report may be accepted⁴, so far as the change regarding married women is concerned⁵.

(b) Omission of "rank and title" was recommended in the earlier Report⁶, in view of the changed constitutional set up. But, as foreigners may also have occasion to get documents registered, we think that this change need not be made.

(No comments have been received on the definition of "addition" as proposed in the Sixth Report).

Clause 2(2)

The earlier Report had proposed a new definition—"affect immovable property"⁷. A suggestion has been made to add the word "intends" in the proposed definition in

1. Any recommendations for making minor changes are subject to the view expressed in this Report as to whether the Act should be re-enacted or not.

2. Sixth Report, page 8, paragraph 20.

3. See *Sukriti Bala v. Hemant Kumar*, A.I.R. 1957 Assam 153, paragraph 6, as to the proviso.

4. Sixth Report, page 9.

5. See section 2(1), as proposed to be amended.

6. Sixth Report, page 9.

7. Sixth Report, page 40.

clause 2(2). If the suggestion is accepted, the proposed definition would read—

“A document is deemed to affect immovable property, if it *intends*, purports or operates to create, etc.....”.

The reason given for the suggestion is¹, that semi-illiterate document-writers in the villages draft documents very badly, (so that the *intention* of the party is not reflected in the document). In such a case, the word “purports” may not be adequate and the addition of the word “intends” would ensure that the *intentions* of the parties are taken into account. This argument cannot be accepted. The proposed definition is merely a formal one; the earlier Report² explained that the object of the definition was to avoid repeating in every section the long clause “which purport or operate.....”.

Further, what was the intention of a particular person at a particular time is not always easy to determine. An elaborate enquiry into what was or was not the intention of the parties may prove a source of delay and uncertainty. It is true, that courts have often to decide questions of intention. But, when the very validity of a document depends on such uncertain factors, it would not be wise to adopt that test. It must be noted, that the registration of a document is for all times, and where, for example, the executant is dead, it will be fairly difficult to determine, after his death, what was his *intention*. What is recorded in the document can be interpreted; what is not recorded there create a difficult problem of interpretation for the courts.

We do not think that the proposed definition of the expression “affect immovable property” is required. It will be more appropriate to retain the describing words in existing sections 17(1) (b), 18(a), etc. The definition need not, therefore, be added.

The definition of “book” in section 2(2) is, at present, inclusive only. Clause 2(3)—definition of “book”—proposes the addition³ of the words “*means any of the register books to be kept by this Act and*”. This was proposed to be added to make the definition more explicit⁴. Regarding these added words, a comment has been received that they might limit the scope of the definition to such register books as are prescribed *by the Act itself*, and might thus leave out those prescribed by the State Government *under the Act*. It has, therefore, been suggested that after the words “by the Act”, the words “or under this Act” may be added. As there is a general power to make rules under clause 76(1) (which takes the place of existing section 69), therefore, if the

1. Sixth Report page 73.

2. Sixth Report, page 73.

3. Sixth Report, page 40, clause 2(3).

4. As explained in Sixth Report, page 73.

change proposed by the Sixth Report is to be made, it would appear to be safer to accept the suggestion made in the comment also.

We, however, think that it is not necessary to carry out the proposed change, because the expression "register book" is not used in the body of the main section¹ dealing with register books. The change may be *dropped*.

Clause 2(5) Clause 2(5), corresponding to existing section 2(5), defined "endorsement". A suggestion has been made, that the definition should cover an entry in writing made by the registering officer on a sealed cover deposited under the Act, as the registering authority has to make an *endorsement* on covers intended for deposit also. (This is not a comment on any change proposed by the Sixth Report, but a suggestion on the existing Act). We may refer, in this connection, to existing section 42, clause 43(1) in the Sixth Report—under which a will can be deposited with the Registrar. Under existing section 43—clause 44 in the Sixth Report—the Registrar has to note, on the sealed cover containing the will, certain particulars. If the suggested change is made, it would be useful for the purpose of all those sections where the word "endorsement" is used. For example, an incorrect "endorsement" is punishable under one of the provisions²; the proposed change will be useful for that provision. The suggestion should, therefore, be *accepted*.³

Clause 2(6) Clause 2(6)—definition of "execution" (new) defines it as "the act of voluntarily signing a document having understood the contents thereof". The object behind adding the definition, as explained in the earlier Report⁴, was to make it clear that execution imports not merely signature, but signature after understanding the contents. Now one comment states, that the definition is not necessary, while another comment is to the effect that the definition is wide and would leave the doors open for litigation. Ordinarily, it is said, execution would mean "duly executed", i.e., signed, sealed and delivered by the executant.

The definition is important for the sections dealing with presentation of documents for registration—for example, section 32(a) and (c) and, more particularly, sections 34(3) and 35 dealing with proof of execution. For the present purpose, sealing and delivery have not much relevance. Hence the non-mention of those requirements may not cause much difficulty. What is sought to be stressed is,—mere proof of admission of signature should not amount to

1. Existing section 51.

2. Existing section 81.

3. See section 2(5), as proposed to be amended.

4. Sixth Report, page 73.

execution,^{1,2} and therefore, the proposed definition, has the beneficial object of preventing fraud.² However, a small drafting change may be suggested, and the definition may be re-worded as follows:—

“execution”, in relation to a document presented for registration, means execution by a person who has understood the contents thereof³.

Regarding clause 2(7)—definition of “immovable pro-
 property”—corresponding to existing section 2(6), several points have been made, and it will be convenient to deal them one by one with reference to the topics to which they relate. These are as follows:—

(a) *Standing timber*—Under the existing section, Standing standing timber, growing crops and grass are excluded timber from “immovable property”. Under the proposed provision, they are to be excluded “*whether immediate severance is intended or not*”. The reason for this proposed clarification, as explained in the earlier Report⁴, is, that there is a conflict of decisions as to whether standing timber, when it is not intended to be severed immediately, should be treated as movable or immovable property. The Commission was of the view, that for the purposes of the Registration Act, standing timber should not be regarded as immovable property, whether it is to be severed immediately or not.

While the proposed amendment has been accepted in the comments received from some quarters, other comments have raised a number of objections thereto. One comment is, that “standing timber” is always to be cut and never allowed to stand, and therefore, the proposed addition is not necessary. To this, one may reply, that in view of the conflict of decisions, some clarification is desirable. Another comment is, that a period of three months from the date of sale may be fixed for removal of the timber to constitute it as standing timber. It is argued, that if there is no restriction regarding the period during which the timber is allowed to stand, it will be more in the nature of lease (and should be regarded as “immovable property”). This can be answered by pointing out, that it would not be practicable to impose any such hard and fast limit. Yet another suggestion is, that standing timber should not be classified as movable property by way of an unqualified

1. cf. the discussion in Mulla, (1963), page 148, 13th line and page 149.

2. See also the review of case-law in *Kishnu v. Maroti*, (1963), 65 Bom. L.R. 578, 582, 584,—holding that —“execution” in section 35 connotes knowledge of contents.

3. To be carried out only if the whole Act is re-enacted.

4. Sixth Report, page 9, paragraph 21(B), text corresponding to foot-notes 1 and 2.

exception; it should be classified as movable and immovable according to permanency and continued growth for a period, stability of the tree, prejudice to the soil, etc. This, however, does not appear to be a workable course, and would encumber the definition with complicated criteria.

It has, further, been suggested, that the new words "whether immediate severance is intended or not" should not be read with the words "standing timber" (but only with growing crops or grass). Standing timber (according to the suggestion) should be treated as movable property only if immediate severance is intended. It may, however, be noted, that after the submission of the earlier Report, the question of standing timber has come up for consideration before the Supreme Court.¹ (The case related to the Madhya Pradesh Abolition of Proprietary, etc., Act, 1950, but the court had to discuss the interpretation of the words "immovable property" in relation to standing timber). The Supreme Court stressed the aspect of *sustenance* by the *soil*. The Court pointed out that *trees* were immovable property, because they are attached to or rooted in the earth; but standing timber was not immovable property. It was intended to be used as timber. The Supreme Court further observed²:

'(29) Now, what is the difference between standing timber and a tree? It is clear that there must be a distinction because the Transfer of Property Act draws one in the definitions of "immovable property" and "attached to the earth"; and it seems to me that the distinction must lie in the difference between a tree and timber. It is to be noted that the exclusion is only of "standing timber" and not of "timber trees".

* * * *

"Therefore, "standing timber" must be a tree that is in a state fit for these purposes and, further a tree that is meant to be converted into timber so shortly that it can already be looked upon as timber for all practical purposes even though it is still standing. If not, it is still a tree because, unlike timber, it will continue to draw sustenance from the soil.

'(31) Now, of course, a tree will continue to draw sustenance from the soil so long as it continues to stand and live; and that physical fact of life cannot be altered by giving it another name and calling it "standing timber". But the amount of nourishment it takes, if it is felled at a reasonably early date, is so negligible that

1. *Shantabai v. State of Bombay*, (1959) S.C.R. 265; A.I.R. 1958 S.C. 532, 537, paragraph 33.

2. Paragraphs 29 to 31 in A.I.R.

it can be ignored for all practical purposes and though, theoretically, there is no distinction between one class of tree and another, if the drawing of nourishment from the soil is the basis of the rule, as I hold it to be, the law is grounded, not so much on logical abstraction as on sound and practical commonsense. It grew empirically from instance to instance and decision to decision until a recognisable and working pattern emerged; and here, this is the shape it has taken.¹

The Court cited with approval the view expressed in Mulla's Transfer of Property Act, (4th edition pages 16 and 21) that "if the transfer includes the right to fell the trees for a term of years, so that the transferee derives a benefit from further growth, the transfer is treated as one of immovable property". The court further added. "Before a tree could be regarded as a standing timber, it must be in such a state that, if cut, it could be used as timber; and when in that state, it must be cut *reasonably early*. The rule is probably grounded on generations of experience in forestry and commerce, and this part of the law might have grown out of that. The tree might otherwise deteriorate, and its continuance in a forest after it has passed its prime might spoil the forest and eventually the timber market. But however that may be, the legal basis for the rule is, that trees that are not cut continue to draw nourishment from the soil, and that the benefit of this goes to the grantee".

The change proposed in the earlier Report is not, therefore, necessary now, and can be dropped.¹⁻²

(b) *Fruit and Juice*—The earlier Report proposed to exclude, from "immovable property", "fruit upon and juice in trees whether in existence or to grow in future". The reason given was³ that in accordance with prevailing judicial opinion, it should be made clear that fruits upon and juice in trees should not be considered as immovable property whether they exist at the date of the contract or are to grow in future. It may be noted⁴, that even now, fruits upon and juice in trees are excluded from "immovable property", because of their inclusion in the expression "immovable property" in existing section 2(9). Thus, the only change is the addition of the words "*whether in existence or to grow in future*".

Now, a comment has been made that a deed conferring right in respect of fruit upon and juice in trees to

1. See also *Baijnath v. Ramadhan*, A.I.R. 1963 All, 214(F B).

2. Mulla (1963), deals with the matter at pages 6-7.

3. Sixth Report, page 9, paragraph 21(B).

4. cf. Sixth Report, page 74, top, note relating to draft section 2(7).

grow in future would automatically create a right in the land itself, as the land would provide further nutriment for their growth. Hence the added words, it is suggested, should be deleted. In reply to this, it may be pointed out, that it has been specifically held¹ that fruits to grow in future are also movable property. It has also been held² that a lease of trees granted to empower the lessee to take the juice of the tree is movable property.

While it is true that the fruits derive sustenance from the land, they have to be ultimately detached from the land *in all cases*. Hence the proposed clarification is useful.³

It has also been stated, that the words "grown in future" would not be appropriate for juice, because juice does not "grow". But we found that it was not easy to devise a happier expression, and, therefore, no change in the wording proposed in the Sixth Report on this point is necessary.

Regarding fruits, the earlier Report⁴ cited an Allahabad decision⁵.

As pointed out in the Allahabad case, the earlier cases were decided under the old Act. Therefore, strictly speaking, there is no conflict of decision. However, the change proposed in the Sixth Report is a good clarification. The clarification regarding fruit as well as juice should, however, be added in the definition of "movable property"⁶.

Machinery

(c) *Machinery*—The Commission had proposed in the earlier Report that "machinery" be excluded from the definition of "immovable property", in these words:—

"machinery embodied in or attached to the earth when dealt with apart from the land".

It was explained in the earlier Report⁷, that hardship is caused where machinery embodied in or attached to the earth is sold without the land and is treated as immovable property. The purchaser has to pay stamp

1. *Raja Devi v. Muhammad Yakub*, I.L.R. 47 All 738; A.I.R. 1925 All-411 (Mango crops).

2. *Janoo v. Hucha*, (Bengal), (1868) 12W.R. 366; cited in Mulla, (1963), page 16.

3. Mulla, (1963), deals with the subject at page 16.

4. Sixth Report, page 9.

5. *Raja Devi x. Yakub*, I.L.R. 47 All. 738; A.I.R. 1925 All. 411.

6. See section 2(9), a proposed to be amended.

7. Sixth Report, page 9, paragraph 21(B).

duty on the machinery as well as on the land, to get the document registered. To avoid this hardship, this clarification was proposed. Now, divergent comments have been received on this change. On the one hand, it has been suggested, that the proposal to treat such machinery as movable property will give chances to people to evade stamp duty and registration fee, by deliberately executing separate documents for land and for machinery, even though the machinery is embodied in the earth, etc. On the other hand, it has been suggested in some comments, that the words "*when dealt with apart from land*", should be deleted, thus making all machinery movable property, even if sold with the land. There does not appear to be much force in the first objection. If machinery is *dealt with separately*, it should, on principle, be treated as movable property. In fact, even now the degree and object of annexation is an element to be taken into account¹. This is also fairly clear from the words "permanently fastened, etc."

We may, by way of example, refer to the case of a flour mill. It can change hands and be removed, while, as has been pointed out², a house cannot be removed without demolition. The degree and object of annexation are the tests usually applied. If the machinery is dealt with separately, it stands to reason that it should be regarded as movable³. This disposes of the second point also. No change in the proposed provision is recommended. The proposed change be accepted.

(d) *Other points* —A suggestion has been made that stock-in-trade or share may be excluded from "immovable property". No such clarification is necessary⁴.

It may be added that the re-arrangement of items of "immovable property", and the omission of "movable property", proposed in the earlier Report, does not appear to be necessary. The definition of movable property may better be *retained* in view of its affirmative value.

The definition of "India" was retained in the Sixth Report. But our view is, that the definition should be omitted⁵. The definition is derogatory to the provisions of

Clause 2(8)
—Existing
section 2
(6A)—Defini-
tion of
"India"

1. Mulla, (1963), page 6, text corresponding to footnotes (h), (i), (j).

2. cf. *Khan Chand v. Nur Muhammad*, A.I.R. 1966 Lah. 242.

3. This aspect was not discussed in *Mohammad Ibrahim v. N.C.F.T.C.*, A.I.R. 1944 Mad 492.

4. See also discussion relating to clause 3, and relating to omitted section 17(2)(ii).

5. See section 2(6A), as proposed to be omitted.

the Constitution. The expression "India", occurring elsewhere in the Act, will, in our opinion, be construed in accordance with the extant clause. The fear that, if the definition is omitted, the definition in the General Clauses Act will apply, is not well-founded. It is also our view, that the expression "India" occurring in the various sections need not be replaced by "territories to which this Act extends".

Clause 2(9)
—"lease"

The existing definition of "lease" in section 2(7) says, that it includes a counterpart, *kabuliyat*, an undertaking to cultivate or occupy, and an agreement to lease; instead of this, a new definition has been proposed in the earlier Report—clause 2(9)—as follows:—

' "lease" has the same meaning as in the Transfer of Property Act, 1882, and includes a counterpart'.

The differences between the existing and the definition proposed in the Sixth Report may be analysed as follows:—

(i) The existing definition is merely an inclusive one, while the proposed definition adopts the definition in the Transfer of Property Act.

This has not provoked any comment. The expression "lease" in the Registration Act has been held to bear much the same meaning as in the Transfer of Property Act¹, and that was also the reason for making the change². We are not however in favour of this change particularly if the whole Act is not to be re-enacted.

(ii) The existing definition expressly includes an agreement to lease. The Sixth Report proposed its omission, because, as explained in the earlier Report³, this had been interpreted by the Privy Council⁴ as confined to an agreement to lease which creates a present and immediate interest in the land i.e. one which effects an actual demise and operates as a lease. That being the position, it was considered unnecessary to retain the expression in the definition. This change also has not provoked any comment, and we may, further, note that after the Sixth Report was submitted, the Supreme Court⁵ has also reaffirmed the view expressed by the Privy Council.

(iii) The existing definition includes not only a counterpart, but also a *Kabuliyat*, an undertaking to cultivate or occupy and an agreement to lease. The

1. Mulla, (1963), page 8.

2. Sixth Report, page 10, paragraph 21(c).

3. Sixth Report, page 10, paragraph 21(c).

4. *Hemanta Kumari's case* (1919), 46 I.A. 240; I.L.R. 47 Cal. 485. (P.C.)

5. *Trivenibai v. Lilabai*, (1959) S.C.R. 833; A.I.R. 1959 S.C. 620 (also states the meaning of "Counterpart". See page 624 in the A.I.R.).

definition proposed in the earlier Report includes only "counterpart". A comment has been received to the effect that "counterpart" should not be included, because the "counterpart" which is to be executed by the tenant in favour of the lessor does not involve any transfer of property. While this may be theoretically correct, one must also take into account the practical aspect, namely, that often landlords are in the habit of letting out immovable property merely on documents signed by the lessee alone. In areas to which or cases in which the Transfer of Property Act, 1882 applies, this cannot happen, because section 107 of that Act (as amended in 1929) provides, that where a lease is made by registered instrument, the instrument must be executed by both the lessor and the lessee. But in other cases the document merely signed by the lessee can still be met with. It is, therefore, advisable to retain the inclusive part dealing with "counterpart".

An express provision was proposed¹ in the earlier Report to the effect, that the "counterpart" need not be registered, where the lease corresponding thereto has been registered².

The existing words referring to "*Kabuliyat*", and "undertaking to cultivate or occupy", were omitted in the draft proposed in the Sixth Report³. These transactions might, at first sight, appear to be covered by "counterpart". But this is not strictly true⁴. It is safer to mention them specifically, because these documents—namely, (i) a *Kabuliyat* or a rent deed in which a person assents in writing to pay rent in respect of the land rented to him, and (ii) an undertaking to cultivate or occupy—have figured often before the Courts⁵. These should, therefore, be retained, in the absence of an express inclusive provision, a lease does not include a *Kabuliyat*⁶.

The result of the above discussion is, that the only point on which we recommend a change in existing section 2(7) is omission of agreement to lease⁷.

Clause 2(10), following existing section 2(8), defines "minor" as a person who, according to the *personal law* to which he is subject, has not attained majority. A suggestion

Clause 2(10)
"Minor"

1. Sixth Report, page 43, clause 3(2)(d), and reasons at page 18, paragraph 42.

2. See discussion regarding clause 3(2)(d).

3. The earlier Report gives no specific reasons for this omission.

4. See discussion relating to counterpart.

5. See Mulla, (1963), page 10.

6. See Rustomji, Registration Act, (1939), page 17, footnote 2.

7. See amendment proposed to section 2(7).

has been made, that there need not be any reference to personal law, and that for the purposes of this Act, *minority* may be defined as in Indian Majority Act. Now, the significance of the definition would become apparent if we consider, by way of example, one provision wherein the expression "minor" occurs. Thus, under existing section 35(3)(b)—clause 21(2)(iii)—if a person by whom the document is executed, appears to be a *minor*, etc., registration has to be refused. Will anything be gained by referring to the Indian Majority Act, 1875 (9 of 1875)? That Act does not contain the whole law of majority. In the first place, it does not affect the capacity of any person to act in respect of marriage, dower, divorce, adoption and certain religious matters (section 2). In the second place, even as regards other matters, it applies only to persons domiciled in India (section 3, second para). Documents which come for registration may relate to matters excluded from the Majority Act, or may have been executed by persons not domiciled in India. Therefore, the substitution of a reference to the Majority Act may not improve matters. Hence we do not suggest any change.

Clause 2—
"movable
property"
(omitted in
Sixth
Report)

The definition of "movable property" should be *retained*, though omitted in the Sixth Report¹. Certain additions may be made therein, as already recommended².

Clause 2(11)
—"prescribed"
(New)

The definition of "prescribed", added by the Sixth Report, may, if the word "prescribed" is used in the substantive sections, be *added*³.

Clause 2(12)
—"Representative"

Existing section 2(1) defines a "representative" as including the guardian of a minor and the committee or other legal curator of a lunatic or idiot. Proposed clause 2(12) of the earlier Report redrafts the definition by making it more elaborate in the case of a *minor*. It is defined as including, in the case of a minor, his guardian, or in his absence, any near relation of the minor, or if the minor is an adopted son, any near relation in the adoptive or natural family, or, if the minor is a widow, any near relation in the family of the father or husband, being in each case a relation not having any interest adverse to that of the minor.

The reason for this change was thus explained in the earlier Report⁵. A will or authority for adoption can be presented for registration after the death of the testator or the donor of the authority. Difficulties, however, arise when

1. See discussion under clause 2(7) above.

2. See discussion under clause 2(7) above.

3. This change is thus conditional to the use of the expression "prescribed".

4. See section 2(9A), as proposed to be inserted.

5. Sixth Report, page 10, paragraph 21(d).

the donor of the authority is a minor and thus incapable of presenting the deed of authority to adopt. Similarly, the widow of the donor might be a minor. In the case of a minor adopted son, it had been held that the natural father could validly present the document for registration. Since the improper presentation of a document was a radical defect rendering the document void, the Report had enlarged the scope of the present definition to get over this difficulty. (The recommendation was subject to the dissenting note of Dr. Sen Gupta.)

Now, this change has provoked numerous comments, and the points raised in the various comments can be conveniently classified and collected as follows:—

(a) The use of the expression “near relation” has been strongly criticised as vague and elastic. It has been suggested, that either the degree of nearness of relationship should be specified, or a list of relations in the order of preference should be given. Courts, it is *argued*, might find it difficult to determine who is a near relation and who is not.

(b) Secondly, it has been pointed out, that the widening of the definition will involve a scrambling over the properties of such minors. To permit any near relative to represent a minor would take away the safeguards of the rights of a minor. The proposed change, it has been also said, is fraught with grave consequences and may be abused by designing relatives and would jeopardise the interests of minors. The retention of the existing provision, has, therefore, been pressed for.

(c) Several comments have expressed agreement with the dissenting note of Dr. Sen Gupta¹. His view was, that to allow representation to any relation was going too far. Practically, any relation may come forward and present the document, although the minor concerned is living with another relation who looks after all his affairs. Presentation of a document was a responsible act which bound the minor. If at all any amendment was necessary, it would, in his opinion, be enough to add to the definition a clause saying that where a minor has no legal guardian, any person who may, in the circumstances, be regarded as a *de-facto* guardian may present a document for registration. The majority report², had rejected this suggestion because (i) the Muslim Law did not recognise a *de facto* guardian, and (ii) as regards the Hindu law, the nature of the acts of management from which a guardianship could be inferred had not been laid down clearly, and, further, section 11 of the Hindu Minority and Guardianship Act, 1956 had now provided that such a guardian

1. Sixth Report, page 97.

2. Sixth Report, page 11, top.

would not be entitled to deal with the minor's property. But, in Dr. Sen Gupta's opinion, this legal position need not come in the way of the suggestion regarding *de facto* guardian. The absence of a power to dispose of a property should not, he stated, affect the right of a guardian to present a document for registration if that was expressly provided in this Act. That would be a special provision overriding the general law.

(d) A small group of comments seems to be in favour of the proposed change, and in fact, even extension of the proposed change to lunatics and idiots has been suggested. One comment suggests that it should apply to cases of *failure to act* by the guardian also. Another comment suggests an alternative—namely, that the Registration authority may, after preliminary inquiry, record a capable and desirable person as a person competent to present the document.

In view of these comments, the choices now before us are

(i) maintaining the change proposed in the 6th Report;

or

(ii) retaining the existing section;

or

(iii) extending the change proposed to lunatics and idiots;

or

(iv) adopting a substituted provision, for authorising a *de facto* guardian to present the document, as suggested by Dr. Sen Gupta.

The first course has to be abandoned, as there has been very strong opposition to the change proposed. There seems to be some force in the reasoning behind the comments. The need for defining a "near" relation would appear to be imperative. And, even after such definition, the possibility of abuse cannot be ruled out. The third course should be rejected, on the same reasoning. The fourth course,—substitution of a *de facto* guardian,—is attractive. But, in practice, it may also lead to controversies as to who is a *de facto* guardian. Having regard to the fact that authorities to adopt will now be very rare after the passing of the Hindu Adoptions, etc. Act, 1956—Section 8 *et seq*—there would not be any strong necessity for a clarification on the subject. Therefore, the best course would be to *retain* the existing section.

[If any change, however, is to be made, then, just as the case of absence of the guardian is proposed to be covered, the case of failure to act by the guardians should also be covered, because, as the section stands now, if the guardian omits to act for his own reasons, the case is left uncovered. In fact, the cases of the guardian not being in existence or being absent or refusing to act or for any cause being unable or unfit to act, should all be provided for. In such cases, the permission of the "court" as defined in section 4(5) read with section 4(4) of the Guardians and Wards Act, 1890, should suffice for acting as guardian for the *limited* purpose of presentation for registration and other functions under the Act—for example, under existing section 77. We are making this suggestion as *an alternative*, if the section is to be *altered in any manner*.]

Some new points regarding the definition clause have been made in the comments. Thus, a suggestion has been made that the words "instrument" and "document" should be defined. There does not, however, appear to be any strong necessity for defining these expressions. Ordinarily, "document" and "instrument" are inter-changeable¹. Not many controversies seem to have arisen on these expressions, except that there is some conflict of decisions about letters². A decree, it has been held, is not an instrument³.

Even as regards letters, the more recent cases⁴ appear to regard "letters" as falling within "instruments" if they contain the terms of the agreement.

A definition of "instrument" does not, therefore, appear to be needed.

Existing section 17(1) provides for the compulsory registration of instruments of gifts of immovable property. The earlier Report proposed a wider provision in its place, to the effect, that instruments which *under any law* require registration for giving validity to the transaction effected thereby should be registered. The reason for this change⁵ was, that it was proposed to substitute a clause which was wider in scope to include all documents which are required by the substantive law to be registered for giving validity to the transaction. Comments have been received to the effect, that the words "for giving validity to the transaction effected thereby" would lead to a good deal of controversy

1. See *Joharmal v. Tej Ram*, (1893) I.L.R. 17, Bom. 235, 267.

2. See *Mulla*, (1963), page 30.

3. *Kalawati v. Shri Krishna*, A.I.R. 1944 Oudh, 49, 53 (F.B.).

4. See *Jagannadhan v. Official Assignee*, A.I.R. 1931 Mad. 124, 127, 128.

5. cf. Sixth Report, page 12 paragraph 25, and page 74.

Clause 2—
New points

Clause 3(1)
(a) Instruments requiring registration under any law for their validity

and vagueness. It has also been suggested, that the words "required to be registered" will serve the purpose. We considered this question at some length. The proposed extension of existing section 17(1) to *transactions required to be registered* under (any other) law, is, in our opinion, not necessary. Where registration is required under a statute other than the Registration Act itself, the consequences of non-registration will depend on the terms of the statute. As regards trusts, see the undermentioned cases,¹ where these observations occur:—

"Section 5, Trust Act, provides its own sanction for non-registration, viz., invalidity²—".

The proposed change may, therefore, be dropped.

Another comment received is to the effect that the following proviso should be added to clause 3(1) (a)⁴:—

"Provided that where a transaction can be validly effected orally or by mere delivery of possession of property, instruments recording the terms of such transaction shall not be required to be registered".

The suggestion seems to have been made in view of the fact, that very often courts have to deal with cases on which the transaction has been already effected and the document merely records it. There is, however, no defect in the law on this point, and the difficulties that have been experienced can be attributed to the problem of applying the provision⁵. No change is recommended, as to this point.⁶

Clause 3(1)
(b)—Non-
testamentary
instruments
generally

Clause 3(1)(b), corresponds to existing section 17(1)(b), and deals with non-testamentary instruments affecting immovable property of the value of one hundred rupees and upwards. The minimum limit of one hundred rupees has been retained, as in the existing section. Comments have been received to the effect, that in the present con-

1. *Govind Ram v. Madan Gopal*, 721-A 76, A.I.R. 1945 P.C. 66,74

2 As to Wakfs, see Mulla, Mahamedan Law, (1961), page 165, paragraph 187.

3. As to registration required under sections 54, 59, 107 and 123 of the Transfer of Property Act 1882, see Mulla, Registration Act, (1963), pages 172-173, and section 49 of the Registration Act as it now stands.

4. See also article by Mr. V.B. Raju (as he then was) "Amendments to Registration Act", A.I.R. 1958 Journal 68, 69.

5. See for example, Mulla, (1963),

(i) page 34, "Declare",

(ii) page 49, Acknowledgement,

(iii) pages 40, 42. (Mortgage by deposit of little deeds).

(iv) page 53, "Recitals".

(v) page 54, "Admission".

6. See also *Ram Rattan v. Parmanand*, I.L.R. 1946 Lah. 63; A.I.R. 1946 P.C. 51.

text of high prices this limit is ridiculously low, and to give practical relief it should be raised to five hundred rupees. (One comment suggests its raising to two hundred rupees).

The existing provision was considered in the earlier Report¹, where (though there is no specific discussion as to increase of the limit), the view expressed was, that the time may come for removing the exemption in respect of instruments where the value is below one hundred rupees. If the exemption is removed, it would mean that even for a transaction of smaller value there should be documents requiring both stamp duty and registration fees. It was, however, observed, that this could not be effected without amending the Transfer of Property Act, under which a sale or mortgage does not require even a writing if the value is under one hundred rupees. Since the question whether the limit should be removed from the Act was one of policy and required careful consideration, the provision in the Registration Act, it was stated, "may be retained for the present".

In this position, a change in the existing limit need not be considered for the present.

Another suggestion is, that transactions relating to immovable property like partition, release, sale, etc., for less than one hundred rupees, should be effected *only by registered documents*. This also cannot be considered for the present, for the reasons given above.

Clause 3(1)(b)—substitute the words "affect immovable property". This change has to be dropped².

Following existing section 17(i)(d), clause 3(1)(c) **Clause 3(1)** requires registration of leases from year to year, etc., sub- **(c) leases** ject to the existing proviso whereunder the State Government can grant exemption from the operation of this clause in any district, etc. where the period of the lease does not exceed 5 years and the annual rent does not exceed Rs. 50. One comment suggests that the limit of Rs. 50 may be replaced by Rs. 100. Another comment suggests that, to avoid disputes regarding genuineness or otherwise of agricultural leases, compulsory registration of such leases should be provided for.

Though these points were not specifically considered in the earlier Report, the trend of that Report³ was, that the proviso was an enabling provision for the benefit of agriculturists, and should be retained to obviate the necessity of getting such leases registered. The commented provisions in the Transfer of Property Act, sections 107 and

1. Sixth Report, pages 11, 12, paragraph 26.

2. See above, discussion relating to clause 2(2).

3. Sixth Report, page 14, paragraph 31

117, were also considered. Moreover, a drastic provision requiring *all* agricultural leases to be registered would mean that even such leases from month to month or for a year or less than a year should also be registered,—which would be an extreme position to take. Hence no change is suggested on this point.

We do not also think it necessary to increase the limit of Rs. 50 in section 17(1), proviso.

Clause 3(1)
(d)—Assign-
ments of
decrees

Departing from existing section 17(1) (e), clause 3(1)(d) provides that assignment of “executable decrees or orders” need not be registered. A few comments have been received to the effect, that the existing provision should be retained. Now, the reason for this change, as stated in the earlier Report¹, was, that, in the case of executable decrees or orders, the transferee has, under Order 21, rule 16, Civil Procedure Code, to satisfy the court about the assignment; the further requirement of registration was, therefore, unnecessary, as, even if the assignment is registered, the court has to inquire into its validity. We feel, however, that every case of assignment may not go to court, and even if it goes to court, registration of the assignment may supply good evidence. The proposed change should, therefore, be *dropped*.

Clause 3(1)
—Explanations

Clause 3(1) *Explanations*.—The First Explanation to clause 3(1) is new.² It may create difficulties, and should be *dropped*. Existing section 17(1)(c) was proposed³ to be omitted.

Omission of
section
17(1)(c)

Clause 3(1)—*Omission of existing section 17(1) (c)*.—Existing section 17(1) (c) has been omitted in the 6th Report⁴. Its omission was linked up with the proposed extension of the Transfer of Property Act to whole of India. Extension of the Transfer of Property Act may, however, take long time. The omitted provision should, therefore, be *restored*.

The Sixth Report, as an alternative, suggested a redraft of section 17(1) (c), to make it clear that it does not apply to receipts in respect of transactions already registered. This is also not necessary, as there is no real conflict of decisions⁵.

Existing section 17(1) (c) may, therefore, be *restored*, as it is.

1. Sixth Report, page 15, paragraph 32.

2. Sixth Report, page 74, bottom. See Mulla (1963), page 37 for conflict.

3. Sixth Report, page 13, paragraph 29-30.

4. Sixth Report, page 14, paragraph 30.

5. See *Chamroo Sahu v. Stephen*, A.I.R. 1947 Pat. 300, 301, 302, paragraphs 8-9 (Reviews case-law).

A suggestion has been made that a deed, lists of partition relating to immovable property should be registered. This cannot be accepted. It is true, that in practice questions very often arise whether a document is a deed of partition or whether it merely recites a partition already orally effected. The distinction between an *acknowledgment* of partition on the one hand and an *instrument* of partition on the other hand, is well known, and though there may be difficulty in applying the principles, yet the principles are well-established.¹⁻² If the document is the sole evidence of the partition, it is registrable; otherwise it is not.³

Clause 3(1)
New points

It is true that previously there was some conflict of decisions on the point whether an unregistered instrument of partition could be used to prove that the parties ceased to be joint. The matter is now settled by a Supreme Court decision, answering the question in the affirmative.⁴

A few points regarding partition have been already discussed.⁵

Clause 3(2) (a).—Regarding clause 3(2) (a) which follows existing section 17(2) (iii), a suggestion has been received to the effect that “debenture” and “debenture stock” appeared to be different from each other and therefore, “debenture stock” should be added in the definition of the word “debenture”.

Clause 3(2)(a)

This appears to be unnecessary. Debenture stock is of the same nature⁶ as ordinary debentures, except that instead of each bond securing a definite amount, the whole sum secured is treated as a single stock, and a certificate is issued to each holder declaring the holder to be entitled to a definite part of the stock.⁷

The verbal changes, however, made by Sixth Report are not necessary, and may be *dropped*.

Clause 3(2)(b).—The verbal changes⁸ made by Sixth Report are not necessary, and may be *dropped*.

Clause 3(2)(b)

1. See the Privy Council case of *Bageshwari Charan v. Jagannath Kuari* 59 I.A. 130; A.I.R. 1932 P.C. 55, 66; I.L.R. II Pat. 272, adverting to the distinction between a mere recital of fact and something, which itself creates a title. This was a decision on the word “Declared”.

2. See also Mulla, (1963), pages 34-35.

3. See, for example, the decisions collected in *Panchapages v. Kalvan Sundaram*, A.I.R. 1957 Madras 472, 477 to 481, paragraph 14 *et. seq.*, see, also Mulla, (1963), page 49.

4. *Nani Bai v. Gita Bai* (1959) S.C.R. 479; A.I.R. 1958 S.C. 706.

5. See discussion under clause 3(1)(a).

6. *Murray v. Berring*, (1908) W.N. 153; (1908) 2 Ch. 493.

7. For details see Jowitt, Dictionary of English law, (1959), Vol. 1, page 580.

8. Sixth Report, page 17, paragraph 37.

Clause 3(2)
(c)—Point
regarding
extinguishing
mortgage.

Under existing section 17(2)(xi), any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage, when the receipt does not purport to extinguish the mortgage, is exempt from compulsory registration. Proposed clause 3(2) (c) omits the words "when the receipt does not purport to extinguish the mortgage". The result of this change would be, that even a receipt extinguishing a mortgage—or rather, "purporting" to do so—would be exempt from compulsory registration. The reason for this change, as explained in the earlier Report¹, was, that a mortgagee may while receiving the last payment due on the mortgage or any sum lesser than the mortgage of debt, issue a receipt acknowledging the discharge of the debt in full by such receipt. "There is no reason why the receipt should become compulsorily registrable merely because it also states the fact that by the payment recited therein in the debt is finally extinguished". A person having notice of the registered mortgage (it was stated) would naturally inquire whether it is extinguished or not. Moreover, it is not the receipt which discharges the security, but the fact of the discharge of the debt. Hence it was considered unnecessary to require registration of receipts in such cases.

This change has provoked the comment, that thereunder, if a property is once mortgaged it would continue to be shown as mortgaged even after it is extinguished by acknowledgment of receipt on the deed, and the suggestion has been made that the existing provision should be retained without change. So far as the reasoning on which this particular comment is based is concerned, it may be pointed out that even now, in the absence of a receipt which purports to extinguish the mortgage, the possibility of the property continuing to be shown as mortgaged would be there.

The matter, however, is not so simple as it seems, and it seems desirable to state the history of the section and the interpretation placed on it by courts. As explained by Mulla², this provision was inserted for the first time in the Act of 1877 by the Amending Act 7 of 1886, and the objects of the amendment was negative, namely, to supersede the decisions to the effect that a mere receipt for payment of money under a mortgage required registration even though it did not extinguish the mortgage's interest in the mortgaged property³. Thus, the main purpose of the amendment of 1866 was to remove such receipts from compulsory registration.

1. Sixth Report, page 18, paragraph 41.

2. Mulla, (1963), pages 96-97.

3. *Jawan Ali v. Basa Mal*, (1886) I.L.R. 9 All. 108, 114 (F.B.)

However, in the actual working of the provision, considerable case-law has arisen, which shows the difficulties felt in its application¹.

Three classes of receipts have come up for consideration before the courts.

(i) *A receipt, bare and simple*, without any reference to extinction of the mortgage. This does not at present, require registration, and the proposed clause preserves that position. This is what may be called a "bare receipt"².

(ii) A document in which a usufructary mortgagee recites that his claim has been discharged out of the usufruct and returns possession to the mortgagor. This also does not require registration³, as it is only a *recital* of a completed transaction.

(iii) A receipt which on the face of it acknowledges the payment of the amount on account of extinction of the mortgage. This at present requires registration, but under the proposed provision, it will not.

The first kind of case presents no difficulty⁴.

As regards the second class of cases, registration should not be compulsory, and it is mainly this kind of cases which was referred to in the earlier Report⁵.

So far as the third class is concerned, registration is at present compulsory under section 17(1)(c)⁶.

The real test is the extinction of the mortgage, and this test is embodied in apparently clear words in the existing section. But, in view of the confusing case-law that has gathered⁷ round the existing provision it is desirable to *re-emphasise this test*, and, with such re-emphasis, retention of the existing provision would not be contrary to the recommendation made in the body of the earlier Report.

Two other points arise, though they have not been considered in the earlier Report. The first is about extinction of a *part of the mortgage*. Such a receipt should be compulsorily registrable; but there is some conflict of case law⁸ on the point, a *clarification is desirable*. The second

1. *cf.* Mulla (1963), pages 97, 100.

2. *cf.* Mulla, (1963), page 97.

3. *cf.* the case in Mulla (1963) page 99, footnote "(c)".

4. *cf.* *Venkyasubhayya v. Venkayasubhayya*, (1881) I.L.R. 3 Madras 53.

5. Sixth Report, page 18, paragraph 41, 7th line in the paragraph.

6. See discussion in *Totaram v. Harish Chandra*, A.I.R. 1937 Nagpur 402, 405. (Vivian Bose J.).

7. See, particularly, Mulla (1963), page 98.

8. Mulla, (1963), page 100

point is, whether the words "when the receipt does not purport", etc., are to be read with "any endorsement" also. There is some conflict on this point also and the opinion expressed by Mulla¹, that the last words of the clause apply also to an endorsement, appears to be correct and should be codified.

We recommend² that in the light of the above discussion, the existing section be suitably re-drafted.

Clause 3(2)
(d)—Exemption for
counterpart
of a lease.

Clause 3(2) (d) proposes a provision to the effect, that where a lease is registered, its counterpart is exempt from registration. This was proposed for reasons³ which may be thus summarised. In areas to which the Transfer of Property Act does not apply, a lease may have a counterpart. If the lease is registered, there is no reason why the counterpart should also be registered. The proposed adoption⁴ of the definition of "lease" from section 105 of the Transfer of Property Act would not (it was stated) make any difference, because the Report did not propose extension of the procedure of executing a lease (as contained in section 107 of the Transfer of Property Act) to all leases.

This recommendation was subject to the dissenting note of Dr. Sen Gupta⁵. Since some comments have expressed agreement with his views, we shall first discuss his points. His objection was, that since the definition of "lease" in the Transfer of Property Act had been adopted, and since, under that Act, a lease must be executed by both parties, there cannot be a counterpart to such a lease, though there may be a duplicate copy, and the proposed clause should be dropped. In his view, by the force of the definition of "lease" as proposed in the Sixth Report the definition in the Transfer of Property Act must be deemed to be incorporated in the Registration Act, and the fact that the Transfer of Property Act does not apply would be absolutely immaterial.

Now, the existing Act (or the proposed Bill) (in the Sixth Report) does not anywhere say that a lease must be executed in a *particular manner*. The nature of the document to be regarded as a lease is the only topic on which a borrowing is made from the Transfer of Property Act. If a document falls within "lease" as known to the Transfer of Property Act, (i.e., briefly, a transfer of a right to enjoy immovable property for a certain time or for perpetuity in consideration of price, money, etc., or other thing of value),

1. Mulla, (1963), page 98.

2. See amendment proposed to section 17(2)(xi).

3. cf. Sixth Report, pages 18-19, paragraph 42.

4. See clause 2(9), in the Sixth Report.

5. Sixth Report, pages 95-96.

then it becomes registrable. The further provision in section 107 of the Transfer of Property Act, 1882.

(i) certain leases can be made only by registered instruments;

(ii) other leases can be made by registered instruments or by oral agreement and delivery of possession;

(iii) where a lease is made by a registered instrument, the instrument or, (if more instruments, than one, each instrument) should be executed by the lessor and the lessee—does not become extended to all areas to which the Registration Act applies.

Therefore, in other areas, it is still possible to enter into a lease by virtue of an instrument not signed by both parties. If, in such a case, the lease has been registered, the counterpart should not require registration. It must also be noted, that the definition of "lease" as proposed includes a counterpart¹, and, therefore, in the absence of an exempting provision, counterparts would require registration. Hence, theoretically the change proposed in the Sixth Report is not objectionable.

There are, however, some practical considerations, to be borne in mind. It would seem, that "counterpart" means a duplicate². Strictly speaking, the counterparts are two pieces of one entire parchment or paper on which the contract is engrossed in duplicate, and the *two parts together* constitute a contract by deed. But, in common parlance, the document signed by the grantor is called the original, and that signed by the party accepting the estate, is called the counterpart. Now, it is true, that in the case of a lease governed by the Transfer of Property Act, both the parties have to sign the lease, so that, the *need for a counterpart does not arise*. However, in cases not governed by the Transfer of Property Act, it is possible to have counterparts of leases.

The distinction between a "counterpart", on the one hand, and a mere undertaking by the lessee, on the other hand, would seem to lie in this,—that, in a "counterpart" the text is the same as in the original, while in the "undertaking", the text signed by the grantee or lessee will be different from the text signed by the grantor or lessor, being expressed in a form appropriate to covenants meant for signature *by the lessee*.

Theoretically, therefore, the proposal in the Sixth Report cannot be objected to. It is, however, not possible

1. See clause 2(g).

2. See the extracts from Stroud and Jowett, *infra*.

to anticipate what practical complications the new exemption might create. It should also be noted, that the exact meaning of the expression "counterpart" may not be easily ascertainable¹, and there is a likelihood that the proposed exemption may be construed as exempting many other documents which are not counterparts.

Stroud² gives the following definition of "counterpart"—

"(2) The counterparts, or counterpanes, of an indenture, are the two pieces of one entire parchment (or paper) on which the contract between the parties is engrossed in duplicate, the piece sealed by one party being delivered to the other. The two parts put, or considered as put, together constitute the contract by deed. In common parlance, however, the counterpart or counterpane, sealed by the party from whom the estate, &c., moves, is called the original and the counterpart or counterpane, sealed by the party accepting the estate &c., is called the counterpart. When both counterparts, or counterpanes, are sealed and delivered by each party (which of late years has been frequently done) they are commonly spoken of as "duplicate originals" (2M. & G. 516, n.b.).

"(3) In the schedules to the Stamp Acts of 1870 (33 and 34 Vic., c. 97) and 1891 (54 & 55 Vic. c. 39) "duplicate or counterpart" of an instrument is used as distinguished from the "originals".

Mulla³ in his commentary on the Stamp Act, gives this definition of "counterpart"—

"*Counterpart*—The counterparts of an indenture are the two pieces of one parchment on which the deed is engrossed in duplicate. The piece executed by one party being delivered to the other so that each may possess an example of the deed. The two pieces together constitute the deed but generally the part executed by the party who is the obligor, grantor, or from whom the estate moves is called the original and the other the counterpart. Under section 4, however, the parties may determine for themselves which is the original and which the counterpart or duplicate.

"The counterpart is as efficacious as the original but a counterpart stamped under this article would not be admitted in evidence unless it were endorsed under section 16 or unless the original were produced to show that it was duly stamped."

1. See discussion above.

2. Stroud, Judicial Dictionary (1952), Vol. I, page 395.

3. Mulla, Stamp Act, (1950), page 199.

Jowitt states¹—

“Counterpart, the corresponding part or duplicate, the key of a cipher. When the several parts of a deed (as is almost invariably the case with the lease) are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts. If a lease and counterpart differ, the ordinary rule is that the lease prevails, but the rule may be departed from if the mistake is clearly in the lease². The lessee cannot without agreement be made to pay the costs of the counterpart”³.

Under section 2(16) (b) of the Indian Stamp Act, 1899, a lease includes a *Kabuliyat*, etc., but not a counterpart of a lease. A counterpart is chargeable under article 25, of the Indian Stamp Act, 1899⁴.

It may be noted by the way, that the practice of only one person (*i.e.* the tenant) executing a document, or the landlord executing a document and the tenant also executing a *Kabuliyat*, is not a rare one, as would appear from the numerous cases relating to rent deeds⁵.

Incidentally, if a change is made in the definition of “lease”⁶, it will be necessary to make a *consequential change* here, so as to exempt documents besides counterparts *i.e.* *Kabuliyat*, etc.

Another comment received is to the effect that since “lease” as defined includes counterpart, registration of a lease will require registration of the counterpart also, and, therefore, the provision exempting a counterpart is inconsistent with the definition of lease. This may be answered by pointing out, that it is for this very reason—namely, to avoid double registration—that the exemption is introduced.

A point has further been made, that in areas where the Transfer of Property Act is not in force, it is necessary that each counterpart should be registered, so as to provide information about leases in those areas. This overlooks the fact that the exemption is operative only where the lease has itself been registered. If the lease has been registered, it would itself provide, the necessary information.

1. Jowitt, Dictionary of English Law, (1959), Vol. I, page 513.

2. *Burchell v. Clark*, (1876) 2C.P.D. 88; *Mattheus v. Smallwood* (1910) 1 Ch, 777.

3. *Re Negus*, (1895) 1 Ch. 73.

4. See Mulla & Pratt, Indian Stamp Act (1963), page 266.

5. See Mulla, Transfer of Property Act, (1966), page 658, under “Rent notes”, and page 675 under “By both the lessor and the lessee”.

6. See discussion relating to clause 2(9)

Clause 3(2)
(e) and
Clause 3(1)
Explanation
(ii)

A new point has been made in one of the comments, suggesting the compulsory registration of documents referred to in existing section 17(2) (v) and existing section 17(2), *Explanation*, in certain cases. At present, a document which merely creates a right to obtain another document affecting immovable property is not to be registered, and in particular, a document purporting or operating to effect a contract for the sale of immovable property does not require registration merely because it recites payment of earnest money or purchase-money, etc. Now, it is stated in one of the comments that transactions in the nature of agreements to sell, re-sell and re-purchase are entered into in the following circumstances. An ante-dated agreement (it is stated) is used to avoid stamp duty on sales, by—

(i) first having a sale deed drawn up for a nominal amount;

(ii) then executing an unregistered agreement to re-purchase or sell; and

(iii) then executing a final *release* of the agreement to repurchase for a substantial consideration. The real consideration for the transaction (it is stated) is the sum total of the consideration expressed in the various deeds (sale and release) but payment of stamp duty is evaded by stamping the final document as a “release” and by making use of the unregistered document as a ground for the release. Such documents should, it is said, be made (compulsorily) registrable so that three beneficial results would ensue:—

(a) frauds on the public, who may enter into a contract for the purchase of property in respect of which an agreement to sell already exists, may be prevented;

(b) suits for specific relief would be brought down;

(c) the revenue will benefit.

These benefits, it is stated, will more than compensate for the additional expenditure to the registering public. It has, therefore, been suggested, that clause 3(2) (e) and clause 3(1), *Explanation* (ii), may accordingly be deleted.

The earlier Report¹ did consider the matter, briefly. It proposed no change, because the view taken was that there was no need to have two registered documents in receipt of the same transaction. The matter, however,

1. Sixth Report, page 17, paragraph 38.

bears closer examination at length, and the following points should be noted:—

(i) As would appear from the history of the provision¹, the object of the present provision is to save a person from having to register two deeds in relation to the same subject matter. This was the reason for the general provision in existing section 17(2) (v).

But, since doubts arose as regards agreements to sell immovable property in view of decisions holding that such agreement created an interest in land and would not fall within the general exemption, a *specific* provision exempting contracts for the sale of immovable property was made, which is existing section 17(2), *Explanation*.

(ii) Since an agreement to sell merely gives a right to obtain another document relating to immovable property, creates no interest and cannot be enforced against a person who has no notice thereof², the question of a *fraud* on the public has no importance for legal purposes.

(iii) Moreover, the malpractice in question cannot justify an *extreme provision* removing the general exemption. Such a course would cause unnecessary hardship.

(iv) It is a moot point whether the last mentioned release of the rights flowing under the agreement for repurchase does not itself require registration.

(v) In any case, the question of fraud on the Stamp Act cannot be conclusive in a consideration of the Registration Law.

(vi) We are not concerned here, it may be noted, with the question that very often arises, namely, whether a sale coupled with agreement to re-purchase can constitute a mortgage³.

For these reasons, no change in the law is recommended on this point.

Existing section 17(2)(vi) to 17(2)(xa), exempt from registration decrees or orders of court (except in certain cases), grants of immovable property made by the Government, instruments of partition and other orders passed by certain public servants. The Sixth Report proposed to replace this provision by a general exemption in clause 3(2) (f), and that general exemption, referred to any decree, etc., instrument, etc., certificate, etc., of which copies are required to be sent to the Registering officer

Clause 3(2) (f)—Decree, plaint, etc., of which copies are to be sent under new clause 42.

1. See Mulla, (1963), pages 74-75.

2. See sections 40 and 54, Transfer of Property Act, 1882.

3. This is discussed in Mulla, (1963), pages 38-40.

under the clause corresponding to existing section 89 (clause 42). This change was linked up with the proposal to expand the scope of existing section 89, by the inclusion therein of a number of other documents. For the present purpose, it is not necessary to examine them in detail¹.

The only comment received on clause 3(2)(f) relates to decrees and orders. It suggests the addition of the words "except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding" after "decree or order" in this clause. The words proposed to be added in the comments are the same as those contained in existing section 17(2)(vi). This point was specifically discussed in the earlier Report², and that Report took the view that since section 17(1)(b) and (c) refers only to non-testamentary instruments and since a decree or order is not said to be a non-testamentary instrument, section 17(2)(vi) was a "somewhat curious provision"

Further, the Report took the view that it was unnecessary to insist that a decree or order of a court relating to immovable property outside the suit should be registered. It was sufficient if a copy of the decree or order is sent to the Sub-Registrar under clause 42 corresponding to existing section 89.

It has been suggested that existing section 17(2)(vi) dealing with such compromise decrees should not be deleted⁴. It is argued that this deletion will increase work in Registration offices, and also that unscrupulous persons will cheat the Government by starting a suit comprising small property and then by obtaining a compromise decree covering property of a greater value.

All these points will be discussed later⁵.

It has also been suggested, that since registration of plaints and Schedules of property is nowhere provided for, they need not be exempted specifically. But we do not think that there is any harm if they are mentioned, if the scheme of clause 42 is maintained.

Clause 3(3)—
Adoption Clause 3(3), following existing section 17(3), provides that authorities to adopt a son, not conferred by a will and

1. As to the reasons for this change, see the Sixth Report, page 7, (Discussion, relating to section 89), page 37 (paragraph 101), pages 17 and 18, (paragraphs 39-40), and regarding section 17(2), pages 75 and 80.

2. Sixth Report, page 17, paragraph 39.

3. The history of the provision is discussed in Mulla, (1963) pages 83, 85.

4. See comments under clause 42(1).

5. To be considered under clause 42(1).

executed after the first day of January, 1872, shall also be registered. The retention of this provision had been a matter of some controversy when the earlier Report was prepared, and Dr. Sen Gupta had given a dissenting note on this point¹. Some of the comments have expressed agreement with the views of Dr. Sen Gupta. A few other points have also been made.

We shall first take up Dr. Sen Gupta's dissenting note. His point of view was, that under section 8 of the Hindu Adoptions and Maintenance Act, 1956, a widow does not need the authority of anybody else to adopt. Hence the provision in section 17(3) of Registration Act should be deleted. The view taken by the majority of the Members of the Law Commission² was, that the position did not appear to be clear having regard to the language of that Act, and, therefore, it was advisable to retain the provision. But Dr. Sen Gupta thought that the provisions of the Act were quite clear. Now, section 8 of the Hindu Adoption, etc., Act authorises any female Hindu (subject to the provisions of the section) to take a son or daughter in adoption. Section 6 enumerates the requisites of a valid adoption, which may be summarised as—

- (i) capacity and right to take in adoption;
- (ii) capacity to give in adoption;
- (iii) capacity to be taken in adoption; and
- (iv) compliance with other conditions laid down in the Chapter.

These requisites are dealt with in sections 7 to 11. We are not concerned at present with capacity to take and give in adoption or to be taken in adoption. (Sections 7, 8 and 10). That leaves only section 11 (other conditions). Section 11 does not require the authority of anybody else. In fact, under section 12 of the Act, a person is adopted not as the child of both the parents, but as the child of each parent or of either of the parents. Section 4 expressly abrogates the texts or rules of Hindu Law on matters for which provision is made in the Act. We went into this matter at some length. We share the doubts expressed in the Sixth Report, and think that the Sixth Report rightly adopted a cautious approach in the matter.

The points on which we felt doubts were two, namely—

- (i) Whether the Hindu Adoptions, etc., Act abrogates the rules of Hindu Law under which the husband's authority to adopt is required in the case of an adoption by a widow (except in a few States). This doubt was expressed in the Sixth Report also.

1. Sixth Report, page 96, bottom and page 97, top.

2. See Sixth Report, page 19, paragraph 44.

(ii) Whether the sections in the Hindu Adoption, etc., Act about the effect of adoption by a widow (sections 12 and 14) make the adopted person the son of the *widow's husband also*. If not, then it is possible to argue that the concept of adoption by the widow with the husband's authority—under which the adopted son becomes the son not only of the widow *but also* of the deceased—still survives.

Omission of an "authority to adopt" from the Registration Act may create problems in view of these doubtful points, and it is advisable to retain the existing provisions, which, in any case, is harmless.

Authorities to adopt may, therefore, be retained.

Under Hindu Law, a Hindu widow cannot adopt to herself¹, though the position is different under French law in respect of a widow domiciled in French India².

Mulla's view³ is, that under the Hindu Adoption Act the adoptee (in effect) becomes the son or daughter not only of the widow but of her deceased husband as well. The same view has been taken in two recent decisions⁴⁻⁵.

A suggestion has been made in one of the comments that since section 10(1) of the 1956 Act allows both a son and a daughter to be adopted, the word "son" in clause 3(3) of the Bill should be omitted. In effect, this amounts to the addition of "daughter" to clause 3(3). As regards this suggestion, we should point out, that Hindu Law (as amended by statute) does not contemplate the adoption of a daughter (except in the case of Naikins, etc., in Madras)⁶. Clause 3(3) is intended only for Hindu Law as unamended by statute, and the suggested addition need not, therefore, be made.

Where an adoption should be made compulsorily registrable was a point which had been considered in the earlier Report⁷. But the view taken, was, that unless the substantive law was altered by providing that registered instrument shall be required to effect an adoption, such a provision could not be appropriately enacted in the Registration Act. It was also noted, that section 16 of the Hindu

Clause 3(3)
Deeds of
adoption

1. See caselaw cited in Mulla, Hindu law, (1966), page 479.

2. cf. *Natraja Pillai v. C.S. Subbaraya Chettiar*, A.I.R. 1950 P.C. 34.

3. Mulla, Hindu Law, (1966), pages 921 and 935.

4. *Ankesh Narain v. Jana Bai*, (1965) 67 Bom. Law Reporter 864, 867 (K. K. Desai, and Palekar JJ.).

5. *Subash Misir v. Thagai Misir*, A.I.R. 1967 All. 144, 148, 150, paragraphs 6 and 7 (S. N. Singh J.).

6. Mulla, Hindu Law, (1966), page 500, paragraph 480 (1) and page 504, paragraph 487.

7. Sixth Report, page 19, paragraph 46.

Adoption, etc., Act, 1956 did not go so far, and merely created a presumption of a valid adoption where the adoption was evidenced by a registered deed. The Report¹ did give out a hint that "another step forward" could be taken to provide that an adoption shall be made only by a registered document. Since this hint has not so far been taken by the Legislature the comments received to the effect that adoptions should be made only under registered documents do not justify a change in the previous proposals. (These comments are based on the fact that the 1956 Act does not provide any ceremonies for adoption, and the comments do possess some force. But, for the reasons given above, a change in the law is not proposed².)

Registration of wills is not at present, compulsory under section 17, but is optional under section 13(e). Clause 3 (New points):
—Wills also follows the existing law in this respect by not requiring registration of wills. A comment has, however, been received to the effect, that it should be made compulsory, to facilitate the administration of the Estate Duty Act, 1953, apart from ensuring the genuineness of the will and so reducing the number of suits for disputed succession. This suggestion cannot be accepted. Efficient administration of the Estate Duty Act is not a matter germane to the scope of the Registration Act. If that logic has to be adopted, there may be many other documents connected with other laws whose registration should be recommended. As regards genuineness of the will, sufficient formalities have been laid down, in the Succession Act in the form of attestation etc. Moreover, by its very nature a will is a document, which—

- (i) may be executed in urgent circumstance;
- (ii) may be modified frequently; and
- (iii) may contain many matters which the executant may like to keep secret.

To make its registration compulsory would be to cause inconvenience and hardship to the executant. Further, there may not be one but several beneficiaries who are concerned; they may not be aware that they are mentioned in the will, and cannot, therefore, take any steps to insist on its registration at the time of execution. If their rights are to be affected because the will is not registered for no fault of their own, the position would become rather unsatisfactory.

1. Sixth Report, page 20, paragraph 46.

2. The existing law is stated in Mulla, (1963), page 19, paragraph 46.

3. cf. Mulla, (1963), pages 34 and 106.

Clause 4

Clause 4 deals with optional registration¹. The existing section—section 18(f)—specifically enumerates certain documents which may be registered, and then puts a residuary item for other documents. The clause in the Sixth Report omits the specific enumeration. In our opinion, this saving of matter is not worthwhile. Existing section may be *retained*.

Clause 5—
Documents
in other
languages

Clause 5, following existing section 19, provides that if the document 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 is accompanied by a true translation into a language commonly used in the district and also by a true copy. The following points have been made in the comments received on this clause:—

(i) The expression “shall refuse to register” should be clarified—whether it means “returned”, “refused from registration” or “referred to the Registrar”;

(ii) The proper thing should be to refuse to “accept the document for registration” rather than refuse “to register” the document²;

(iii) Regarding the expression “language which the Registering Officer does not understand”, it has been stated, that the linguistic capabilities of registering officers differ, and therefore, “English or a language not commonly used in the district” would be better. (All Registering Officers, it is said, are expected to know English).

So far as the first two points are concerned, the question is whether there is any difference between “refusal to register” and “refuse to accept for registration”. Sections 19, 20(1), 21(4), 22(2), 23 main paragraph, 25(1), 26 last line, 35(3) last line, 58(2), 71(1), 71(2), 73 to 77 are some of the existing provisions containing the various expressions used regarding refusal. More particularly, one may contrast existing section 20(1), relating to interlineation, with existing section 35(3), last line, relating to denial of execution. The former has been treated in the Act as a ground for refusal to accept, while the latter has been treated as a ground for refusal to register.

But it is not certain that the two expressions necessarily entail different consequences (with reference to the applicability of sections 72, 76 and 77 to the sections containing

1. See Sixth Report, page 20, paragraph 47, and page 75.

2. cf. existing section 20, whereunder, if a document contains interlineations etc. not initialled, etc., the Registering Officer may “refuse to accept for registration” the document.

these expressions)¹. Hence, it is not necessary to change the expression "refuse to register" into "refuse to accept for registration".

It may be stated that the only High Court which makes a distinction in this respect is the Bombay High Court, and its decisions do not also appear to be uniform²⁻³.

As regards point No. (iii), its acceptance would mean narrowing down of the facilities for registration⁴. If, for example, in Uttar Pradesh, a document is presented for registration in Bengali, and the Registering officer is a Bengali or otherwise knows the language, then under existing section 19, he need not refuse to register it, but under the change proposed by the comment, he would be bound to refuse its registration. The existing provision need not be disturbed, as it has not caused any difficulty.

Under clauses 5 to 7, a suggestion has been made to the effect that along with the document to be registered, the executant should fill up and sign a standard form of questionnaire, stating whether he has understood the document and whether he has voluntarily executed the document mentioning what is the consideration for the document, and whether the possession has been transferred and so on. This, however, appears to be a matter which can if considered desirable be better dealt with by *administrative instructions to the Sub-Registrars* to satisfy themselves about the various salient points. To introduce a statutory provision requiring the enclosure of a formal document containing answers to such questions would mean the addition of one more formality which, in practice, is likely to remain a formality only. Since the filling up of such questionnaire would not dispense with the other provisions of the Act regarding inquiry as to execution, it would not serve a very useful purpose. No change need, therefore, be made.

Clause 6 deals with the documents containing interlineations, blanks, etc., and follows existing section 20. A suggestion has been made that a provision should be made for preserving photostat copies of all documents which are registered. Such a provision has been made by the Bombay Amendment Act of 1930, which authorises the copying of documents by means of photostat⁵. Consequential change has been made by Bombay in section 69 by adding clause (ggg) (See Bombay Act 35 of 1958), whereunder, a power is

Clauses 5 to 7—Suggested standard form to be signed by the executant

Clause 6—Points for photostat copies

1. See Mulla, (1963), pages 256, 262, 112 and 107.

2. See *Kisan Laxman v. Dalsukh Mohammad*, A.I.R. 1939 Bom. 254, 255 (Reviews cases).

3. For the Madras view, see—

(i) *Krishnaswami v. Nalla Gounder*, A.I.R. 1945 Mad. 309, 310, reversed on another ground in *Nalla Gounder v. Krishnaswami* A.I.R. 1945 Mad. 465.

(ii) *Gangadara v. Sambasiva*, A.I.R. 1918 Mad. 1082.

4. Contrast Mulla, (1963), page 107.

5. See Mulla, (1963), pages 246 to 249.

given to make rules regulating the procedure for transmitting documents for being photographed, etc., etc. This will be considered at the end¹.

Clause 7(1) Clause 7(1) corresponds to existing section 21(1), and needs no comments.

Clause 7(2) & (3)—description of property Existing section 21(2) and (3) deals with the manner in which houses and lands should be described in a document relating to them. Clause 7(2) and (3) proposed certain changes therein, for the reasons given in the earlier Report². Since there are several minute points of difference between the existing section and the proposed clause, and since numerous points have been made in the comments received on the clause, it appears to be convenient to discuss the existing section, the changes proposed by the earlier Report, the points made in the comments and the action which *we recommend thereon*, in the form of a chart, as given below.

CHART

Existing section	Change made by earlier Report	Comments received on earlier Report	Recommendation on comments
1	2	3	4
(i) Houses in towns to be described on north or other side of the street to which they front, and by their existing and former occupancies, and by their numbers (if the houses are numbered)—section 21 (2)	(i) <i>Houses and lands in Municipal areas to be described by area, boundaries, municipal town survey number, municipal door number (if any) and street or road they abut (if any)—see clause 7(2) (Sixth Report, page 75, bottom, says that this has been redrafted to make it more explicit). (Thus occupancy is omitted, areas and boundaries are added, and (in addition to houses) lands are covered, if situated in municipalities).</i>	(i) Some comments suggest that names, territorial divisions, and dimensions should be added. Some comments state that no change is needed in existing provisions.	<i>General</i> : The provision should be neither too elaborate nor too sketchy. If it is too elaborate there may be mistakes leading to controversies ³ . If it is too sketchy, there may be uncertainty about identity of the property. (i) A <i>via media</i> in the form of the Bombay Amendment ⁴ of 1958 is recommended ⁵ . Under that amendment, in city surveyed areas, the cadastral number is to be mentioned.

1. See discussion under "Suggested new provisions".

2. Sixth Report, page 75 and page 20, paragraph 43.

3. cf. Mulla, (1963), page 110.

4. See Mulla, (1963), page 107.

5. See section 21, as proposed to be amended.

1	2	3	4
<p>(ii) Other houses (<i>i.e.</i> houses not in towns) and lands, to be described by their names (if any) and as being in the territorial division in which they are situated and by their superficial contents, the road and other properties on which they about, their existing occupancies and also, whenever practicable, by reference to a Government map or survey.—S. 21 (3).</p>	<p>(ii) In other places, houses and lands to be <i>described by area, boundaries, survey number or paimaish or other like number</i>, if any also and where practicable, by reference to Government map or survey.—clause 7(3) (Thus name, territorial division, occupancies and road etc. are <i>omitted</i> and area and boundaries <i>added</i> as well as survey number).</p>	<p>(ii) Some comments suggest that names and territorial divisions be added. One comment says that no change is necessary in existing section.</p>	<p>(ii) Existing provisions, it would appear, have caused no difficulty, and may be <i>retained</i>.</p>
<p>(iii) State Government may, by rule, require that houses (not being houses in towns) and lands, be described, (for the purposes of section 21) by reference to Government map or survey—section 22 (1). The object of such a rule</p>	<p>(iii) Section 22(1) is omitted. (Sixth Report, page 76 top, says that it is unnecessary in view of the changes proposed to section 21).</p>	<p>(iii) One comment states that the only change necessary is to amend section 22(1). It thus suggests, that —(a) the words “not being houses in towns” be omitted; (b) after “Government map”, add, “or a Government or other”.</p>	<p>(iii) Section 22(1) should be <i>retained</i>. Adoption of Bombay Act [(iv below)] will meet the object behind the comment received also.</p>



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would be to make such description *mandatory*. It will be an exception to (iv) below.

- (iv) Save as provided by rule under section 22(1)—*See (iii) above*,—failure to comply with section 21(2), (3) not to disentitle the document to registration, if description of the property is sufficient to identify the property section 22(2).
- (iv) Failure to comply with clause 7(2)(3) does not disentitle registration, if description sufficient, etc.—clause 7(4), proviso, (Sixth Report, page 76, top, is silent about reasons for this particular change, that is to say, why the saving regarding rule was omitted. But section 22(2) was omitted, and that seems to be the reason. The result of the change proposed in Sixth Report is, for rural houses and lands, the existing *mandatory* provision to mention Government map or survey (when so directed by the rule), is *omitted*).
- (iv) One comment suggests, that no change should be made on this point.
- (iv) Bombay Amendment Act 1958², may be *adopted*³. The obligation to give the statutory description will, then, be *mandatory*—(a) in City Surveyed Area; and (b) in cases where a rule is made as per (iii) above.

Clause 7(4)— Clause 7(4), following existing section 21(4), provides that a non-testamentary document containing a map or plan of any property comprised therein shall not be accepted for registration unless accompanied by a true copy of the map or plan etc. An amendment has been suggested⁴ in one comment to the effect, that a document registrable in Book 3 containing a map, plan or other diagram should be accompanied by a copy of such map, plan or diagram for being filed in the Registration Office. Now, Book 3, which is maintained⁵ under existing section 51(1), is a "Register of wills and authorities to adopt". Cases of maps, plans, or other diagrams referred to in such documents may not be many, and there is no need to make the suggested change. [If this change is made, a *similar*

1. For examples of such rules, *see* Mulla, (1963), pages 286, 296.

2. *See* Mulla, (1963), page 116.

3. *See* section 22(2), as proposed to be amended.

4. Suggestion of a State Government.

5. *See* existing section 51(1).

change should be made in relation to instruments to be entered in Book 4—i.e. practically all other documents not required to be registered¹, being in either case documents which do not relate to immovable property. Consequential changes will then be necessary in the clause² corresponding to existing section 61]. It may be pointed out, that his will cover maps, plans or other diagrams even if they relate to movable property.

Under existing section 23, a document other than a will must be presented for registration within four months from the date of its execution. Clause 8(1) reduces this period from four months to one month (except for cases in the proviso relating to presentation of copy of a decree or order). The reasons for this change were thus stated in the Sixth Report³:—

Clause 8(1)
—Time for
presenting
documents

“We consider that the period.....should be reduced to one month. This would reduce the opportunity to bring ante-dated deeds into existence. It is also desirable that registration should be prompt. No serious hardship is likely to be caused, as there is a power to excuse delay (section 25) and we are recommending a reduction in the amount of the fine”.

This change has, however provoked various comments, which can be classified as follows:—

(i) One set of comments presses for the retention of the existing limit of four months. Reduction, it is stated, will work considerable hardship, as one month's time is too short. Difficulties peculiar to hilly areas have also been emphasised in some of the comments.

(ii) Another set of comments suggests that the reduction should be to the extent of two months. It is also stated, that agriculturists (who are concerned with many transfers) require time to collect the amount of consideration.

(iii) Still another set of comments suggests an increase of the limit to six months

The reasons for which the change was proposed are not unconvincing. However, having regard to the comments summarised above, it appears desirable to *retain* the existing period.

The proviso to clause 8(1), following existing section 23, provides that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or *where it is*

1. See section 51(3).

2. Clause 29.

3. Sixth Report, page 20, paragraph 49.

appealable, within four months from the day on which it becomes final. Regarding *appealable* cases, a comment received suggests the substitution of the words "where an appeal is preferred", for the words "where it is *appealable*". The object of this change is to avoid the necessity of the Registrar's deciding whether a particular case is *appealable* or not. The effect of this change would be, that even if the case is not really *appealable*, still, if the party in fact files an appeal, the period would be extended. We are not in favour of the proposed change. In most cases, the expression "where it is *appealable*" and the expression "where the appeal is preferred" will not give different result.

Clause 8(2)—
period of
wills

Clause 8(2), following existing section 27, provides that a will may be presented for deposit or registration *at any time*. A comment has been received to the effect that persons taking under a will should be compelled to present it for registration within a specific period after the death of the testator. A similar suggestion was also considered in the earlier Report, but rejected in these words—"We are not inclined to accept the suggestion¹"

Under existing section 32(1), a person claiming under a document can present it for registration. The beneficiary under a will may not always come to know quickly of the disposition in his favour, and the fixing of a period running from the date of death may cause hardship. No change, therefore, *should be made* as the existing provision has not caused any legal or administrative difficulty.

Clause 9—
documents
executed by
several
persons in
different
times

Clause 9, corresponding to existing section 24, deals with the cases where there are several persons executing a document at different times. While maintaining the main provision that the document should be presented for registration within the specified period from the date of *each* execution, the clause differs from the existing section in two respects—

- (i) the existing section mentions "re-registration" also, while it is omitted in the draft clause;
- (ii) the period is reduced from four months to one month.

The omission of "re-registration" was recommended in the Sixth Report², as a consequential change, presumably because the section dealing with "re-registration"—existing section 23A—had been recommended to be omitted³. Comments, however, have been received to the effect that section 24 should

1. Sixth Report, page 21, paragraph 54.
2. Sixth Report, page 21, paragraph 51.
3. Sixth Report, page 20, paragraph 50.

be retained as it is. It is also stated, that the "re-registration" referred to in existing section 23A is for curing defects due to presentation by unauthorised person, while "re-registration" under section 24 is in respect of a document which is already registered once, where re-registration becomes necessary because of its being re-executed by a different party.

The comment appears to be justified by case law. Section 24 has been interpreted as contemplating a partial registration of a deed¹. Thus, in a Privy Council case², three vendors, living at different places executed a deed at different times. Vendors No. 1 and 2 admitted its execution, and the deed was registered. Vendor No. 3 then came and denied execution, but still the registration as regards No. 1 and 2 was held to remain valid. In fact, section 35 was amended after this decision, by inserting the words "as to the person so defying appearing, or dead", thus giving legislative sanction to the Privy Council's pronouncement. See also the following decisions³⁻⁴⁻⁵, upholding partial registration. The reference to re-registration should, therefore, *be restored*. As regards period, the change proposed, is linked up with the period for presentation allowed under clause 8(1). If that is not changed⁶, the period under clause 9 should also not be changed.

Existing section 25(1) provides that if, owing to urgent necessity or unavoidable accident, any document, etc., is not presented within the prescribed time, then the Registrar, in cases where the delay does not exceed four months, may direct that on payment of a fine not exceeding *ten times* the amount of the proper registration fee, such document shall be accepted for registration. Clause 10 of the Bill in the Sixth Report departed from this, in the following respects:—

Clause 10—
fine for
delay in
presentation

(i) The fine has been reduced to a lumpsum not exceeding Rs. 10 in addition to the registration fee.

The reason for this change was thus given in the earlier Report⁷.

"It is quite inequitable to levy a heavy penalty in respect of documents presented for registration after the prescribed time. A multiple of the registration fee will usually

1. Mulla, (1963), page 123.

2. *Mohammad Ewaz v. Brijlal*, (1877) 4 I.A. 166; I.L.R. 1 All. 465 (P.C.).

3. *Jagdish v. Sunder*, A.I.R. 1949 Pat. 393.

4. *Raja Hazari v. Bhagwandas*, A.I.R. 1928 Nag. 239.

5. *Natesa v. Subramania*, A.I.R. 1918 Mad. 323, 325, 326.

6. See discussion relating to clause 8(1).

7. Sixth Report, page 21, paragraph 52.

be very high, as the fee for registration is in most States an *ad valorem* fee.”.

(ii) The words “owing to urgent necessity or unavoidable accident” have been replaced by the words “a proper cause being shown” for the reason¹ that the existing wording is not happy and the words “owing to urgent necessity” are not appropriate.

(iii) Instead of the words “the Registrar...may direct”, the words “the Registrar...may extend the time” have been used.

(iv) Certain other verbal changes have been made.

Now, as regards the first point, the comments received suggest that the fine proposed is too low and may not be conducive to expeditious presentation of documents; one comment suggests that the amount may be increased to a maximum of Rs. 50, while another suggests that the amount of fine should be three times the amount of the proper registration fee. Another comment suggests that it should be five times the amount of the registration fee. A few comments suggest that it should be at least Rs. 20 or Rs. 25.

If one has regard to the rules, one finds that in most States the amount of the fine is linked up with extent of the delay. For example, the rules made under the Act by the Government² of Bombay provide that the fine imposed under sections 25 and 34 of the Act shall be of the following amounts, namely—

(i) if the delay does not exceed one month—not exceeding $2\frac{1}{2}$ times the proper registration fee;

(ii) if the delay exceeds one month but does not exceed two months,—not exceeding five times the amount of the registration fee; and so on.

Prima facie, the object of the fine would be to encourage parties to seek prompt registration; and on principle, the imposition of a heavy fine would not be justifiable. Therefore, the approach adopted in the Sixth Report, on this point, has much to commend itself. At the same time, we have to take into account the trend of the comments.

We discussed this matter at some length. On the one hand, the maximum amount of Rs. 10 proposed in the Sixth Report, may be too low. On the other hand, the existing provision—ten times the registration fee—is extremely harsh. The Registration Rules of several States (which have been gone through by us) show, that the registration fee is *ad valorem* in many cases. Hence, its multiple

1. See Sixth Report, page 21, paragraph 52.

2. See Bombay rule 40, Mulla, (1963), page 322.

would be very high, and some maximum appears to be needed. Having considered all aspects of the matter, we recommend¹, that the fine should be five times the Registration fee, but not exceeding Rs. 200 (Rupees two hundred).

As to the second point, it has been stated in the comments that it is desirable that the grounds on which extension is to be granted should be given in the section itself. This would, in effect, mean restoration of the words "urgent necessity", etc. We think, that it would be better to retain the existing language.

As regards the third and fourth points the verbal changes as such do not seem to have provoked any comment. But it would be better to retain the existing language.

A fresh point made in one comment is, that it should be made explicit that the extension of time should be on application made within the time allowed, and the application should be accompanied with a copy of the document to be registered and the application should be open to the public on payment. It has also been suggested, that a list of cases in which time is allowed should be put up on the notice board, and that an application for extension should not be allowed unless it is first put up on the notice board for a fortnight. We think that the addition of such provisions would necessarily encumber the section.

Clause 11, following existing section 26, makes special provision for documents executed outside India. It has been suggested, that there should be no discrimination between documents executed in India or outside India, and that the law should be uniform for both. Another comment received is to the effect, that the period of four months after arrival in India *allowed* by existing section 26(b), clause 11(b) is too long.

Clause 11—
Documents
executed
outside
India

The comments overlook the fact, that in the case of documents executed outside India, there may be special reasons why they cannot be promptly registered. The parties may take time to settle down in India and to arrange their affairs. They may not be conversant with the local laws; they may not be familiar with the administrative arrangements for registration, and so on. The special provisions are justifiable. No change is needed on this point.

Existing section 28 provides that, subject to certain exceptions, every document mentioned in the specified clause of section 17 or section 18, in so far as such document affects immovable property, shall be presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property to

Clause 12(1)
—
presentation

1. See section 25, as proposed to be amended

which such document relates is situate. The proposal made on this point in the earlier Report, clause 12(1), read with clause 12(4) is, that where the property is really situated outside the jurisdiction of the Sub-Registrar, but some non-existent, fictitious, or insignificant property (or property which is not intended to be conveyed) is included in the deed to confer on the Sub-Registrar jurisdiction by virtue of its situation, then the validity of the registration should not be questioned by the *parties*. (This is not to affect the rights of third persons acquiring rights in the property without notice of the transaction to which the document relates). The reasons for which this change was proposed will be discussed elaborately later; but, for the present, it will suffice to say¹, that it was regarded inequitable and unjust that the very persons who were parties to the transaction and secured registration by such a device should be allowed to impeach the registration as being a fraud on the registration law²⁻³. There are certain other verbal changes also proposed in the section. But, the above being the most important point, it may be taken up at the beginning.

Numerous comments have been received on this point. While some comments expressly agree with the suggested amendment, others oppose it or suggest its modification. One point made is, that the document should be presented to the Sub-Registrar in whose jurisdiction a major portion of the property is situated, the reason given being that registration raised a presumption of notice, and, as such the registration of documents *at any place* will lead to frauds. This comment, however, overlooks the fact that the proposed change is very narrow, being confined to a provision that the *parties shall not be* allowed to challenge the registration. Rights of third parties are not proposed to be affected⁴. The Clause does not give a go-bye to the existing rule, for ordinary cases.

Another suggestion received is, that an *Explanation* should be inserted below the section to lay down the minimum requirements by which a registering officer should satisfy himself that the property is situate in his jurisdiction. Such a provision would, however, cause unnecessary delay in the registration proceedings, and cannot be adopted.

Some of the comments have opposed the change *in toto*, and it becomes necessary to examine in detail the reasons why the change was proposed in the Sixth Report⁵. The

1. *cf.* Sixth Report, pages 21-25, paragraphs 55 to 57.

2. See particularly, Sixth Report, page 23 middle.

3. As to existing law, see Mulla, (1963), pages 126 to 128.

4. Sixth Report, clause 12(4)(b).

5. See Sixth Report, pages 21—25, paragraphs 55—57.

reasons were these. Numerous decisions under the existing Act had held, that if the property is really outside the jurisdiction of the Sub-Registrar, and some fictitious property or non-existing property alleged to be within his jurisdiction is included, or property (though situated within his jurisdiction) is included without any intention of transferring it, then it is a fraud on the Registration law.

There are several decisions of the Privy Council on the subject¹⁻².

Now, the earlier Report did not question the correctness of these decisions; but the points which it had to consider was, whether such unsatisfactory consequences should not be avoided in cases where the parties had resorted to such devices merely to avoid going for registration to a distant place. "It is inequitable and unjust that the very persons who were parties to the transaction and secured registration by such a device should later be allowed to impeach the registration as being a fraud on the registration law. As long as rights of third parties are not affected, no harm is likely to be caused by recognising registration effected by a resort to such devices³."

This was the crucial argument advanced to support the change proposed. It has been embodied in clause 12(4), as follows—

[after proposing in clause 12(1) the enactment of the general rule that the document should be presented before the Sub-Registrar within whose area the whole or some part of the property is situate]:—

"12. (4) Notwithstanding any thing contained in sub-section (1),—

(a) after a document is registered, no party thereto shall be entitled to question the

1. See these cases—

- (a) *Harendra Lal v. Hari Dasi Debe*, 41 I.A. 110; I.L.R. 41 Cal. 972; A.I.R. 1914 P.C. 67 (Fictitious property).
- (b) *Biswanath (also reported as Mathura Das) v. Chandra Narayana*, 48 I.A. 127; I.L.R. 48 Cal. 509; A.I.R. 1921 P.C. 8 (Insignificant share of village included without transfer of possession, and without any intention to transfer any interest therein).
- (c) *Collector of Gorakhpur v. Ram Sundar*, I.L.R. 56 All 468; A.I.R. 1934 P.C. 157 (Property which could not be enjoyed, and to which there was no access, included).
- (d) *Venkataram Rao v. Sobhandari Appa Rao*, 63 I.A. 169; I.L.R. 59 Mad. 539; A.I.R. 1936 P.C. 91 (A yard of land situated in a district in which the purchaser neither resided nor owned property, included, though the vendor's title was doubtful and the purchaser made no attempt to take possession).

2. Decisions of the High Courts are collected in *Ramanandan Prasad v. Chandra Narain*, I.L.R. 19 Pat. 578; A.I.R. 1940 Pat. 504.

3. Sixth Report, page 23, paragraph 56 middle.

validity of its registration on the ground that the property which purported to give jurisdiction to the Sub-Registrar to register it either did not exist or was fictitious or insignificant or was not intended to be conveyed;

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

The question may be asked whether it is likely that the parties themselves would ever be allowed to challenge the registration of the document. The following summary of some illustrative cases will show the existing position on this point:—

Case No. 1—

The plaintiff was allowed to put forward the fraud of his father (who had acted as his guardian) in including one square yard of property situated in another district without any intention to convey. The registration was held to be void¹.

Case No. 2—

A parcel of land which was never intended to form part of the security, was inserted in the mortgage deed for giving jurisdiction to the Sub-Registrar. This was held to be a fraud on the law of registration, and hence it was specifically held that the mortgagor could raise the plea of valid registration even though he was party to the fraud².

Case No. 3—

Property which was in existence, but in which the parties did not intend to transfer any interest, was included for obtaining registration in the district where this piece was situated. Registration was held to be invalid. The proceedings in which this decision was given were between the parties to the document, because they were initiated by the mortgagee for a mortgage decree and sale of the property mortgaged under a mortgage deed by Udit Narayan as the head and managing member of the joint Hindu family of which the respondents were members³.

1. *Venkata Rama Rao v. Sobhandabi Appa Rao*, 63 I.A. 169; I.L.R. 59 Mad. 539; A.I.R. 1936 P.C. 91.

2. *Ramanandan Prasad v. Chandradip Narain* I.L.R. 19 Pat. 573; A.I.R. 940, Pat. 504, 509 (Harries C.J. and Manohar Lall J.).

3. *Bishwa Nath Prasad (also reported as Mathura Das) v. Chandra Narain Ghauhnari*, 48 I.A. 127; I.L.R. 48 Cal. 509; A.I.R. 1921 P.C. 8.

Case No. 4—

Fictitious inclusion of an item of property, never intended to be sold, it was stated, would amount to fraud. This view was expressed in a case where the validity of the document was challenged between the parties. On the facts, however, it was held that there was no fraud¹.

Case No. 5—

Insignificant item of no value and completely inaccessible, was included in the sale deed. It was incapable of being utilised or enjoyed by the purchaser. This was held to be a mere device to evade the Registration Act, and the registration was held to be void².

The decision can be regarded as one not between the parties to the document, as will be shown by the following analysis of facts.

Raja K., the owner of the impartible Majhauri estate, died in 1911. His widow was taken as his heir. A Court of Wards was constituted for the widow, and the Court of Wards appointed the appellant as Manager of the Estate. There was, however, one Indarjit who had a possible claim to the estate (as an agnate). He died in 1921, and his son B in 1922 sold some of the property to the respondent³.

Only three questions were raised in the appeal before the Privy Council, and these were decided as follows:—

First, whether Indarjit was the lawful heir of Raja K. The answer given was “yes”⁴.

Secondly, whether the pedigree was proved. This was also answered in the affirmative⁵.

The third question was whether the registration was valid. This was answered in the negative.

The appellant was not a successor-in-interest of Indarjit, and was, therefore, a *third party* vis-a-vis the document.

It is obvious, that courts have in reality permitted the parties to challenge validity. Therefore, the assumption behind the earlier Report is substantiated by this position of the case law.

1. *Gope Nath v. Rup Ram*, A.I.R. 1930 All. 786, 790 righthand column, paragraphs beginning with the words “The third point.....” and ending with the words “The question before us.....” (Sulaiman and Kendal, JJ.).

2. *Collector of Gorakhpur v. Ram Sunder Mal*, I.L.R. 56 All. 468; A.I.R. 1934 P.C. 157, 165, righthand, 167, left-hand (P.C.).

3. See at page 153, left-hand in the A.I.R.

4. See page 159, left, read with page 164, left, bottom, in the A.I.R.

5. See page 165, right, 12 lines, in the A.I.R.

Case No. 6—

There is one Madras case¹, in which the principle adopted was that the person alleging his own baseness should not be heard. But the authority of this Madras case is totally shaken by the Privy Council case of 1936, and, therefore, if it is intended to restore the principle behind the Madras case, legislative intervention is necessary.

Case No. 7—

We may also refer to the position in an earlier decision of the Privy Council². There, non-existent property was included in the deed. This property was alleged to be situated at 25, Gurudas Street in Calcutta, while all the other properties were outside Calcutta. It was held, that such a fictitious entry (in the Schedule) was a fraud on the registration law, and the deed was not validly registered. It is not very clear whether the female defendant (respondent in the Privy Council) who challenged the registration was a successor-in-interest of the person who executed the mortgage (of the property in dispute) in favour of the plaintiff. The object of the suit was to obtain a declaration that the female defendant acquired no right in the property by virtue of the purchase made by her. Apparently, the decision may be regarded as not being between the parties.

We may now refer to the dissenting note (in the previous Report) of Dr. Sen Gupta³, as several comments have expressed agreement with his views.

Dr. Sen Gupta's first objection was, that the Act, which says that the Registrar should have jurisdiction only if some property affected by the document is within his jurisdiction, "would stultify itself" if it is said at the same time that the registration would be good if a document is registered without such jurisdiction. Now, the body of the Report does not suggest such an extreme course⁴. Nor does clause 12(4)(b) go to that length. All that is provided is, that the parties will not be entitled to challenge the validity of the registration.

Dr. Sen Gupta's second point was, that if the Registrar *bona fide* believed that the property existed within his jurisdiction, then he could register it even if ultimately it turned out that the property was non-existent or fictitious. His objection was that the *bona fide* belief of the Registrar may be difficult to prove when the matter comes before the

1. *Venkataswami v. Venkata Subbayya*, I.L.R. 55 Mad. 507 ; A.I.R. 1932 Madras 311.

2. *Harendra v. Haridas Deb*, 41 I.A. 110; I.L.R. 41 Cal. 972; A.I.R. 1914 P.C. 67.

3. See the dissenting note of Dr. Sen Gupta, Sixth Report, page 99.

4. See Sixth Report, page 24, paragraph 57(1).

court. Now, it is true that in the body of the Report, a suggestion was made somewhat on these lines¹. But that was only a "principle" to be given effect to, and if reference is made to the actual draft in clause 12(1) read with clause 12(4) (a), it will be found that validity is not made to depend on the Registrar's belief.

Dr. Sen Gupta's third objection was, that there could seldom be any honest reason for not registering a document where it ought to be registered. As against this, it may be pointed out, that ordinarily the parties are the best judges of their convenience, and if they select a particular place, it may not always be a dishonest device.

Dr. Sen Gupta's next objection was, that it would be difficult to prove an intention to defraud a third party. But under clause 12 such intention does not come in the picture, and this objection, thus, loses its force.

Next, Dr. Sen Gupta did agree with the principle that the parties should not be entitled to impeach the registration. He described it as "understandable". But, he pointed out, that the parties did not always deal with one another at an arm's length, and the purchaser may have perhaps taken the document in good faith upon the representation of the vendor (that the property did exist and belonged to him) without further inquiry. In his view, it could not be laid down as a general proposition that parties who were not dealing at an arm's length, should not be allowed to challenge the transaction on account of defect of jurisdiction in any case. This objection can be answered by pointing out, that the protection given by the proposed clause is only as regards the *validity of the registration*, and does not cure any fraudulent representation as to title or the nature of the property which might have been made by either party. The normal consequences of such fraud would ensue notwithstanding the proposed change. In some of decisions, validity of the registration and validity of the document have been mixed up. But the two are really separate issues. The proposed changes cure a defect in the validity of the document, *only to the extent to which such defect is due to invalidity of registration*.

Dr. Sen Gupta suggested that the proper way to attain the object sought would be to alter the "first proviso", [perhaps this refers to clause 12(4)] by providing that, after the document is registered, the party thereto on whose representation the non-existent or fictitious property had been included shall not be permitted to challenge the validity of the registration. But, as already pointed out above, right of the party to challenge the document by reason of fraud, etc., is not prejudiced by the amendment proposed in the previous Report, and, therefore, it need not be limited in this way.

1. Report, page 24, paragraph 57(3).

Dr. Sen Gupta also stated, that scrutiny of all properties by the Registrar might indefinitely delay registration. But the Sixth Report did not contemplate such scrutiny. All that the body of the Report¹ contemplated really was that if the registering officer was *prima facie* satisfied regarding his jurisdiction, the registration will not be invalidated. Further, the actual clause provides only that the parties will not be allowed to impeach it.

Dr. Sen Gupta further stated, that it was not true (as was assumed by the majority in the Sixth Report) that property within jurisdiction was included only for the purpose of registration in the nearby office; he added, that in many cases it was included not for convenience of registration but to create jurisdiction of the Original side of the High Court. This device should not, in his opinion, receive encouragement from the legislature. Now, if one has regard to the actual judicial decisions, many of them are not concerned with the Original side jurisdiction, and further, it was not that the framers of the Sixth Report wished to encourage fraudulent devices to confer jurisdiction on the High Courts. Their suggestion was mainly based on the principle, that a person alleging his own baseness ought not to be heard. This is a principle well-recognised in the jurisprudence of every country, and applied almost daily by the courts where its relevancy is established. There is no reason why it should not be given proper consideration under this subject also.

We might state here one more reason for the proposed clarification. At present, there is a conflict of decisions² on the question whether, where registration of a mortgage deed is void in the situation under consideration, a personal covenant in the mortgage deed can be sued upon. This conflict will be resolved by the proposed change.

One other aspect of the proposed change may be referred to. At present, when the validity of registration is to be attacked on the ground of the defect in question, oral evidence for that purpose is admissible by virtue of section 92, first proviso, in the Evidence Act, as interpreted by the Courts.³⁻⁴ The proposed change will render such defects immaterial; so that resort to such oral evidence will be obviated.

This finishes the main question under this clause. The draft suggested in clause 12(1), when compared with the existing section 28, would show that certain other *verba*

Other points
— verbal
changes

1. See Sixth Report, page 24, paragraph 56, 8th line on the page.

2. See Mulla, (1963), page 130.

3. *Ramanandam v. Chandra*, I.L.R. 19 Pat. 571; A.I.R. 1940 Pat. 504

4. See also *Ganti v. Hrishikesh*, A.I.R. 1946 Calcutta 465.

changes were also proposed. Thus, the existing section mentions the various clauses of sections 17 and 18, while the draft merely refers to "this Chapter". Secondly, the existing section uses the words "in so far as such document affects immovable property", while the draft speaks of a document "so far as it purports to affect immovable property". In the draft clause, there is also an elaboration to deal with cases where a document refers to more than one item. The comments received suggest (in substance) the retention of the existing language.

We think that it would be better to retain the present wording, in view of the objections received.

In conclusion, it may be noted that the possibility that the proposed change may encourage fraud has to be balanced against the principle that the law should not allow parties to back out of a transaction merely because there is a technical defect in registration of which the parties were, or at least one party was, fully aware. A shady deal is not intended to be protected. Only a technical flaw is proposed to be neutralised and that too on sound moral principles. Rights of third parties are perfectly safe. On the whole, therefore, the proposed clause will lead to less injustice than the position resulting from the existing section. Conclusion

To make the discussion concrete, we may note here the effect of the proposed changes with reference to various situations. Effect of proposed change

Following categories of documents seem to have arisen in practice¹:— Analysis

- (i) property fictitious (cases in A.I.R. 1914 P.C.);
- (ii) property not belonging to the vendor, etc., conveyed without intention to convey. (But fraudulent intention must be proved. cf. *Venkata v. Veerabhadralu*, A.I.R. 1935 Mad. 26, right hand).
- (iii) Property (even if belonging to the vendor, etc.) professed to be conveyed without intention to convey (cases in A.I.R. 1921 P.C. and 1934 P.C.);
- (iv) Property not capable of enjoyment (case in A.I.R. 1936 P.C.).

The proposed change will cover these situations; No. (ii), which is not frequent, will also be covered, if there is no intention to convey.

The proposed change will not affect the position in cases where there is no fraud; e.g.—

- (a) Where there is a mistake in registration, resulting in registration in a wrong district; (the view has

1. See also the analysis in *Chhotabhai v. Dadabhai*, A.I.R. 1935 Bom. 54, 62 (left-hand column).

been expressed that such a case can be dealt with by re-registration¹ under existing section 30);

(b) Where both parties *bona fide* believe that the grantor has title to the property.²

It must be borne in mind, that the "fraud" contemplated by the case-law as to validity of registration is totally different from mere failure to make out a good title. A party may fail to make out his title, but that is not the same thing as fraud on registration.³⁻⁴

It must also be noted, that the proposed change is confined to *registration law*. It will not affect the position regarding jurisdiction of courts, which will continue to be determined by the existing principles, under which the court can examine the reality of the transaction⁵.

Clause 12(2)
—Place of
presentation
of will or
authority to
adopt

Clause 12(2), following existing section 40, mentions "authority to adopt". This phrase, it is said, is no longer necessary in view of the Hindu Adoptions, etc., Act, 1956. The point has been already discussed under clause 3(3), and, for the reasons stated there⁶, this phrase should be retained.

Clause 12(3)
—Residual
provision
for place of
registration

Clause 12(3) combined existing section 29(1) and 29(2). As stated in the earlier Report⁷, no change in principle was recommended. A few verbal changes were, however, made. The comments received find fault with one verbal change on the ground that the re-casting has really made a change in substance. The following comparative chart may be useful for understanding the change made.

Existing section	Clause
29(1). Every document not being a document referred to in section 28, or a copy of a decree or order, may be presented etc. either in the office of the Sub-Registrar in whose Sub-district the document was executed, or in the office of any other Sub-	Clause 12(3). Every document, not being a document referred to sub-section (1), and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed

1. *of. Suganmal v. Mt. Unrao Bai*, I.L.R. 1940 Nag. 74; A.I.R. 1940 Nag. 13.

2. *of. observations in Bishwanath (or Mathura) v. Chandra Narain Chowdhry*, A.I.R. 1921 P.C. 8, 16 and *Pahladi Lal v. Larauti*, I.L.R. 41 All. 22; A.I.R. 1919 All. 450.

3. *of. Venkata v. Veerathadulu*, A.I.R. 1935 Mad. 26, Right-hand.

4. See also *Chootabhau v. Dadabhai*, A.I.R. 1935 Bom 54.

5. See discussion in *Nani Lal Roy v. Suniti Bala*, A.I.R. 1952 Cal. 529, 534 (P.B. Mukherjea J.)

6. See discussion relating to clause 3(3).

7. Sixth Report, page 25, paragraph 59.

Existing section	Clause
Registrar etc. at which all the persons etc. desire the same to be registered.	or the <i>original decree or order was made</i> , as the case may be, or in the office of any other etc. (rest same as in existing section).
29(2). A copy of a decree or order may be presented for the registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar, etc. at which all, etc., desire, etc.	

It would thus be seen, that existing section 29(1) seems to *exclude* from its scope copies of decrees or orders, because section 29(2) deals with them specifically. The draft clause, however, makes such copies registrable with the Sub-Registrar in whose sub-district the original decree or order was made or with *any other* Sub-Registrar where the parties *desire*, etc. Thus, a change of substance may ensue in relation to a copy of decree or order which affects immovable property. Under the proposed clause, they can be registered elsewhere if the parties desire, while section 29(b) is (in this respect) confined to decrees, etc., affecting immovable property.

It may be noted, that section 29, before its amendment by Act 32 of 1940, was not divided into sub-sections. It ran as follows:—

“Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented, etc.”

[rest as in section 29(1)]

This gave rise to the question whether a copy of a decree or order was to be dealt with under section 29 or section 28. The Bombay High Court held,¹ that it was to be dealt with under section 29, and that the Legislature had deliberately put a copy of the decree, etc., in section 29 as being a document which does not fall within section 28. After this decision, the section was clarified as it stands now. The existing language should be *restored*.

In clause 12(4)(a) proposed by the Sixth Report is a new Clause 12(4) provision to the effect that, after a document is registered, no party should be entitled to question the validity of the registration, on the ground that the property did not exist

1. *Vinayak v. Parsappa*, A.I.R. 1938 Bom. 212.

or was fictitious or insignificant or not intended to be conveyed. Under clause 12(4)(b), rights of third parties were not to be affected if they acquired the rights without notice of the transaction to which the document related. This change has been considered in detail already.¹ It remains now to consider only a few comments on matters of detail. One comment is to the effect, that an exception should be made in favour of a *bona fide* purchaser purchasing under a deed without notice of inclusion of the fictitious item. Now, clause 12(4)(b) already makes an exception for persons having no notice of the transaction, and that should suffice. Another comment is to the effect that where a third party is defrauded or his rights defeated the registration should be invalid as against such party. But clause 12(4)(b) already meets this point by making the document inoperative against the third party.

It has also been suggested that instead of the words "no party thereto" the words "no party which presents a document for registration" should be substituted. But the clause need not be so narrowed down².

Certain matters of detail pertaining to clause 12(4)(b) have been considered at length by us. The object of clause 12(4)(b) was to ensure that the bar under clause 12(4)(a) should not affect the rights of third parties. As drafted in the Sixth Report, however, the provision seems to be slightly wider. It may, therefore, be *re-drafted to ensure* that it does not go beyond what is absolutely necessary to secure its object, namely, that the provision in clause 12(4)(a) shall not affect the rights of third parties.

The draft suggested in the Sixth Report³ uses the formula "a person who acquires right in the property—without notice of the transaction—to which the document relates", etc. The meaning of the expression "notice" was discussed before us in detail.

A comment⁴ has been received to the effect that this may lead to difficulties in interpretation; the term "notice" is not defined in the General Clauses Act or in the Registration Act, and, it is stated, that the real value of notice might be for the purposes of the Transfer of Property Act. It is pointed out, that under that Act registration would itself amount to notice, and that the provision in question may defeat itself.

The definition of "notice" in the Transfer of Property Act has not been borrowed in the Registration Act, in the definition clause. Therefore, the answer to the question

1. See discussion relating to clause 12(1).

2. See also discussion relating to clause 12(1).

3. Sixth Report, page 46, clause 12(4)(b).

4. Comment of a High Court.

whether registration amounts to notice would depend on the facts of each case. Nevertheless, being aware of the controversy which existed on the general question as to how far registration amounted to notice before the amendment of the Transfer of Property Act in 1929¹, we gave anxious consideration to this comment. We also considered the question whether the word "actual" could be inserted before the word "notice" in the draft proposed in the Sixth Report, and the controversy thus avoided.

We felt, that if the expression "notice" has at all to be used, it may be better to define it as in section 3 of the Transfer of Property Act² omitting the portion in that Act relating to registration. The definition in the Indian Trusts Act is shorter than that in the Transfer of Property Act, but it is less elaborate, and is not comprehensive³.

The definition of "notice" in section 3 of the Indian Trusts Act⁴, is as follows:—

"A person is said to have notice of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229".

The definition of "notice" in the Transfer of Property Act, 1882, section 3, which is very lengthy, includes not only actual notice and imputed notice (notice of an agent) and constructive notice (wilful absence from an inquiry or gross negligence), but makes two further additions, namely first, *registration as notice*, and secondly, constructive notice to the agent. It also mentions actual possession specifically. As regards the effect of registration as notice, according to the decision of the Privy Council, (before the Amendment of 1929), the question of notice was not one of law but of fact, to be determined according to the circumstances of each case^{5,6}. As to the position in the Punjab, the undermentioned cases may be seen^{7,8,9}.

1. See Mulla, Transfer of Property Act, (1966), page 37, and see the Privy Council decision in *Tilakdhari Lal v. Khedan Lal*, 47 I.A. 239; I.L.R. 48 Cal. 1; A.I.R. 1921 P.C. 112.

2. Section 3, Transfer of Property Act, 1882.

3. cf. Law Commission's Report on the Indian Trusts Act, (17th Report), page 5, paragraph 11.

4. The Indian Trust Act, 1882 (2 of 1882).

5. See Mulla, Transfer of Property Act, (1966), page 37.

6. *Tilakdhari Lal v. Khedan Lal*, 47 I.A. 239; I.L.R. 48 Cal. 1; A.I.R. 1921 P.C. 112.

7. *Gopal Singh v. Thakar Singh*, A.I.R. 1935 Lah. 313, 314 (Wills).

8. *D.A. College v. Umrao Singh*, A.I.R. 1935 Lah. 410.

9. *Ghulam Fatima v. Gopal Devi*, A.I.R. 1940 Lah. 269.

Illustration 3 to section 27(b) of the (old) Specific Relief Act, may also be seen.

We also considered the sections in the Law of Property Act.

Sections 198 and 199 of the Law of Property Act, 1925, (15 Geo. 5 c. 20) read as follows:—

Registration under the Land Charges Act, 1925, to be notice

“198. (1) The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and applies only to instruments and matters required or authorised to be registered under the Land Charges Act, 1925.

Restrictions on constructive notice

199. (1) A purchaser¹ shall not be prejudicially affected by notice of—

(i) any instrument or matter *capable of registration* under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof;

(ii) any other instrument or matter or any fact or thing unless—

(a) it is within his knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) Paragraph (ii) of the last sub-section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same

1. For definition of purchases see section 205(1)(xxi).

manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Act".

The provisions of sections 198 and 199 modify the doctrine of notice¹.

Section 199 of the Law of Property Act, is designed to restrict and not to extend the doctrine of notice. Its object is to remedy the evil consequences of such a doctrine, as illustrated in one case where a solicitor had come to know of a certain fact in a previous transaction, and this created the impression that the solicitor had actually remembered about what he had come to know and this "knowledge" of the solicitor was again imputed to the client², in a subsequent transaction.

The need for clause 12(4) (b) was also discussed at some length before us.

The illustration given in the Sixth Report in this context says, "The owner may give an unregistered sale-deed to A and later give another ante-dated sale-deed to B and have it registered in an office far away by including in it...", etc³. We have taken note of the illustration. We think that some kind of provision is needed to avoid misunderstanding of the scope of clause 12(4) (a).

The main object of clause 12(4) (b) is to *emphasise* that the registration of the document under the circumstances mentioned in clause 12(4) (a) should not *bind a third party*, i.e. a person who acquires rights otherwise than under the document, and is not a party to the document.

We, therefore, *recommend*⁴ that the saving contemplated by clause 12(4) (b) of the Sixth Report should appear in a redrafted form, as follows:—

"Nothing in this sub-section shall affect a person, who, not being a party to the document and not claiming under the document, acquires rights in the property in good faith".

1. Lewin, Trusts, (1950), page 724.

2. See Lewin, Trusts, (1950), pages 725-726.

3. Sixth Report, page 23, paragraph 56, lines 34-40.

4. See section 29, as proposed to be amended.

One comment makes the point that a question of burden of proof will arise in the event of a conflict between the transferees, and therefore suggests that an *Explanation* be added which should cast the burden of proof on the parties who have gone out of their way to secure registration by inclusion of non-existent, etc., property. It appears unnecessary to encumber the clause with this additional provision, whose purpose or effect is not very precise.

Clause 13

Clause 13, departing from existing section 30(2), gives power to *every* Registrar to register a document without regard to the situation in any part of India of the property, *if sufficient cause is shown for doing so*. (Under the existing section, the power is given only to Registrars in Presidency towns, but irrespective of the existence of a sufficient cause). While this major change¹ has not provoked any comment, one comment received suggests that the Registrar should *record* his reasons for acting under this section. This does not appear to be necessary.

Incidentally, we may mention here that, independently of the comments on the Sixth Report, we have received suggestions to the effect that the Registrar in *Delhi* should have power to register a document executed in Delhi, irrespective of situation of the property. We have already submitted a separate Report on the subject².

Our views are as follows:—

(i) The existing section 30(2) may be extended to Delhi, as already recommended by us³.

(ii) The Sixth Report⁴ proposes its extension to all Registrars i.e. in substance to all district headquarters. This is not necessary, as there may not be a big concentration of people from several parts of India, or a cosmopolitan population, at every district headquarters.

(iii) The requirement of "sufficient cause" added by the Sixth Report⁵ may be *deleted*, as it is not necessary to hedge in the section with any such restriction.

It would be of interest to refer here to the various suggestions which were made to the Law Commissions with reference to section 30(2), before the earlier Report was prepared. On the one hand, there was a suggestion that the sub-section be deleted⁶, the reason given being that there was no justification for giving a wider jurisdiction to the Registrar in Presidency Towns.

1. As to reason for this change, see Sixth Report, page 25, paragraph 60.

2. Thirty-First Report of the Law Commission, [Indian Registration Act—section 30(2)—extension to the Registrar of Delhi]. (May 1967).

3. Thirty-First Report of the Law Commission, (May, 1967).

4. Sixth Report, page 25, paragraph 60, and page 46, clause 13.

5. Sixth Report, page 46, clause 13.

6. S. No. 51 in File No. F.3(4)/55-L.C. II (at the end) (A Sub-Registrar in U.P.).

Most of the suggestions were, however, for extending the section. Thus, there was a suggestion to extend it to Delhi¹. Another suggestion was to extend it to the Registrar of Ambala². This suggestion pointed out, that after partition there was no Registrar in the Punjab who could exercise the powers under section 30(2) with which previously the Registrar of Lahore was invested, and that hardships were experienced in the absence of such a provision.

There were suggestions to extend the section to all Corporation³ towns. One of the Members of the Law Commission seems to have suggested its extension to "any Registrar of a district in or outside a State including a Registrar of a capital town in a State"⁴.

One suggestion made in the Memorandum submitted on behalf of the All India Registering Officers' Conference⁵ (held at Patna on December 24, 1955) was to the effect, that section 30(2) may be amended so as to empower the Registrars of all capital towns of the Union and the States, in addition to such other towns as the Government of India may notify in the Official Gazette, to register any document referred to in section 28 without regard to situation in any part of India of the property. The reason given was, that capital towns have generally a mixed population of inhabitants from every part of the country.

Another suggestion to the same effect was of the Assam Registering Officers Association⁶ and of the Madhya Pradesh Registering Officers Association⁷.

One suggestion to extend the section to all Registrars was in these terms⁸:—

"In view of the Union of States under the Constitution of India, section 10 and 30 may be amended to take in District Registrars other than the District Registrars in Presidency towns".

There was even a suggestion to extend the section to "the Sub-Registrars"⁹.

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1. S. No. 78, File No. 3(4)/55-L.C. II (Delhi Administration).
 2. S. No. 9, File No. 3(4)/55-L.C. II (Government of Punjab).
 3. Suggestion of U.P. Sub-Registrars Association (contained in file No. F.3(4)/55 L.C. II at page 1 after the printed Report).
 4. S. No. 33, File No. F.3(4)/55-L.C. II.
 5. S. No. 19, Enclosure, File No. F.3(4)/55-L.C. II.
 6. S. No. 25, File No. 3(4)/55-L.C. II.
 7. S. No. 12, File No. F.3(4)/66-L.C. II.
 8. S. No. 70, File No. F. 3(4)/55-L.C. II (Advocate General of a State), being copy of the original in file No. F.3(5)/55-L.C. II.
 9. S. No. 73, File No. F.3(4)/55-L.C. II (suggestion of an Advocate).

Finally, we may note the suggestion made to empower "the Sub-Registrars at District headquarters, i.e., the District Sub-Registrars".

Clause 14

Clause 14 modified² existing section 31 slightly³, by making certain verbal changes. Our views as to these verbal changes are as follows:—

(i) The substitution of "ordinarily" for 'in ordinary cases' is not necessary.

(ii) The mention of "presentation" in section 31 is not necessary. Though presentation is the initial step and the proviso to section 31 also deals with presentation, the body of section 31 need not be disturbed. As section 32 is subject to section 31, no practical difficulty is likely to arise by reason of the existing language.

The changes suggested may be therefore *dropped*.

Clause 15
(a)(i)

Regarding persons who may present documents for registration, clause 15(a)(i) embodies existing sections 32 and 40 with certain modifications, the reasons for which have been given in the earlier Report⁴. These changes have not provoked comments. But a few new points have been raised in the comments. Thus, it has been suggested that a person who is authorised to sign a document on behalf of another should also have the power, to get the document registered. The law on the subject is, however, fairly clear, namely, that an agent who executes a document under a power of attorney may present it for registration, and the power of attorney does not require⁵ authentication under existing section 33.

The comment refers to an Andhra Pradesh case⁶ to the contrary. The decision is based on certain observations of the Privy Council in *Puran Chand's case*⁷ to the effect, that "executing" means "person who by valid execution enters into an obligation under the instrument". But those observations should be taken in the context in which they were made. No change is necessary.

1. S. No. 6, File No. F. 3(4)/55-LC II (Assam Registering Officers Association—earlier suggestion).

2. Sixth Report, page 46, clause 14.

3. For reasons, see Sixth Report, page 25, paragraph 61 and page 77 (Notes).

4. See Sixth Report, pages 25-26, paragraph 62.

5. See cases cited in Mulla, (1963) page 137, foot-note (1).

6. *Sardar Singh v. Pissue Mal H. Bankers*, A.I.R. 1958 Andhra Pradesh 107; (1957) 2 Andhra W.R. 342.

7. *Puran Chand's case*, A.I.R. 1928 P.C. 38.

The following analysis will show the various situations covered by the existing provisions:—

(i) agent authorised to sign—agent can present it¹ without the necessity of authentication under section 33;

(ii) agent authorised to sign—principal can also present² it;

(iii) agent authorised to present—agent can present if the power of attorney falls within section 33;

(iv) agent authorised to present—even then the principal can, presumably, present the document;

(v) one agent authorised to sign and another agent authorised to present—the latter agent can also present³.

The Sixth Report made certain verbal changes in existing section 32(c). These are not necessary, and may be dropped.

Clause 15(b) provides, that a will may be presented for registration by the testator, or after his death, by any person claiming as executor or otherwise “thereunder”. The existing section 40(1) is in a slightly different form, and provides, that the testator, or, after his death, any person claiming as executor, etc. “under a will” may present it, etc. Clause 15 (b)

One comment states, that the word “thereunder” in the proposed clause imposes an unnecessary restriction. This does not appear to be correct; this word is merely in replacement of “under a will”.

Another comment suggests, that the presentation of a will by the agent of the executant should be permitted. This clarification appears to be necessary in the scheme adopted in the Bill in the Sixth Report, whereunder a dichotomy has been introduced between—

(i) documents other than will or authorities to adopt (on the one hand), and (ii) wills and authorities to adopt (on the other hand). Existing section 32 speaks of documents generally, and its operation in relation to wills and authorities to adopt is excluded only to this extent, that during the donor's life time, the persons claiming thereunder, etc., or the donee of the authority, etc., cannot present it⁴. Presentation by

1. Mulla (1963), page 137.

2. Mulla (1963), page 137.

3. *Puran Chand's case*, Mulla (1963), page 144, top.

4. See Mulla (1963), page 158 quoting the passage from the Privy Council's case of *Venkatappayya v. Venkata Ranga*, A.I.R. 1929 P.C. 24.

agents and representatives of the testator or donor is not excluded.¹ Therefore in clause 15(b), the case of the testator's representative or agent should be *covered*, and the case of the claimant's representative, assign or agent should also be *covered*.

We think that to avoid difficulties, the existing scheme of section 32 should be *restored*.

Clause 15 (c) Clause 15(c), which corresponds to existing section 40(2), deals with presentation of authorities to adopt. Here also a comment has been received that presentation by agents should be permitted.² Really speaking, if this provision is to be retained in the form proposed in Sixth Report, more elaborate change will be necessary as in clause 15(b).³ As regards authorities to adopt, as they are to be retained,⁴ references to such authorities in clause 15(c) should also be *retained*.

Clause 16 Clause 16 (dealing with powers of attorney which may be recognised) follows existing section 33 (with small verbal alterations). Accordingly, it makes a distinction between—

- (i) cases where the executant resides in India,⁵ and
- (ii) cases where he does not reside in India.⁶

In the former case, the power of attorney has to be presented before and authenticated by the Registrar or Sub-Registrar within whose district, etc., the principal resides. In the latter case, it can be authenticated by any Magistrate. Now, a comment has been received to the effect, that the distinction between the two cases should be abolished, and that in the former case also authentication by a Magistrate should suffice. It has also been suggested, that authentication before a *Notary Public* or any court or Judge may be added.

As regards Magistrates, it appears to be unnecessary to include them in the first case. As regards Notaries, we consider that while in big cities the notaries may be responsible persons, in small cities they may not be responsible persons, and they may not be competent to check frauds, in respect of powers-of-attorney. In view of this difficulty, we were first hesitant to add notaries. But, ultimately we decided to add them.

We recommend⁷ an amendment of existing section 33 accordingly. It may be added, that notaries are empower-

1. See Mulla (1963), page 159.

2. As to present law, see Mulla (1963), pages 158-159.

3. See discussion as to clause 15 (b).

4. See discussion relating to clause 3 (3).

5. Section 33 (1)(a).

6. Section 33 (1)(c).

7. See section 33, as proposed to be amended (regarding notaries).

ed under section 8(1)(a) of the Notaries Act¹ to authenticate the execution of documents.

Clause 16(1) (c).—needs no comments².

Clause 16(1)
(c)

Clause 16(2) and (3).—Clause 16(2) and (3) corresponds to existing section 33(2) and (3), with verbal changes³. Consequential changes on the addition of *notaries*⁴ will be necessary in clause 16(2) and (3)

Clause 16(2)
and (3)

Clause 16(4), following existing section 33(4), provides that a power of attorney may be proved by its production without further proof, if it purports to have been “executed before and authenticated by” the person etc. mentioned before. Thus, to obtain the benefit of this provision, two things are required:—

- (i) execution before the authority concerned; and
- (ii) authentication by that authority.

Now, in the case of persons who are ill or are in jail or are exempt from personal appearance, the proviso to existing section 33(1)—clause 16(1), proviso—provides, that such persons need not attend for executing the powers-of-attorney before the authorities concerned. This has been interpreted as meaning that they need not *execute* the power of attorney before the authority concerned.⁵ In such cases, therefore, the condition of execution before the authorities concerned would not be fulfilled. To bring them within the beneficial provision in clause 16(2), it has been suggested that the words “or voluntarily executed by the principal and authenticated as aforesaid, as the case may be” may be added at the end. We do not think that any such change is required.

Clause 17(1) makes a small verbal change in section 52(1) (a) (b). It is not necessary.⁶

Clause 17

In prescribing the time-limit for the appearance of parties, clause 18(1), proviso, departing from existing section 34(1), provides that the Registrar may extend the time for appearance on proper cause being shown, by a period not exceeding two months (instead of four months as in the existing section). The amount of fine which the Registrar can impose is also reduced to a lump sum of Rs. 10. Other verbal changes are also made. This reduction of period is

Clause 18
(1), proviso

1. Notaries Act, 1952 (53 of 1952).

2. See Sixth Report, page 26, paragraph 64.

3. See Sixth Report, page 26, paragraph 64.

4. See discussion under clause 16 (1).

5. See Mulla (1963), page 142, cases in foot-note (1).

6. Discussed in the Sixth Report, page 32, paragraph 80 and page 77 and page 20.

noted in the earlier Report,¹ (though no detailed reasons have been given). Since clause 10(1) allows extension up to four months,² the comments suggest that here also, for uniformity, the period of four months should be maintained.

As regards reduction of the fine, it has been suggested in the comments that the maximum fine should be five times the amount of the proper registration fee.

The other verbal changes made in by clause 18(1), proviso are not, in our view, necessary.

There is no objection to having a uniform period. The period of four months *should be retained*. As regards the amount of fine, the clause should *follow* the decision under clause 10 corresponding to existing section 25³. We *recommend* an amendment of section 34 accordingly.

One important point regarding clause 18(1) should be *noted*. Appearance of the party is required within the time required for presentation, under the relevant section⁵. Existing section 34(1), in this connection, does not refer to section 27 relating to wills. Clause 16(1), however, refers *inter alia* to clause 8, which would take in clause 8(2) relating to wills. Since a will can be presented at any time⁶, clause 8(2) should be *excluded* from the sections referred to in clause 18(1).

Clause 18(2) and (3) corresponds to existing section 34(2) and (4), with verbal charges⁷ which do not appear to be necessary.

Clause 18(4)-
Return of
documents
for non-ap-
pearance When the executant who presents the document does not appear within the time prescribed or extended, the Registering Officer, it is provided by clause 18(4), should make an entry to that effect on the document, and return it without registration to the party who presented it. This is a *new* provision recommended by the Sixth Report, where the reasons were thus stated⁸:—

“Provision will also have to be made, for cases where the executants do not appear within the specified period. We suggest that in such a case the Registrar should make an entry to that effect on the document and return it without registration to the party who presented it”.

1. Sixth Report, page 26, paragraph 65.

2. See clause 10 (1).

3. See discussion regarding clause 10.

4. See Section 34, as proposed to be amended (regarding the maximum).

5. Section 34 (1), read with section 23.

6. See section 23, which excludes wills, and section 27.

7. cf. Sixth Report, page 77 (Notes).

8. See Sixth Report, page 26, paragraph 65.

Clause 18(4) embodies this recommendation, and as regards the period, in addition to the period allowed for appearance, it permits two months thereafter. This provision has provoked numerous comments, which can be classified as follows:—

(i) One point made is that it conflicts with clause 21(1) (iv), under which, if the executant does not appear within the time allowed for appearance, the Sub-Registrar has to refer the document to the Registrar.

(ii) Another point is, that return of documents to one of the *executants* without consent of the claimants may cause loss and hardship to the claimant.

(iii) A third point, is, that the extra period of two months after the already extended time-limit for presentation or appearance is unnecessary.

(iv) Another point is, that this provision will deprive the Government of the fee leviable for return of the documents after one month of the date of refusal due to non-appearance of the party. Moreover, it may entail expenses to Government by way of postal charges to be incurred in returning the document by post.

(v) It is also pointed out, that it is not clear how the Sub-Registrar is expected to deal with the document if the executant appears within the further period of two months thereafter and how the period will be calculated.

(vi) A major objection is, that the claimant (who is not the executant) will be deprived of his right to establish his claim before the registering officer. This is because the document will be returned to the "party" under the clause.

There is no doubt that the proposed provision makes a change in the existing law. At present¹, while existing section 34(1) requires the executant to appear within the time allowed for presentation, and section 34(3) contemplates an inquiry as to execution, it does not provide that the document must be returned to the executant. It leaves open the claimant's right at least to ask the Sub-Registrar to finish the inquiry as to execution. It is only if the *executant denies* execution that the registration is refused under existing section 35(3) (a).

In any case, clause 21(1) (iv) also deals with the same situation², (unless it is regarded as limited to

1. The existing position is discussed in Mulla(1963), page 151.

2. Clause 21 (1) broadly corresponds to existing section 35 (3), but sub-clause (iv) is new.

cases where the executant has not presented the document himself), and there appears to be some conflict between clause 18(4) and clause 21(1) (iv).

For these reasons, we consider that clause 18(4) should be dropped.

Clause 19(b) Clause 19(b) corresponds to section 34(3) (b), with verbal changes as per re-arrangements which were proposed by the Sixth Report.

In clause 19(b), the words "is right" should be replaced by "his right", to correct the misprint.

Clause 19(c) Clause 19(c), corresponding to existing section 41(2), deals with inquiry in the case of will or authority to adopt. Regarding authority to adopt, a suggestion has been made for adding the words "and before coming into force of the Hindu Adoptions, etc., Act, 1956". But, if clause 3(3) relating to authority to adopt is retained¹, the reference to such authority in clause 19(c) should also be retained.

Incidentally, the opening lines of clause 19 speaks of the persons executing *the document*, but the situation in sub-clause (c) is one of death of the testator or donor. Hence, clause 19(c) may appropriately be made into a separate sub-section.

Clause 19—
New point A new point regarding clauses 19-20 (dealing with inquiry before registration) had been made in one comment. It is stated, that the "representative or assign" of an executant can present a document for registration *through agent* under clause 19, and that admission of execution under clause 20 should also be made through agent in case of such representative or assign. We are not sure whether the assumption about clause 19 is correct. However, it seems desirable that such agents should also be brought within the purview of clauses 19 and 20 (existing sections 34 and 35); and, for that purpose, perhaps the phraseology of existing section 34(1)—"agents authorised as *aforesaid*" may be regarded as more clear when read with existing section 32(c). *That phraseology may be restored*, in place of the words in clause 19, opening lines, "duly authorised".

Clause 20(1)
(a) and (b)
(ii)—
Reading over document and proof of attestation While dealing with the procedure on an enquiry before registration for obtaining proof of execution, clause 20(1) (a) and (b) (ii) introduce certain new provisions not found in existing sections 34(3) and 35(1). The first addition is the requirement to the effect that the registering officer shall read over the document and explain its contents to

¹ See discussion as to clause 3(3).

the executants or the representatives, assigns or agents, as the case may be. The second addition is the requirement that he should inquire whether or not the document was attested according to law by the persons by whom it purports to have been attested (where such attestation is required by law).

Explaining the reasons for this addition, the earlier Report¹ states, that it is common knowledge that a person relying on a document required by law to be attested is often called upon to prove due attestation after a long lapse of time. In many cases the attestants would not be alive, and if none of them is alive the burden is cast on the person relying on the document to prove due attestation. A plea of want of attestation is bound to be successful in such circumstances under the existing law. To avoid such difficulty, it was suggested that at the stage of registration there should be an inquiry as to due attestation, and it was also suggested that registration should raise a presumption of due attestation and registration. To carry out this suggestion, a specific provision was suggested to the effect that the registering officer should read over and explain to the executant the nature of the document before inquiring of him whether it was executed, and admission of execution should be endorsed only after the document has been read over and explained. It was also observed, that such a provision would embody the existing practice. A Provision, it was added, should be made that where attestation was required by law, at least one attesting witness should be examined at the time of registration.

This recommendation was subject to the dissenting note of Dr. Sen Gupta². In his view, these amendments required too much of the Sub-Registrar. Reading over might make the burden of the Sub-Registrar excessive. Many documents are exceedingly prolix, and the Registrar would have to read the whole of it including the Schedules which may run to fifty pages. Where the executants are literate, no question of reading over will arise. In other cases, he stated, there must be an endorsement or solemn affirmation by a person who has read over and explained the document and that should be sufficient. At the most, the Registrar can state the nature of the document whether it was a mortgage or a deed or partition or conveyance and ask whether such a document has been executed. Again, regarding attestation, in his opinion, that was a function which could not be expected to be duly performed by the Sub-Registrar in many cases. Whether a particular attestation is a proper and legal attestation is a question which ought to be left to the court to decide when the matter came up before it, if there are the required number of witnesses signing as such, the Registrar may proceed on the basis that there has been a proper attestation, without deciding whether that is a

1. Sixth Report, pages 26-27, paragraph 66.

2. Sixth Report, page 101.

proper attestation. The details, namely, whether the witnesses signed after the executant and whether the executant saw the witnesses signing, etc., need not be determined by the registering officer. Even if the Registrar accepted the attestation under the proposed section, it would not shut out the question of attestation if the matter came before the court. "It is true that where a document has been registered there will be a presumption that if the document requires attestation, it has been attested; but only a *presumption*..." This further burden on the Registrar would in his view, serve no useful purpose. Moreover the question whether a document is legally attested is one which may have to be determined not upon the statement of the attesting witness alone but on the examination of the witnesses to the circumstances of execution. He, therefore, thought that this amendment should not be made. A proposal that attesting witness should be required to sign a proper attestation clause, a standard form of which may be set out in the Act, he said, might probably receive his support; a declaration or a solemn affirmation in the attestation clause signed by the witness ought to suffice for registration, without any necessity of dragging him before the Sub-Registrar.

Many of the comments received on this clause express agreement with Dr. Sen Gupta's views. Registering officers, it is said, are heavily over-worked and busy persons, and to read over the documents to the applicant would take much of their time. As regards attestation, it is stated that the proof of attestation sought to be established will lead to difficulties, because—

- (a) there will be extra work for the registering officer;
- (b) he will have to know all the classes of documents required to be attested;
- (c) he will have to find out whether the document is attested *according to law*;
- (d) parties will have to undergo hardship in getting attesting witnesses and bring them to the registering office;
- (e) a professional class of attesting witnesses may come into being.

This is the tone of the majority of the comments. Very few comments have expressed agreement with the proposed amendment regarding attestation, as saving the time of the court and expenses to the honest litigant.

A few subsidiary suggestions have also been made. One is to the effect that the executant should attest that the attestators have attested the execution of the document. Another comment is to the effect that the registering officer should enquire of the executant whether the

attestors attested the document executed by him and then make an endorsement to that effect. A third one is to the effect that the provision regarding reading over may be confined to cases where the parties are illiterate and foreign to the executant. A fourth one is to the effect that instead of "reading over", the Registrar should "explain" the contents of the documents to the executant or their representatives, assigns or agents as the case may be.

We have carefully considered the proposed clause and the comments received thereon. The clause was proposed with the beneficial and laudable object of ensuring the minimum of disputes as to execution. But the comments reveal that there might be practical difficulties in the achievement of this object. As regards reading over, the time and labour involved may not sufficiently compensate for the likely benefits. All documents will not come to the court. Even if they come to the court, the registration does not dispense with proof of execution.

In this connection, the Rules on the subject were also gone through by us^{1,2}.

It was felt, that while it may be desirable to have some sort of provision to ensure that the person alleged to have executed a document really understands the nature of the document, it may not be practicable to insert a rigid provision in the Act, as it may induce an interested party to challenge the validity of registration later on flimsy grounds. Provisions in the Rules are for guidance of registering officers, and are adequate.

The change regarding *reading over* the document should, therefore, be *dropped*.

The subsidiary suggestion to "explain the contents" has not found favour with us. It is somewhat vague, and may create complications.

As regards inquiry into attestation, the difficulties pointed out in the comments are numerous and real. Though not many documents are required to be attested, and, therefore, the proposed provision would not come into play often, yet, when it does come into play, it will require extra work and application of mind on behalf of the registering officer. If the work is done hurriedly, the proposed presumption of due execution and attestation³,

1. e.g., Rule 128, Punjab Rules.

2. See also Rule 59, Madras Rules, which runs as follows:—

"A document executed by a person who is unable to read shall be read out and if necessary, explained to him. A document written in a language not understood by the executing party shall, in the like manner be interpreted to him. When a party to be examined is dumb, recourse must be had to the means by which he makes himself understood".

3. Sixth Report, page 27, top.

may even be a source of mischief, because illiterate persons and *pardanashin* ladies will find it difficult to displace the presumption. There is a possibility, that the provision will not be followed in its true spirit, particularly where the registering officer has not much legal experience or knowledge. It may sometimes be difficult also to produce the attesting witness. For these reasons, the requirement to inquire about attestation should also be dropped. Here again, the subsidiary suggestions that the attesting witness should sign some kind of clause in the endorsement, or that the executant should attest that the attesting witnesses have attested the execution, have not much to commend themselves.

Clause
20(2)—
Registration
on admis-
sion of exe-
cution

Clause 20(2) (registration where execution admitted), departs from existing section 35(1), and requires that there should be proof of attestation. The *Explanation* requires that at least one attesting witness must be called for proving due execution. (There is also a verbal change, that registration is "as to the person admitting execution").

These provisions are consequential on the scheme regarding attested documents¹. If that scheme is dropped, these provisions will also have to be removed. The comments on these provisions reiterate the practical difficulty of securing attendance of attesting witnesses. It is pointed out, that an attesting witness has no interest in the transaction. He may deliberately not appear before the Registration in time, and it is unfair that merely because he does not appear, the registration should be withheld².

A few new points have also been made in the comments. One is, that (in the case of a will or authority to adopt), where the testator or donor is dead and the document is presented by some other person, the registering officer should add a certificate as to his satisfaction of such execution by the testator or donor. Now, existing section 4(2)(a)—clause 19(c)—already requires that the registering officer should satisfy himself that the will or the authority to adopt was executed by the testator or the donor. There is no necessity to add the further formality that he should make an *endorsement* to that effect. (As to endorsement required under the existing law, see existing section 58—clause 26). It may also be noted, that where considered necessary, the endorsement can be provided for in the rules³.

One comment suggests a proviso or an explanation to the effect that a person presenting a document may, at any stage before the registration number is assigned to

1. See discussion relating to clause 20(1)(a) and (b)(ii).

2. Under clause 21(1)(v), in such a case the matter has to be referred to the Registrar.

3. cf. Madras, rule 71(2). Mulla (1963), page 316.

the document, withdraw it from registration. The absence of such a provision does not appear to have caused any practical difficulty. Hence no change is needed.

Clause 20(3) widens the scope of the registering officer's power to examine witnesses¹. So far as the Sub-Registrar is concerned existing section 35(2) is confined to his examining any one present in his office. But existing section 75(4) relating to the Registrar gives him power to enforce the attendance of any person as if he were a Civil Court. The clause widens section 35(2) on the lines of section 75(4).

This change has not provoked any comment. But a new point has been made in a comment, to the effect that there should be power to order the *production* of documents or records. *This may be accepted*. We also think that the registering officer's power should be confined to a witness within his jurisdiction. We *recommend*² necessary *amendment*.

We have confined the amendment to the Sub-Registrar. So far as the Registrar's power under section 75(4) is concerned, we do not think it necessary to disturb its wording.

There are several changes introduced by clause 21(1) (which corresponds to existing section 35(3) dealing with the procedure on denial of execution). We shall, however, consider only the change that have provoked comments. First, where the executant denies execution or is dead or minor etc., existing section 35(3) provides that the registering officer shall *refuse* to register the document as to the person so denying or dead etc. (From such refusal there is an "application" to the Registrar under section 73). Instead of this provision, clause 21(1) proposes that the Sub-Registrar shall *refer* the document to the registrar. Secondly, this procedure of reference is to be made applicable to two more cases, namely,—

Clause
21(1)—
Procedure
on denial of
execution

(i) where the executant does not appear before the registering officer within the time allowed for appearance; or

(ii) where the attestation of the document is not proved, and attestation is necessary in law for the validity of the document.

Coming to the reasons for these changes, we may state that so far as the substitution of the *reference* procedure is concerned, the earlier Report³ states that the clause provides for a reference to the Re-

1. Sixth Report, page 78 (Notes).

2. See section 35 (2), as proposed to be amended.

3. Sixth Report, page 78, notes under clauses 21 and 22.

gistrar instead of making an order of refusal. In the body of the Report¹, the reason is more elaborately explained thus :—

“We are of the opinion that the procedure for appeal in case of refusal by the Sub-Registrar should be replaced by a simpler procedure. We consider that there is no need to provide for an order of refusal by the registering officer and then an appeal or application to the superior officer against that order. It would be conducive to expedition and simplicity, if instead of refusing to register any document and driving the parties to an appeal or application, the Sub-Registrar himself refers the matter to the Registrar to whom he is subordinate”.

The Report contemplates that the Registrar would then follow the procedure under existing section 74, and if he refuses to register, a suit can be filed under section 77.

As regards non-appearance or non-attestation, the change regarding non-appearance as such is not dealt with under this clause elaborately in the earlier Report, but the change regarding attestation is consequential on the scheme proposed in that Report—see clause 20(1)(b)(ii) and (2)—to ensure the attestation is inquired into at the time of registration. The intention was to treat proof of attestation, or rather non-proof of it, in the same manner as denial of execution².

The addition of categories of non-appearance and non-attestation was subject to the dissenting note of Dr. Sen Gupta³. His argument was, that under the existing law if the executant does not appear the document may still be registered under certain circumstances. Of course, the executant has to be called upon to appear and admit the execution; but it will be unfair to a person claiming under the document to refuse registration merely because the executant does not appear. It was still more unfair in his opinion, that because the attesting witnesses do not appear, there should be a reference to the registrar. The attesting witness has no interest in the transaction and may fail or refuse to appear. The parties should not suffer on this account. The provision, in his opinion, seemed to mix up the authentication of the execution of the document, which was the proper function of registration, with a decision about its validity. He also pointed out, that it was not clear that if the executant did not appear within the time, a further time for his appearance would be given.

1. Sixth Report, page 34, paragraph 92.

2. *cf.* Sixth Report, page 27, second sub-paragraph last line.

3. Sixth Report, page 103.

Many of the comments received express agreement with Dr. Sen Gupta's views. It is said, that if the executant does not appear, it is unfair to the claimant under the document to refuse registration. It has also been pointed out, that clause 21(1)(v) providing for reference in the case of non-proof of attestation, conflicts with clause 20(1) (a) and (b) (ii). It is further pointed out, that appearance before the Registrar might involve expenditure which the party may not be in a position to afford.

A major and detailed objection is, that under the present procedure a party goes to the Registrar only if he is dissatisfied with the Sub-Registrar's order refusing registration. Under the proposed procedure, however, a reference will invariably be made in every case, and this will result in unnecessary increase in correspondence and expenditure in the Registration office and also be a source of avoidable inconvenience to the parties. It has, therefore, been suggested that existing section 35(3) should be restored with consequential verbal changes in place of proposed clauses 21 and 22. It is contended, that the existing clauses have not caused hardship, and are comprehensive and should be retained.

Besides these major points, a number of other points have been made in the comments. Several verbal changes have also been suggested. These are not being noted in detail, because the major changes themselves seem to require reconsideration in the view of the numerous comments objecting to them. The reference procedure was proposed to be substituted by the Sixth Report, because it was to be considered that a single step should take the place of the double proceedings of refusal by the Sub-Registrar and appeal to the Registrar. It would, however, appear from the comments received on the Sixth Report, that the existing double procedure has not caused much inconvenience in practice, and the proposed new procedure has not been welcomed. In this state of affairs, in view of the strong opposition to the proposed change, the only course left is to retain the provisions of existing section 35(3) and sections 71 to 76. (Sections 72 and 73 were omitted in the Bill¹, because these sections relating to appeal etc. were proposed to be replaced by reference. Section 76(1) (a) was omitted in view of the change proposed by clause 13 in existing section 30², and its omission has nothing to do with the scheme of reference. Certain changes made in sections 71, 74, 75 and 76, in so far as they are consequential on the scheme of reference, have to be removed.)

Regarding non-appearing parties, the position has been considered by us. The Sub-Registrar should, we think,

1. Sixth Report, page 34, paragraph 92, and page 78.
2. Sixth Report, page 78.

refuse registration as regards the non-appearing parties. The contrary view taken in a *Lahore case*¹ may lead to fraud. We were, at first inclined to recommend an express provision to that effect, by adding the case of non-appearance to the existing section. Later, however, we decided not to recommend a change, in the absence of any serious practical difficulty.

The present position regarding non-appearance of one of the parties is dealt with elaborately by Mulla²⁻³.

Clause 21(2) Clause 21(2) contains detailed provisions for a reference by the Sub-Registrar to the Registrar under clause 21(1). If clause 21(1) is to be dropped and the existing provision for appeal under section 71 is to be retained⁴, the consequential changes will have to be made in this sub-clause also.

If the sub-clause is to be maintained along with the procedure for reference as envisaged in the Sixth Report, a number of small points made in the comments received on this sub-clause may have to be considered. But, in view of our recommendation under clause 21(1), we are not encumbering this Report with those points.

Clause 22(1) Clause 22(1) deals with the case where the Sub-Registrar has made a reference to the Registrar. If clause 21 is modified⁵, this will also have to be suitably altered.

Apart from this, there is no other change suggested in the comments.

Clause 22(2) Clause 22(2), corresponding to existing section 75(1), provides⁶, that the Registrar before whom a document comes for enquiry for the purposes of registration, shall order the document to be registered, if certain conditions are fulfilled.

A comment suggests a re-draft—which applies to the existing section also—to replace the latter half by the words “when the document was initially presented before him, register it and in cases under section 21, order the document to be registered”. The main object of this comment seems to be to cover the cases where the document comes to the Registrar otherwise than on appeal (or reference under the scheme of the Sixth Report). In such a case he has *himself* to register it; he has not to pass an order

1. See Mulla, (1963), page 151.

2. See Mulla, (1963), page 150, footnote (e), and pages 151, 152, 155.

3. See also *Sukhdeo v. Radhika Singh*, A.I.R. 1950 Pat. 77, 79 and *Raghuvir v. Kaulesar*, I.L.R. 23 Pat. 719; A.I.R. 1945 Pat. 140.

4. See discussion under clause 21(1).

5. See discussion relating to clause 21(1).

6. For reasons, see Sixth Report, page 68.

setting aside the Sub-Registrar's order. But, as the existing language has caused no difficulty, we do not think that this change is necessary.

Clause 22(3) provides that if the Registrar directs re-registration, he should also direct the parties to appear for registration before the Sub-Registrar. This corresponds to section 75(2) with two changes. One is the change consequential on the reference procedure. The other is that while the existing section seems to cover the case of the Registrar passing order on a document *presented* to himself, this case does not seem to be covered in the draft clause. Apparently, the earlier Report did not intend any deliberate change in this respect, and that case should be *added*, though no comments have been made on this point. Clause 22(3)

A fresh point made in the comments is, that where the case is one of reference, the Registrar should—

- (a) forward—
 - (i) the document;
 - (ii) copy of his order; and

(b) also direct the parties to appear before the Sub-Registrar on a specified day for registration, failing which registration should be refused.

In case the reference procedure is to be replaced¹, this change may not be necessary, because sending of the document to the Sub-Registrar by the Registrar can happen only if, as proposed in clause 21(2)(d), the document in original is to be forwarded to the Registrar by the Sub-Registrar.

Clause 22(4) corresponds to existing section 75(3) without changes, and no comments have been received. Clause 22(4)

Clause 22(5) incorporates a part of existing section 75(4), the other part being incorporated in clause 20(3)². Clause 22(5)

Clause 22(6)(b), dealing with the order of refusal by the Registrar, departs from existing section 76(1) in that it specifically enumerates the cases in which the Registrar refuses registration and, further, in doing so, it mentions non-proof of attestation also. This latter change (regarding non-proof of attestation) is consequential on the changed scheme embodied in clause 21(1)(v). As that changed scheme is *replaced* by the existing one³, clause 22(6)(b) will also have to be replaced by existing section 76(1). The former—specific enumeration—is not necessary, and may be *dropped*. Clause 22(6) (b)

1. See discussion relating to clause 21.

2. See discussion as to clause 20(3).

3. See discussion relating to clause 21(2).

Clauses 21
and 22
(Omission
or altera-
tion of sec-
tions 61 to
76)

Clauses 21 and 22, dealing with refusal of registration, lay down the procedure where refusal is on the ground *enumerated* in the clause. This scheme of specific enumeration is a departure from existing sections 71(1) and 72(1) read with section 76(1). The existing sections do not enumerate the grounds. All cases of "refusal to register" or "refusal to admit a document to registration" are covered (at present),—

(i) So far as the Sub-Registrar is concerned, by sections 71 and 72; and

(ii) so far as the Registrar is concerned, by section 76.

A query arises whether the proposed specific enumeration leaves out some other grounds. It has been pointed out that (for example), that refusal of registration under clauses 5 and 7 (language not being understood by the Sub-Registrar, or interlineations of insufficiency of description), would not be covered by clauses 21 and 22, because they are not mentioned there.

There seems to be some force in this objection. Cases under clauses 6 and 7 are not enumerated in clauses 21 and 22. In this respect, existing section 72 is much wider, because it covers all grounds of refusal to admit a document for registration, except denial of execution. It may be useful to add here, that "refusal to admit" a document for registration would appear to include cases of refusal to "accept for registration"^{1,2}.

It may also be noted, that as regards refusal under section 25 also, the prevailing view is^{3,4} that there is no difference (in relation to the applicability of sections 76 and 77) between "refusing to register" and "refusing to accept for registration".

We have already suggested⁵ the retention of the existing provisions in sections 71 to 76.

The points noted above support that conclusion.

Clause 23

Clause 23 corresponds to existing section 77, and deals with the suit to be filed in case of order of refusal by the Registrar. One change proposed by the earlier Report is the addition of a proviso, which seeks to save any other

1. *Munshi v. Daulat Ram*, A.I.R. 1944 Lah. 349, 350.

2. *Abdul Rahman & Co. v. Lakmichand*, I.L.R. 40 Bom. 40, 69; A.I.R. 1925 Bom. 34, 36 (Refusal under section 21 for want of sufficient description).

3. *Gangadara v. Smbasiva* (1916) I.L.R. 40 Mad. 759 (F.B.).

4. *Maneklal v. Kasturbhai*, I.L.R. 53 Bom. 644 ; I.L.R. 1929 Bom-365.

5. See discussion relating to clauses 21 (2) and 22 (1).

remedies to which a person may be entitled on the basis of an unregistered document¹. This change has been agreed to in a comment received on this clause. It may be adopted².

A few other points have, however, been raised. One is, that the time of thirty days allowed by clause 23(1) for the suit should be counted from the date of the *communication of the order to the applicant*, and not from the date of the making of the order, as at present. Another suggestion is to the effect, that in computing the period, the time requisite for obtaining a copy of the order should be excluded.

The first suggestion relates to the starting point. The present position seems to be that the starting point for counting the period of thirty days under section 77 is the date of the order, if the order was made in the presence of the party concerned. If the order was made in his absence, the starting point is, again, the date of the order, if notice of the date of the hearing of the application was given to the party; but if no such notice was given, then the starting point is the date of communication of the order³. The present position is, thus, clear and just, and no provision is needed.

As regards the time spent on obtaining copies, section 12(2) of the Limitation Act does not in terms apply to suits under this section⁴. Though a plaint in a suit under section 77 of the Registration Act is not required to be accompanied by a copy of the order, yet, in practice, it will be difficult to frame such a suit without knowing what the actual order was. Hence the obtaining of a copy is a practical necessity. *Having regard to the very short period of limitation, (30 days), this concession should we think, be allowed. We recommend an amendment accordingly*⁵.

Clause 24 mentions "authorities to adopt", and the retention of these authorities will depend on whether clause 3(3) is to be retained⁶. Clause 24

Clause 25 provides that (besides a document admitted to registration) *every memorandum of document* received shall be copied in the appropriate book. This is an addition to existing section 52 (1) (c). The earlier Report⁷ stated that memoranda were included in view of the changes introduced in clause 42. Clause 42(3) proposed that a registering officer receiving a copy of decree, etc., Clause 25

1. For reasons, see Sixth Report, page 34, paragraph 95, and page 78.

2. See section 77 (2), as proposed to be amended.

3. See Mulla (1963), page 263, and cases in foot-note (d) there.

4. See Mulla (1963), page 264, foot-note (r).

5. See section 77 (1), as proposed to be amended.

6. See discussion relating to clause 3(3).

7. Sixth Report, page 79, note on clause 25.

under that clause shall prepare a memorandum in the prescribed form. Under clause 36(1), which was adopted by clause 42(3), a copy of the memorandum had to be sent to all Sub-Registrars within whose sub-districts any part of the property is situated.

It has been suggested, that copying of the memorandum is not necessary. (From the comments received on other clauses¹, it would appear that the existing practice is only to file the memoranda). It has also been suggested, that copying of the memoranda will mean mere duplication of work. Since, at present, these memoranda also are indexed, this change can be safely dropped.²⁻³

It may be noted, that the words relating to "memorandum" in clause 25 can refer to—

(i) memoranda filed where an original document has been registered—clause 36(3);

(ii) memoranda filed where a copy has been received—clause 42(3).

In the former case, the memorandum is to be sent to other Sub-Registrars concerned, because the property is situated in different sub-districts. Since the Sub-Registrars are required to file it⁴ in Book No. 1, the further provision of copying out the memorandum is unnecessary in relation to them, in clause 25.

In the second case, only the copies are received by the Registration office. Since clause 42(3), earlier half, provides that the copy shall be filed in Book No. 1, in relation to them also, the copying out of the Memoranda under clause 25 is unnecessary. *मम नयन*

Clause 25

While dealing with endorsement on documents admitted to registration, clause 26 provides that on every *copy* sent to registering officer (under clause 42—existing section 89) the particulars mentioned in the section shall be endorsed. Those particulars include the signature and "addition" of the executant and of all persons examined under the Act and payment of money, etc. This is a new provision, not found in existing section 58 (which is confined to endorsement on original documents registered). The comments received state that the endorsement will not be possible in the case of *such copies*. This objection seems to be correct. The change may be dropped.

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1. See discussion relating to clause 36.
 2. This point is linked up with clause 36 and clause 64.
 3. See also discussion relating to clause 42 (3).
 4. Existing Section 65 (2) ; clause 36 (3).

Clauses 27-28 seem to make only consequential changes as to section references, in existing sections 59-60. Clauses 27—
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Regarding clause 29(1) (corresponding to existing section 61)—copying of endorsement, etc.—a suggestion has been made, that a provision should be made enabling the filing of maps, plans, or diagrams accompanying documents registered in books Nos. 3 and 4 and in the indices concerned. On this point, the clause does not seem to depart from existing section 61(1). This comment is apparently linked up with the similar comment on clause 7(4)—existing section 21(4)—and the course to be adopted *will depend*¹ on the decision on clause 7(4). Clause 29(1)

Following existing section 61(2), clause 29(2) deals with return of the document on registration. A comment has been received to the effect, that when the presentant has no interest left in the deed, he does not care to take it back, and the document remains lying until its destruction after two years and therefore a provision that the document should be returned to the presentant or his agent should be inserted. The existing provision does not, however, seem to require any change. The matter can be managed without elaborate statutory provisions. Clause 29(2)

Clause 30(1) makes no change in existing section 62. Regarding clause 30(2), a point has been raised that the reference therein to clause 65 is perhaps a mistake in clause 42. But it is not so. Clause 65(1), (2) and (3) refers to copies, and the mention of copies in connection with that clause is intelligible. Clause 30

Clause 32, following existing section 36, empowers the registering officer to send a request to an officer or court for issue of summons. A point has been made in one comment, that since clause 20(3) widens the powers of registering officers in relation to issue of summons, this provision may not be necessary. There may, however, be cases where the registering officer may prefer to get the summons issued through the court. Hence no change is necessary. Clause 32

Another comment is to the effect that the registering officer should himself have the power to issue the summons. This is covered by clause 20(3)².

Clause 33 is linked up with clause 32, and, following existing section 37, states that an officer or court required by a registering officer to issue a summons shall do so on receipt of the fee. Existing section 37 uses the expression "peon's fee payable in such cases" while clause 33 simply says "fee payable", etc. One comment suggests the sub- Clause 33

1. See discussion as to clause 7(4).
2. See discussion as to clause 20(3).

stitution of "process fee". The expression used in clause 33 is better and may be adopted if the whole Act is re-enacted¹.

Clauses 34—
35 Clauses 34-35 make no change in existing sections.

Clause 36(1)
(3) and (4) Clause 36(1), dealing with the procedure where a document relates to lands in several sub-districts, adds one new provision to existing section 64, in that, besides providing that in such a case the Sub-Registrar should inform all other Sub-Registrars concerned (by sending a memorandum), it also provides that the memorandum shall be copied in Book No. 1. (Under the existing section, the memorandum is only *filed* in Book No. 1). This change has provoked several comments, which state that since the memorandum is filed in Book No. 1, the further provision for *copying* is unnecessary. It is also pointed out that making out copies will mean duplication of work, because indexes of such memoranda are prepared just like the indexes of registered documents. There is some substance in these points. These comments may be *accepted*, and necessary change made in clause 36(1) 36(3) and 36(4) (d)², by removing the requirement of copying.

Clause 36—
New point A new point relating to clause 36 has been made in connection with Cantonments. It is stated, that section 287(2) of the Cantonments Act, 1924 (2 of 1924) requires that when any document relating to any immovable property is registered with Cantonment, the Registrar or the Sub-Registrar shall send intimation to the Cantonments Board or other prescribed authority; it has therefore been suggested that a provision may be inserted in the Registration Act to the effect that a Sub-Registrar, on registering a non-testamentary document relating to immovable property situate in any Cantonment, shall forward a memorandum of the document to the authority approved to administer such Cantonments. The suggested provision would be a duplication of what is, in substance, contained already in the Cantonments Act, and does not appear to be necessary. It may be noted that besides the Cantonments Acts, there are many other Central Acts containing provisions of interest to registration law³.

Clause 37 Clause 37 proposed certain changes in existing section 49, for reasons explained in the earlier Report⁴. The comments received express agreement with this change. But one comment suggests, that the words "unless it has been registered" may be placed at the beginning, to make it

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1. To be carried only if whole Act is redrafted.
 2. See also discussion relating to clause 25.
 3. See the list in Mulla (1963), pages 284-285.
 4. See Sixth Report, page 30, paragraphs 75-76.

clear that it governs all the clauses. This change may be carried out only if the whole Act is re-enacted¹.

Having regard to our recommendation² under clause 3(1) (a), existing section 49 may, as regards documents require to be registered under any other law, be *kept as it is*. Omission of existing section 49(1) (c) and proviso was proposed in Sixth Report, but this may revive old controversies³. They should, therefore, be *retained*.

Clause 38 corresponds to existing section 47, without changes. No comments have been received on this clause. Clause 38

Clauses 39 and 40 correspond to existing sections 48 and 50 with certain changes which are explained in the earlier Report⁴. (The details of those changes are not relevant for the present purpose). Dr. Sen Gupta had, however, in his dissenting note⁵, expressed the view that the existing sections should be omitted altogether. He pointed out, that ever since these sections were brought on the statute book, successive amendments had restricted their scope, and now there was a very tenuous survival of the original section. When the original section was enacted, registration was optional and not (as provided in section 17 of the Act) compulsory. Now section 17 was proposed to be expanded so as to include all documents concerning immovable property. There was therefore, no justification for providing for priority of registered documents over unregistered ones (existing section 48) because the unregistered documents are "*ex hypothesi* perfectly good and effective instruments". Moreover, the giving of such priority was wrong on principle. The prior document or oral document transfers a right to the transferee, and the transferor should have no right to transfer the same by any subsequent document. By making a subsequent document, he is simply transferring something which he has not got. The existing section, in his opinion, left open the door to fraud. A person may transfer a small property *bona fide* to another on receipt of proper consideration, deferring only delivery of possession by consent or for convenience. Under existing section 50—clause 40—even the delivery of possession would be no protection, so that a new registered document may be got executed for the same purpose in favour of somebody else. There was no provision in the law even for reimbursement to the first transferee for the expenses incurred by him. Clauses 39 and 40

Lastly, in his opinion, when virtually every document of importance is compulsorily registrable, no real advantage would be gained by retaining these sections.

1. To be carried out only if the whole Act is to be re-enacted.

2. See discussion as to clause 3 (1)(a).

3. See Mulla (1963), pages 174 and 182.

4. Sixth Report, page 29, paragraph 74 and page 31, paragraph 77.

5. Sixth Report, pages 103 and 104.

Several comments received on these clauses have expressed the view that the sections should be deleted altogether, that they encourage fraud, that they are unnecessary and redundant, and expressed agreement with Dr. Sen Gupta's views. One comment, however, agrees with the amendment proposed by the Law Commission, while one comment suggests the specific mention of section 53A of the Transfer of Property Act in clause 39, second proviso.

It would appear,¹ that the provisions for giving priority to a registered document over an unregistered one were first introduced at a time when registration of the documents concerned was *optional*. As regards documents *compulsorily* registrable, the first Registration Act which gave them priority over unregistered document was the Act of 1877. Before this Act, a document compulsorily registrable had no priority, so that there were cases in which persons committed fraud by first executing a sale deed for, say Rs. 50 (optionally registrable) and then executing a fraudulent sale deed of the same property for, say Rs. 101 (compulsorily registrable). The document, though registered, had no priority over an unregistered document under the old Act, as it was *compulsorily* registrable. The result, was that the deed for Rs. 50 held the field.

This was not all. The document for Rs. 50 was actually executed later, but was *ante-dated*.² It thus defeated the deed of Rs. 101. It was to prevent such mal-practices in respect of documents compulsorily registrable that registered documents were given priority over unregistered documents.³⁻⁴

The deletion of these sections, sections 48 and 50, might therefore revive the very malpractice to remedy which the 1877 Act first introduced the comprehensive provisions now found in section 50. That is to say, the transferee under a document for more than Rs. 100 (registered) may be defrauded by a *subsequent* transfer for less than Rs. 100 (unregistered) which is *ante-dated*. It is true, as pointed out by Dr. Sen Gupta, that retention of the section can lead to fraud in the converse case, namely, a document for less than Rs. 100 (unregistered) can be defeated by a document for more than Rs. 100 (registered). Thus, either course is likely to leave open one kind of fraud. It is not easy to say which is the more frequent and serious type of fraud. We consider, however, that the sections should be *retained*, because—

(i) fraud of the type contemplated by the 1877 Act cannot be ruled out until the limit of Rs. 100 is removed;

(ii) retention of the section would encourage people to seek registration to ensure priority and thus promote the habit of registering documents:

1. See Mulla (1963), page 201, under the heading "Regulations".

2. See cases cited in Mulla (1963), pages 203-204.

3. See the statement of Objects and Reasons to the Bill which became the 1872 Act, cited in Mulla (1963), page 204.

4. Section 50 of the 1866 Act (Mulla, page 199) may be contrasted with section 50, 1877 Act (Mulla, page 200).

(iii) where the section is likely to cause hardship, the Legislature has intervened to provide relief—as in section 53A Transfer of Property Act. (This is in relation to existing section 50).

The existing sections, therefore, need not be removed. As regards the suggestion to mention section 53A, Transfer of Property Act, in clause 39, that appears to be unnecessary, because section 54A is confined to cases of writing, while clause 39 deals with competition between a registered document and an oral agreement or declaration.

The second proviso in clause 39 (added by the Sixth Report to save section 27(b), Specific Relief Act, 1877), is not necessary. The existing position is fairly clear.¹ The second proviso may be dropped. (The existing proviso relating to equitable mortgages was necessary for special reasons).²

In clause 40, the saving regarding section 53A, Transfer of Property Act is not necessary, and may be dropped.

Clause 41(1) corresponds to existing section 87, which Clause 41(1) deals with defects in the appointment or procedure of the registering officer.

Clause 41(2) is a new provision, to the effect that any Clause 41(2) defect in or the want of authority of a person to present a document shall not, by itself, render invalid the registration of the document or the transaction effected by it. Reasons for this change were explained in the Sixth Report,^{3,4} the main point being that once registration is effected, the executant or any other party (whether present or not) should not be allowed to go behind the registration. This change itself has not provoked any comment; but two comments suggest the deletion of the words "or the transaction effected by it" in clause 41(2), because the only question with which the sub-clause is concerned is validity of the registration. The comment may be accepted.

It is also our view, that the provision in clause 41(2) should be confined to parties who before the registering officer assented to registration or admitted execution. Subject to these changes, the provision in clause 41(2) is a useful one, and we recommend⁵ its adoption in a suitable form.

1. See Mulla (1963), pages 169 and 227.

2. See Mulla (1963), page 168.

3. Sixth Report, page 36, paragraph 99 and page 80.

4. The existing law is discussed in Mulla (1963) page 134, under section 32.

5. See section 87, as proposed to be amended.

Clause 41—
New point

Regarding clause 41, a new point has been raised to the effect that if a registering officer, by inadvertence, admits a document affecting immovable property in a place over which he has no jurisdiction, the defect should be curable.

The existing law seems to be that if no part of the property is situate within the sub-district where it is registered, the registration is void under section 28¹. The proposed change might appear harmless at the first sight. But there is one risk, namely, in the district where the property is actually situate, the transfer registered by inadvertence in another district would not be recorded or traceable in the registration records, so that persons subsequently intending to take a transfer of that property might actually have no notice of the first transfer, and may yet be burdened with constructive notice of the transfer under section 3, definition of notice, Explanation 1, Transfer of Property Act. No change is therefore, recommended, as to this point.

Clause 42(1)

Clause 42(1) deals with copies of orders, etc., to be sent by the court or officer. The clause expands the category of orders to be so sent. The reasons for this change were explained in the Sixth Report at various places.² The object was, that registration under the Act should operate as a complete and effective notice concerning title. All documents affecting title to immovable property must be brought within the purview of the Registration Act. Either the document should be registered under the Act, or a memorandum thereof filed under sections 65 and 66 under Book No. 1 and under section 89. Bringing in all documents under section 89 would not put the parties to any additional expenditure, since they are not required to be registered. Copies of all decrees or orders of court affecting immovable property were also proposed to be sent to the Registrar,³ and so were copies of even complaints and memoranda of appeal.⁴

(This recommendation was subject to the dissenting note of Dr. Sen Gupta.)⁵

1. See the cases cited in Mulla (1963), page 126, under section 28, under the heading "Registration void if no part", etc.

2. Sixth Report, page 17, paragraph 39 ; page 18, paragraph 40 ; page 37 paragraphs 101 to 103 ; page 7 (under section 89) ; page 75 ; and page 80 (Notes).

3. Sixth Report, page 37, paragraph 102.

4. Sixth Report, page 37, paragraph 103.

5. Sixth Report, page 105.

I. The following chart will show how the clause widens the scope of the existing section.

Existing section 89	Clause 42 (1)
(1) Loan under the Land Improvement Loans Act, 1883.	(a) Loan under the Land Improvement Loans Act or the Agriculturists' Loans Act, 1884 (12 of 1884).
(2) Certificate of sale of immovable property under Civil Procedure Code.	See (h) below.
(3) Loan under the Agriculturists' Loans Act, 1884.	See (a) above.
(4) Certificate of sale by Revenue-Officer, granted to the purchaser of immovable property sold by public auction.	See (h) below.
	(b) Partition by a Revenue Officer ;
	(c) Vesting Order under the Charitable Endowments Act, 1890, etc ;
	(d) Grant of immovable property by or on behalf of the Government ;
	(e) Decree or order of a court including one upholding possession of defendant under section 43A of T. P. Act ;
	(f) Security bond executed in favour of a court or public officer ;
	(g) Composition deed accepted by a court in insolvency ;
See (2) and (4) above	(h) Certificate of sale granted to the purchaser by a civil court or other public officer.

II. *Plaint or memorandum of appeal in which immovable property is in controversy.*

As numerous comments raising multifarious points have been received, it would be convenient if they are classified and the points made therein divided, as follows:—

(i) One line of criticism is, that the proposed amendment will throw enormous work on courts and registering offices, without any substantial advantage or benefit to the public. It would, it is stated, serve no useful purpose, and increase ministerial work.

(ii) Regarding complaints and memoranda of appeal, it is pointed out, that the process of sending out copies involves immense trouble and expenditure, and will encumber the record of the registering officers. A

plaint or memorandum of appeal is only a preliminary stage of the proceedings, and its transmission to the registering officer will be meaningless. Dr. Sen Gupta had also in his dissenting note,¹ made the point that since the filing of a plaint does not affect title, its recording under the clause will have no use except to show that a suit has been filed. If it is only to give notice to any party that there is a pending suit, it is, in his view, superfluous, because the doctrine of *lis pendens* is not dependent on notice. Moreover, he pointed out, a memorandum of appeal does not contain any description of immovable property, and conveys (to its reader) nothing with respect to the property which is the subject matter of the appeal.

(iii) Besides these objections, a few points of detail have been also made in the comments. Thus, one comment says that courts and officers fail to send copies for years, and that, therefore, a time limit of four months should be laid down. Another comment suggests, that the words "and" after the words "specified in this subsection" may be deleted, so as to remove the misunderstanding that the subsequent words "affecting, etc." do not apply to "decree or order".

(iv) An alternative suggestion is that if copies of decrees passed after adjudication are sent to the Registration Department, the purpose will be served. This was also Dr. Sen Gupta's suggestion.¹

(v) Regarding security bonds referred to in clause 42(1)(f), it has been pointed out that they are compulsorily registrable under existing section 17(1)(b). The decision in *Bishnath Sahu v. Prayag Din*,² is cited in support of this, and it is argued that the original is registrable compulsorily, a copy need not be sent under this clause.³

(vi) It has also been suggested, that these changes may be replaced by a simple provision requiring copies of order of courts directing *attachment* of immovable property to be registered.

(vii) Linked up with these changes is the deletion of the relevant portions of existing section 17(2), listing various documents as exempt from registration. These are, section 17(2)(vi) and section 17(2)(vii), (viii), (ix), (x), (xi) and (xii). As regards section 17(2)(vi) (exempting from registration) "any decree or order of court except a decree or order expressed to be made on

1. Sixth Report, page 105.

2. *Bishnath Sahu v. Prayag Din*, A.I.R. 1958 All. 820.

3. As to existing law, see Mulla, (1963), page 94.

a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding" it has been suggested, in one of the comments, that it should not be deleted. Clause 42(1) (c) provides that a copy of a decree or order of a court (affecting immovable property) is to be transmitted to the registering officer. But an apprehension has been expressed that unscrupulous persons might cheat the Government of the revenue by starting a suit on the basis of an insignificant item and then obtaining a compromise decree by including therein property of much greater value. Therefore, section 17(2)(vi) should be restored (so that such compromise decrees will continue to be registrable).

The object with which the Law Commission, in its earlier Report, proposed the changes was the beneficial one of making the registration law more useful by bringing these documents on the registration records under the proposed procedure. But the comments have pointed out the difficulties. We have to balance, on the one hand, the benefit likely to result and on the other hand, the inconvenience likely to be caused and the increase in work. Even the existing sketchy provisions are not promptly complied with, as would appear from one of the comments. In this state of affairs, to add to the burden on the courts and public officers is likely to mean the addition of a duty which will not be fulfilled in practice, and the provision might thus remain nugatory. The more specific objections are in relation to *plaints and memorandum of appeal*; but the difficulties apply even to decrees, because the number of decrees, etc., affecting immovable property which are being daily passed by courts must be considerably large. The proposed changes in existing section 89 will, therefore, have to be dropped.

Consequential changes will, therefore, be *necessary to retain* the omitted portions of section 17(2). (As regards section 17(2)(vi) relating to decrees other than compromise decrees affecting immovable property, a specific objection has been made to its deletion from clause 3(2). Though the apprehension that the people will file suits to cheat the Government of its revenue may not possess a strong justification, yet the retention of section 89 will itself *necessitate* the retention of section 17(2)(vi)—appearing as clause 42(1) (e)—in clause 3(2)).

It does not appear necessary to provide for the compulsory registration of *attachment*. Attachments are effected by an elaborate procedure, which itself is intended to secure sufficient publicity.

Imposition of a time limit for sending copies under existing section 89 is a good suggestion; but if the time limit is not adhered to, doubts will arise. It cannot, therefore, be accepted.

Clause 42 (1) As to security bonds, the assumption that they are and security bonds compulsorily registrable under existing section 17(1)(b) need not be examined. There is some conflict of decisions on the point, noted in Mulla¹ and reviewed in the cases.²⁻³⁻⁴

We think that it is desirable to exempt a security bond executed in favour of a court or a public officer in his official capacity for the due fulfilment of a condition imposed by a decree or order of the court or public officer.

We recommend accordingly.⁵

Clause 42(2) Clause 42(2), dealing with plaint and memorandum of appeal, will have to be dropped.⁶

Clause 42(3) Clause 42(3), which is described in Sixth Report⁷ as a new provision, provides that the registering officer receiving a copy of the decree, order, instrument, etc., under the clause shall—

(i) file it⁸ in Book No. 1; and

(ii) prepare a memorandum in the prescribed form; and

(iii) the provisions of clause 36 shall apply to such memorandum.

The object of this provision⁹ was to state what steps should be taken by the Registering Officer on receiving the documents, etc. The words requiring preparation of a memorandum in the prescribed form and the consequential incorporation of clause 36 have been objected to in the comments, on the ground that every registering officer in whose sub-district the property is situate will get a copy of the document and file the same.

Since the documents received under this section (existing section 89) are to be filed in Book No. 1, the preparation of the memorandum, appears to be unnecessary. If the property is situated in several sub-districts and the intention is to apply the procedure under clause 36—section 64—that

1. See Mulla, (1963), page 94.

2. Bishmath Sahu v. Prayag Din, A.I.R. 1958 All. 820 (D.B.).

3. B. Rama Bhatt v. Kodanda Rama Bhatt, A.I.R. 1963 Mysore 332 (D.B.) (Reviews case-law).

4. Kasemali v. Ajoyendu, A.I.R. 1956 Cal. 375 (D.B.) (Reviews case-law).

5. See section 17 (2) (via) (new), as proposed to be inserted.

6. See discussion under clause 42 (1).

7. Sixth Report, page 59, clause 42 (3) marginal entry.

8. As to filing, see existing section 89 (1) (2), etc., last 6 words.

9. See Sixth Report, page 81.

also is unnecessary, because, as provided by clause 42(1), every sub-Registrar concerned will get a copy. The words in question may, therefore, be removed.

A suggestion has been made that Rules 88 to 90 of the Madhya Pradesh Registration Rules¹ should be adopted throughout the country, as they make provisions as to how these documents are to be entered in Book No. 1 and how the books are to be bound as Supplementary Book No. 1 to prevent injury to the binding. This aspect will be dealt with later².

Clause 42(4), which is a new provision not found in existing section 89, provides, that the filing of the copies under this clause shall, for the purposes of the Registration Act and of section 3 of the Transfer of Property Act, have the same effect as if the document had been registered under this Act. The reason for this change was thus explained³.—

Clause 42(4)
(New)

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

Now, this change has provoked two comments. One is, that between the words “under” and “this section”, the words “sub-section (1)” should be interposed. That comment also makes the point that the appropriate remedy is amendment of section 3 of the Transfer of Property Act, and registration of mere claim to property made in a civil court is outside the scope of the Registration Act. The other comment states that the filing of copies under this section should have the effect *only* of notice under the Transfer of Property Act and should not have the same effect as a registration.

Now, the real question is, what should be the effect of the filing of copies under existing section 89. The existing Act does not contain any specific provision on the point. On principle, it should have the same effect as registration. Its filing in Book No. 1 (expressly provided for by existing section 89)⁴ supports this approach. Book No. 1, as described by existing section 51(1), is the main “Register of Non-testamentary documents” relating to immovable property. One of the objects of registration is to bring into

1. Rule 88 of the Madhya Pradesh Rules (cited in the suggestion) provides that only the copies & memoranda mentioned in the rule shall be filed in Book I or Book 4. Rule 89 relates to “Supplementary Book 1” being a separate file book for copies mentioned in rule 88 (b) to (g). Rule 90 relates to “Additional Books 1 and 4.” for spare copies.

2. See discussion relating to clause 61 (2), *infra*.

3. Sixth Report, page 81.

4. See Section 89 (1) 89 (2), etc., last 6 words.

being a statutory record under official machinery of transactions of value, and the *filing* of copies should have the same legal consequences. On this reasoning, the proposed general provision equating such filing with registration, is amply supportable.

It is true, that the very nature of the 'documents' of which copies are filed, is such that they would not attract the provisions of section 50, which is confined to certain "instruments" and leases referred to therein¹. Since these are not documents "required by section 17 to be registered," section 49 may also not be attracted.

A certificate of sale also may not be an "instrument" requiring registration². Therefore, it may be that for practical purposes, the only useful consequence of the proposed provision would be the attraction of section 3 of the Transfer of Property Act (registration to amount to constructive notice).

The need for this provision was, therefore, considered at length by us. Documents filed under existing section 89 are, by virtue of section 51(2), filed in Book 1, and are referred to in section 51(2) as "registered". It is not, therefore, necessary to insert the proposed new provision. The doubt raised in the Sixth Report³ on the subject relates to a small area⁴, namely, sale certificates.

(So far as section 3 of the Transfer of Property Act is concerned, that applies only where the documents are *compulsorily registrable*).

Clause 42(4) may, therefore, be *dropped*.

Clause 42—
New point

It has been suggested in one of the comments that since under rule 11(E) (2) of the Evacuee Interest (Separation) Rules, 1951, a registering officer is required to file a copy of the sale certificate under those rules in Book No. 1, a provision should be added to the effect that an officer granting a certificate of sale of immovable property under that rule shall send a copy of the certificate to the registering officer, etc., who shall file it in Book No. 1. This, however, appears to be a provision which can be more appropriately made in those rules.

Clause 43

Clause 43(1) reproduces existing section 42, Clause 43(2) is a new provision, to the effect that when a will is deposited under existing section 42, the testator *shall* endorse on the cover the name and address of the person to whom the original document should be delivered after

1. As to non-application of section 50, see Mulla, (1963), page 279 and 280, footnote (j).

2. cf. Mulla, (1963), pages 105 and 207, and also case at page 280 footnote (j).

3. Sixth Report, page 38, paragraph 104.

4. See Mulla, (1963), pages 279 and 280.

his death. This change appears to be a part of the scheme proposed regarding deposit of will¹. Many wills, it was stated, were accumulating in the Registration offices until the court summoned the wills. It might also happen that even when there is a will, the man's estate may be dealt with without reference to the will. To remedy this situation, suitable amendments were proposed by the earlier Report. One of these was the provision that the testator should endorse on the cover the name and address of the person to whom the original document should be delivered. After death, the will is to be opened on an application under clause 46(1)—existing section 45(1),—and delivered to the nominee under clause 46(1), last portion. (Other changes are not relevant for a consideration of clause 43). Thus, nomination is *compulsory* under the proposed provision.

Now, one comment on the clause is to the effect that this provision for endorsement is not necessary, while another comment points out that it will defeat the object of not disclosing the name of any person connected with the will. After careful consideration, we reject these objections. Secrecy is one consideration that usually prevails in the case of wills; but, as against that, one must also balance the benefit that is likely to result from a provision for nomination. With an endorsement, specifying the nominee, as contemplated, it would be easy for the registering officer to deliver the will to the nominee. The present section (section 45) merely says that after opening the will it shall be copied in Book No. 3; and, thereafter, the original will shall be again re-deposited. This is not satisfactory. Even a person whom the testator wanted to know the contents of the will cannot (at present) get back the will. Hence, if the whole scheme regarding deposit of wills is to be maintained², the proposed provision need not be disturbed. Even otherwise, we do not see any objection to a provision enabling nomination. But we think that it should be confined to cases where the testator himself deposits the will, so as to ensure that the agent, after taking charge of the will from the testator, does not add the nomination by forgery.

We recommend an amendment of the section accordingly³.

Clause 44(1) embodies existing section 43(1) dealing with the procedure on deposit of wills. A comment suggests a verbal change to the effect that instead of the words "shall note", the words "and shall endorse" be substituted. Really speaking, the clause contemplates two kinds of action, noting in the book and noting (endorsement) on

1. Sixth Report, page 28, paragraph 72 and page 81.

2. See clauses 46 and 48.

3. See section 42, as proposed to be amended.

the cover. For the latter action, the word "endorse" is more appropriate. It is, however, unnecessary to make such a minor and verbal change.

Clause 44(2) Clause 44 (2) makes no change in section 43 (2).

Clause 45 Clause 45 corresponds to existing section 44.

Clause 46 Clause 46 proposes the following changes in existing section 45 (proceedings on death of person depositing will)—

(i) Under the existing section, after death, on application made to the registering officer, the latter has to open the cover and cause the contents to be copied in Book No. 3 and then *re-deposit* the original will. Under the clause, however, this provision for re-deposit is omitted, for the reason¹ that it has been replaced by a provision for delivery of the will to the *nominee of the testator*², the nomination being under clause 43 (2).

(ii) Under the existing section, if the will remains in deposit, it continues so indefinitely; while under clause 46 (2), if no steps are taken for withdrawing the will (by the testator) or for seeking delivery of the deposited will to the nominee, then the Registrar has to follow the procedure for the *destruction* of the will as given in clause 48.

Now, one point made in the comments received, is, that at the time of the application under clause 46(1), the nominee of the testator would rarely accompany the applicant. Hence the provision for delivering to nominee would never come into play. Another comment suggests that the procedure of nomination under clause 43 (2) should be deleted and consequentially the provision for delivery to the nominee should also be deleted and existing position as in section 45 restored. A third point is that provision for return of wills *at present lying* in deposit should also be made.

If the provision for nomination is retained³, then the provision for delivery to the nominee has also to be retained. The possible situations may be studied in detail. Assuming that the testator has made the nomination, it may be that—

(i) no application may be made for opening the cover; or

(ii) the application may be made but the copying expenses not paid; or

1. Sixth Report, page 28, paragraph 72.

2. See clause 43 (2) as to nomination.

3. See the discussion under clause 43 (2).

(iii) the nominee may not be present with the applicant or may not be traceable. Under clause 46(2), in all cases the procedure for disposal as laid down under clause 48 has to be followed, that is to say, giving of notice to the depositor and his nominee, thereafter opening the will, further notice to the executor and beneficiaries under the opened will, and (if no steps taken for registration of the will) ultimate destruction of the will.

As the scheme of destruction of wills is to be altered¹, clause 46(2), will also require changes. Our proposal for voluntary nomination² involves a consequential change, and we recommend³ an amendment accordingly. The nominee would usually have knowledge of the will, etc., and can be expected to be present at the time of opening. As regarding wills lying *at present*, that is not a matter which can be dealt with in a *new Act*.

One suggestion regarding clause 45 is that the Registrar on application or *suo motu* should open the sealed cover on being satisfied of the testator's death and cause the contents of the will to be copied in Book No. 3 and deliver the will to the nominee of the testator or executor if no such person is forthcoming to file it. "But opening *suo motu* may be risky. Opening on application is already covered. Hence no such change is needed". Clause 46—
New point

Clause 47(1) corresponds to existing section 46(1). Clause 47(1)
The reference to section 294, Indian Succession Act, 1925 may be substituted⁴ (as proposed in the Sixth Report), in place of reference to the old Act.

Clause 47(2), which follows existing section 46(2), Clause 47(2)
provides that when a court orders production of a deposited will, the Registrar shall open it, cause it to be copied in Book No. 3 and make a note, etc. Now, one comment suggests that the copying of the will should be at the expense of the person causing it to be produced in the court. We do not, however, consider a statutory provision to be necessary⁵.

Clause 48 is a *new* provision, whereunder wills deposited with the Registrar are to be disposed of by *destruction* Clause 48
(New)
(if not registered before the Registrar according to the procedure given in the clause). Briefly, the procedure is that the registering officer has to give a notice on the 1st July, every third year to the depositor and his nominee,

1. See discussion relating to clause 48.

2. See discussion relating to clause 43(2).

3. See section 43, as proposed to be amended.

4. See amendment proposed to section 46.

5. The matter can be left to rules. See Bihar Rule 87, Mulla, (1963), page 345.

inquiring about the depositor's present address. If, after such notice or otherwise, the Registrar is satisfied that the testator had died, he has to open the cover in the presence of a judicial officer not below the rank of a subordinate judge. He has then to give notice to the executor and beneficiaries that if they do not register the will within six months, it *will be destroyed*. Thereafter, the actual destruction is to be in accordance with the provisions of the Destruction of Records Act, 1917. This procedure is a part of the proposed new scheme dealing with wills¹. It was stated in the Sixth Report² that it had been pointed out that numerous sealed covers containing wills had accumulated (in registrar's offices), no persons having come forward to claim them.

The comments received on this clause object to it, on the ground that there is no need for destruction of wills, because the number of unopened and unclaimed wills cannot be large. It is pointed out, that giving of notices to depositors every year will increase the Registrar's work and also the work of the subordinate judge. Whenever the probate Court calls for a will, the will can be sent in original. Sending of notices, it is stated, will also involve much additional expense on postage. Moreover, the sending of the notice will naturally leak out the fact that the testator had deposited a sealed will, and this may result in his being subjected to pressure to disclose the contents thereof, which will defeat the very purpose of depositing a sealed will. If the beneficiary is a minor and the nominee is his guardian with an adverse interest, then it is said, the nominee may not respond to the notice, so that the will may be destroyed under the proposed provision, thus depriving the minor of his right. Therefore, it has been suggested, this clause should be deleted.

Another set of comments favours this provision with some modifications suggested. One suggestion is, that instead of a subordinate judge, a munsif should be substituted. Another is a suggestion to the effect that references to nominee should be excluded, to maintain secrecy. A third comment is to the effect that in clause 48(2), instead of "Registering Officer", the "Registrar" may be substituted.

It has also been suggested, that a notice should be issued on the 1st July of every year in respect of *any sealed cover* which remains unclaimed for more than 10 years on that date.

There appears to be some substance in the objections based on the ground of increase of work and expenditure. Though the proposed provision, would be a useful one,

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1. Sixth Report, page 28, bottom, paragraph 72.
 2. Sixth Report, page, 28, middle.

its implementation may perhaps be impracticable. The provision is, thus, likely to prove inconvenient, and has, for that reason, to be dropped.

Clause 48(3) deals with the actual procedure for the destruction of wills. Since the whole clause has to be dropped¹, the detailed comments on clause 48(3) need not be considered.

Clause 49(1) embodies existing section 3(1) relating to the appointment of the Inspector General of Registration. A new point has been made in a comment to the effect that Munsif Magistrates in the Taluka and District Magistrates should be given powers for supervision over the day to day work of sub-Registrars and Registrars respectively. We consider that this matter depends on the administrative pattern adopted in each State, and a general amendment for the whole country is unnecessary.

Clause 49(2) embodies section 3(2), and no comments Clause 49(2) have been received, on this clause.

Clause 50 reproduces section 5, and no comments have been received on this clause.

Clause 51(1) corresponds to existing section 7(1). Clause 51(1)

Clause 51(2) embodies existing section 7(2), with the substitution in the proviso of "reference" for "appeal". This change is consequential on the changed procedure under clauses 21 and 22, and if those clauses are altered², the word "appeal" has to be restored in this clause also.

Clauses 52 to 54 correspond to existing sections 8, 69(1), Clauses 52 part, and 68, without changes. No comments have been received on these clauses.

Clause 55 deals with absence or vacancy in the office of the Registrar. It departs from existing section 10, by omitting mention of "the Judge of the District Court". Under section 10(1), later half, in default of appointment by the Inspector General, the "Judge of the District Court" acts as a Registrar. This provision does not apply to Presidency towns, where, under section 10(2), only a person whom the Inspector General appoints is the Registrar until the State Government fills up the vacancy. The provision authorising the District Judge to act as a Registrar was proposed to be removed by the earlier Report³ on the ground that there was no reason why there should be any difference in this respect between the areas dealt

1. See discussion relating to clause 48.

2. See discussion relating to clauses 21 and 22.

3. See Sixth Report, page II, paragraph 24.

with by sub-sections (1) and (2), i.e., the mufassil and Presidency towns. The earlier Report, therefore, recommended a uniform provision.

Now, one comment suggests restoration of the existing section, pointing out that occasions may arise when the Inspector General makes a default in appointing a Registrar immediately owing to pre-occupation. We think, that there is some force in the comment, and *restore the existing section*.

- Clause 56 Clause 56 (corresponding to existing section 11) omitted the excepting words, i.e., the last eight words which run "except those mentioned in sections 68 and 72". The clause has provoked no comments. We, however, would like to *retain the existing section*.
- Clause 57 Clause 57 corresponds to existing section 12. It has provoked no comments.
- Clause 58 Clause 58, following existing section 13(1), provides that all appointments under sections 10, 11 and 12—clauses 55, 56 and 57—shall be reported to the State Government by the Inspector General. A point has been made in the comments received on this provision, to the effect that this clause should be *deleted*. The statutory duty to send reports, it is said, serves no purpose or benefit. Appointments are made under the Service Rules, and (it is stated) there is no point in the Inspector General's sending a report to the State Government. The section, however, is harmless, and may be *retained*. Section 13(2), which was omitted in the Sixth Report, may also be *retained*. It was regarded as unnecessary in the Sixth Report¹, but we do not share that view.
- Clause 59 Clause 59 combines existing sections 14 and 16. It has provoked no comments.
- Clause 60 Clause 60 corresponds to existing section 15. It has provoked no comments.
- Clause 61 Clause 61 deals with the register books to be kept in the Registration offices. It departs from existing sections 51 and 52(2); on the following points:—
- (i) It provides that "memoranda" prepared under clause 42 or received under clause 36 shall be entered in Book No. 1. This is consequential on a similar provision in clause 25, clause 36 and clause 42(3), latter half;
 - (ii) It provides that copies of decrees, etc., received under clause 42 shall be filed in Book No. 1;

1. Sixth Report, page 82 (notes).

(iii) If any of the books is in danger of being destroyed or becoming illegible, it authorises the Registrar to order re-copying of that book or portion thereof, and provides that the copies so prepared shall be deemed to be the original. The reasons for this was^{1,2} that a suggestion for the insertion of such a provision had been made and certain States (Bihar and Bombay), had already amended the Act and the necessity for such provision was obvious;

(iv) It also incorporates the provision in section 52(2) regarding authentication of books, with this modification, that it substitutes "State Government" for "Inspector General";

(v) The existing heading of Book No.—2 "Record of reasons for refusal to register"—is changed into "Record of reasons for referring a document to the Registrar". Consequentially, in the offices of Registrars, Book No. 2A is headed "Record of reasons for refusing to register". This is consequential on the scheme of reference under clauses 21 and 22.

Now, several comments have been received on this clause, which contain points relating both as to the existing section and as to the changes proposed therein.

Regarding clause 61(1), which lists the Books and gives their nomenclature, it has been stated that the nomenclature of the Registers is not clear. Proposed Book No. 2 should be described as "Register of reasons for referring, etc.", Book No. 2A as "Register of reasons, etc." and Book No. 4 and Book No. 5 should be described as "Registers of miscellaneous documents". It is also suggested, that a Register may be prescribed for recording the names of parties presenting documents for registration. We do not consider these verbal changes to be strongly needed. As to register of persons presenting documents, presentation is not on the same footing as registration. The change is not needed.

Regarding clause 61(2), which provides that in Book No. 1 shall be entered certain documents and also certain memoranda, it has been suggested that not only the document should be entered, but also the *signatures* of the executant and the witnesses obtained to enable the document to be treated as counterpart of the original and legally noted to be used in proof of the transaction. This does not appear to be necessary. The use of copies given by the Registrar from the Register is allowed under section 57(5) of the Act, and that is enough. Another point made is that the entering of memoranda in the Register, is not necessary. Another point made is that provision

1. Sixth Report, page 32, paragraph 79.

2. The clause is clause 61(5), in Sixth Report page 65.

should be made for keeping register Book No. 1 and Book No. 4 in the form of a file book for the registration of documents of a *temporary character*, which are so prepared that printed copies may be filed in the Registration office instead of the document being copied by hand. This seems to be a useful suggestion, and may be *accepted*¹. Some safeguards will be necessary to prevent tampering, and the safeguards can be provided for by rules.

It may be noted, that some of the changes made by clause 61 are consequential on the changes proposed by other clauses. Thus, copying of memoranda is linked up with clauses 25, 36(1) and 42(3), latter half; and filing of the copies is linked up with clause 42. Nomenclature of Book No. 2 and Book No. 2A (as proposed) is linked up with clauses 21 and 22. If changes are made in any of those clauses, then consequential changes will be necessary in clause 61 also.

Regarding clause 61(5), it is a useful provision, and we *recommend* its adoption².

Other changes made by the Sixth Report or suggested in the comments are not necessary.

- Clauses 62 and 63 Clauses 62 and 63 correspond to existing sections 53 and 54, and have provoked no comment.
- Clause 64 Clause 64(1) corresponds to existing section 55(1).

Under clause 64(2), corresponding to section 55(2), Index I is to contain, besides the names, etc., of executants, etc., "every memorandum copied in Book 1" etc. The entering of particulars of such memoranda is an addition to existing section 55(2). This change was made by way of implementing³ the scheme recommended under existing section 89. As the copying of the memorandum is to be dropped,⁴ this also has to be dropped.⁴

Clauses 64(2) to (6) embody existing sections 55(2) to 55(6), with certain changes. The changes were consequential on the scheme proposed with reference to existing section 89 and are not now required.⁵ But clause 64(7) suggested a useful provision and we *recommend* its adoption.⁶

- Clause 65(1) Clause 65(1) corresponds to existing section 57(1).

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1. See section 51 (3A), as proposed, to be inserted.
 2. See section 51 (5), as proposed, to be inserted.
 3. See Sixth Report, page 33, paragraph 82.
 4. See discussion under clauses 25 and 36.
 5. See discussion under clause 42.
 6. See section 55 (7), as proposed, to be inserted.

Clause 65(2), following existing section 57(2) provides Clause 65(2)
that copies of entries in Book 3 (Register of wills) and the relative index will be given to the executants and, after their death (but not before), to any person applying for such copies. A suggestion has been made in two comments^{1,2} to the effect that this should apply to Book 5—Register of deposit of wills also. We are not inclined to accept the suggestion as in our opinion Book 5 stands on a different footing from Book 3.

Clause 65(3), following existing section 57(3), provides Clause 65(3)
that copies of entries in Book 4 and in the relative index shall be given to the executant or claimant, etc. One comment states that this Book is not a secret document and suggests that it should be open for *inspection of the public*. We do not agree, Book 4—which is “Miscellaneous Register”—contains document relating to movable property³. A person registering such a document may not always wish a member of the public to see it.

A suggestion has been made to the effect that in clause Clause 65(4)
 65(4), which follows existing section 57(4), mention of Book 5 may be added. As in clause 65(2), this change is not made⁴, then no change is required in clause 65(4).

Clause 66, dealing with fees, gives the power to fix the Clause 66
fees to the Central Government (Union Government), while existing section 78 gives that power to the State Government. Explaining the reason for this change, the earlier Report⁵ stated that the existing provision had resulted in varying scales of fees, and that this was a matter in which there should be uniformity. The Report also noted, that there were complaints that the registration fee was unduly high in some States, and observed that the fee should be commensurate with the expense of the Department.

The comments received press for the retention of the existing power of the State Governments, on the ground that administration of the Act is a concern of the State Government. It is also pointed out, that registration expenses differ from State to State, and, therefore, uniformity cannot be insisted upon. The proposed change, it is also said, would restrict the discretion of the State Government in the matter of raising its revenues under this head.

Besides this, a few new points have been made. One is to the effect that fees for the issue of an “encumbrance certificate” should not be very high, because the debtor who

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1. Comment of a State Government.
 2. Comment of an Inspector General of Registration.
 3. See existing section 51(3).
 4. See discussion under clause 65(2).
 5. Sixth Report, page 35, paragraph 96.

would require it is already heavily burdened financially. Another comment makes the point, that a new sub-section should be inserted to empower the State Government to exempt any document from registration fee so as to avoid amendment of the table of fees every time in such cases.

We recognise the force behind the objection to the proposed change, and recommend that the power should *remain* with the State Government (as at present). Since administration of the Act is a concern of the State Governments, this appears to be unavoidable. As regards "encumbrance certificate", the matter is one to be dealt with by the rules.

Regarding the power to grant exemption, we may refer to the amendment made in 1956 by the State of West Bengal,¹ inserting section 78(2) to the effect that the State Government, if it is of opinion that there are reasonable grounds for doing so, may remit any fees in the whole or any part of the State, either generally or for any class of cases and in respect of persons generally, or of any particular classes of persons. This appears to be *useful provision which can be added*. We recommend² accordingly.

Clause 67 Clause 67 corresponds to existing section 79. It has provoked no comments.

Clause 68 Clause 68, following existing section 80, provides that the fee for registration shall be payable on the presentation of the document. The comments received on this clause have pressed for the inclusion of a provision to the effect that if the registration fee could not be realised in full (on presentation), the deficit may be recovered like other revenues of the State. This provision, it is stated, would be used only in cases of deficiency due to error of judgment or other *bona fide* reasons. We appreciate the object behind this suggestion. But we are not sure if the insertion of such a provision would not create complications. If, for example, the document is at the time of registration held to belong to one class carrying a particular fee, and that fee is levied, and afterwards it is regarded as belonging to another class carrying a larger fee, and the deficiency is made recoverable as arrears of land revenue and the amount is demanded from the person who presented the document, then difficulties will arise, if that person does not accept the view taken by the Department, or if that person is dead and his heirs are called upon to pay and a long time has elapsed. The proposed provision will not be fair without an elaborate provision imposing a time limit for recovery, and will not be workable without a detailed procedure for calling upon the presentant or his assigns or heirs, etc., to pay for the deficiency. In the absence of pre-

1. See Mulla, (1963), page 267, citing the West Bengal Amendment

2. See section 78, proposed to be amended.

cise details of the provision desired, we cannot recommend its adoption.

Clause 69, following existing section 81, prescribes the penalty for a registering officer or other employee who endorses, copies, etc., a document in a manner which he knows or believes to be "incorrect" intending, etc., to cause injury to any person. One comment suggests that, in order to cover cases in which registration documents or records are fraudulently altered, destroyed or tampered with, the following words may be added after 'incorrect':—

"or who alters, destroys or tampers with, wholly or partially, any document, register book, index or other record, or any entry therein or the contents thereof".

The matter seems to be covered by the Indian Penal Code,^{1,2} though there is some controversy regarding acts of officers.³ No change in the Registration Act appears to be called for.

Clause 70 corresponds to existing section 82. The insertion of a new provision for the control of document writers has been suggested in a few comments. The provision would, it has been suggested, be to the effect that, from a notified date no person shall write a document for another person for presentation to a registering officer except under the rules under this Act. Contravention would be punishable with fine which may extend to Rs. 200 and writing of a document by an authorised agent or pleader, etc., would be excepted from the proposed restriction. A similar provision has been inserted in Madhya Pradesh, see section 62A inserted by Madhya Pradesh Act 8 of 1955. Bengal Act 5 of 1942 (Bengal Courts Act) has also inserted section 80G, authorising the Inspector-General to make rules on the subject.^{4,5,6} See also the power to make rules on the subject provided by local amendment in Andhra Pradesh under section 69(1) (bb) inserted by Andhra Pradesh Act 5 of 1960.⁷ See also a similar amendment by Rajasthan Act 17 of 1950 and Travancore Cochin Act 25 of 1952.⁷

We are, however, not inclined to introduce such a provision, as we are not sure whether it would be really beneficial.

1. Section 405 read with section 464, second clause, Indian Penal Code (forgery) and section 466, Indian Penal Code.

2. See section 29, Indian Penal Code also.

3. Ratan Lal, Law of Crimes, (1966), page 1248.

4. Mulla (1963), page 272.

5. See Mulla, (1963), page 269.

6. As to the validity of rules under the Bengal Act see *District etc. Association v. State*, A.I.R. 1963 Cal. 124.

7. See Mulla, (1963), page 245.

Clause 70(c) Clause 70 (c), following existing section 82, punishes a person who "falsely personates another" and in such assumed character presents any document, etc. One comment suggests the use of the phrase "personate *some other person whether real or imaginary*" in place of "personates another". The suggestion, apparently, is intended to supersede the decision¹ to the effect that there must be a *real* person in existence who is personated, so that the assumption of fictitious name would not constitute an offence under this section. It would appear, that on a similar provision in the Indian Penal Code, section 205, there is some conflict of decisions as to whether impersonation of an imaginary person is an offence under this section.²

There appears to be no harm in *making it clear* that the offence is committed whether the individual personated is a real or an imaginary person.³ We *recommend*⁴ an amendment to that effect.

Clause 71

Clause 71, corresponding to existing section 83, deals with the sanction required for prosecution for offences under the Act. It makes one verbal change to make it clear that without such sanction a prosecution *cannot* be instituted. As explained in the earlier Report,⁵ this change was intended to settle the conflict of decisions on the point whether private prosecutions could lie notwithstanding the language of the existing section.⁶ This change has not provoked any comment. It may be adopted.⁷ A fresh point has been made in one comment to the effect that there should be a further provision (on the lines of section 476 of the Criminal Procedure Code) to the effect that any party can move the registering officer for taking action under the section. We do not, however, consider a statutory provision for the purpose to be necessary.

Clause 72

Clause 72 corresponds to existing section 84, and has provoked no comments.

Clause 73

Regarding clause 73(1), which corresponds to existing section 88, a comment has been made which relates only to the typography of the draft. The words "to appear in person....." should govern paragraphs (a), (b), (c) and (d).

1. *Emp. v. Rangamma*, A.I.R. 1935 Madras 913, 914.

2. See Ratanlal, *Law of Crimes*, (1961), page 526. Other sections in the Indian Penal Code dealing with impersonation are 140, 170, 171, 171 D and 416.

3. *cf.* the Explanation to section 416, Indian Penal Code.

4. See section 82, as proposed to be amended.

5. Sixth Report, pages 35-36, paragraph 97.

6. See Mulla, (1963), page 273.

7. See section 83, as proposed to be amended.

Clause 74, corresponding to existing section 85, provides for the destruction of documents remaining unclaimed in a registration office for a period exceeding two years. Wills are, however, expressly excluded from this clause, as in the existing section. One comment suggests, that even for wills the period should be two years. The suggestion cannot be accepted. So far as other documents are concerned, their destruction may not matter, because the possession would have been delivered ordinarily at the time of the execution of the document. A will, however, is intended to speak only from a future date, and its destruction might cause inconvenience to many persons. If the testator has not died in the mean-time and has not made another will, then the will lying with the registration office would be a subsisting will, and therefore, a valuable one. If, on the other hand, he has died, and has not made any other will, the will would be his last testament and would, therefore, be still more valuable. Hence no change should be made in this respect.

The clause in the Sixth Report provided for the destruction of documents should be after notice. This change may be accepted¹.

Clause 75 embodies existing section 68, which is a provision to the effect that a registering officer is not liable to any suit, etc., for anything in good faith done or refused in his official capacity. Now one comment makes a fresh point that a provision should be inserted to the effect that a Registrar shall not be made a party to a suit under existing section 77—clause 23—by reason of his refusing registration. It is stated, that this is necessary in view of the decision in a recent Madras case². That decision, however, does not seem to hold that the Registrar is a necessary party. All that it held was, that since in that case V had not disputed the genuineness of the will before the Registrar and it was the Registrar who had refused to register the will because execution had not been proved, therefore V was not a necessary party. In fact, there are earlier decisions³⁻⁴ which clearly hold that the Registrar is not a necessary party. No change is, therefore, needed on this point.

Existing section 69 vests the rule-making power in the Inspector General, while clause 76(1) vests it in the

1. See section 85, as proposed to be amended.

2. *Kanakaratnam v. Venkatachalam*, A.I.R. 1945 Madras 11, 12, left hand.

3. See *Wishambhar v. Prabhakar*, (1884) I.L.R. 8 Bombay 269, 271. Also see (1880) I.L.R. 5 Calcutta 445, 448.

4. See Mulla, (1963), Page 250.

State Government. The change is in accordance with recent practice, and may be *adopted*¹.

Clause 76(2)
(e) and (h) Clause 76(2)(e) [corresponding to existing section 69 (1)(g)] and clause 76(2)(h) [new] propose certain changes which appear to be consequential on the additions made by clauses 61(2)(b) and 64(7). In brief, they deal with the "manner" of copying and authentication of certain books and "manner" of recopying of certain indexes. An objection has been raised that the word "*manner of*" are not clear; we do not agree.

Clause 76(2)
(h)—New point Regarding clause 76(2)(h), a new point has been raised in one comment to the effect that, since clause 61(5) provides for re-copying of books which are in danger of being destroyed, power to make rules regarding such re-copying should also be added in clause 76. The suggestion may be *accepted*².

Clause 76(2)
(i) Clause 76(2)(i) empowers the making of rules as to the notice to be issued before destruction of documents. As notice has been provided for³, this new provision may also be *adopted*⁴.

Clause 76(2)
other points Other additions and changes proposed by the Sixth Report under clause 76(2) appear to be unnecessary, and may be *dropped*.

Clause 76(2)
New point regarding document writers, Regarding the rule-making power under clause 76(2), a new point has been made to the effect that there should be power with the State Government to make rules regulating the profession of document writers. The desirability of a provision for licensing document writers has already been separately considered⁵.

Clause 77—
Exemption for Government Clause 77 exempts certain documents from registration (see existing section 90). The question whether the Central Government should have power to exempt from compulsory registration (all) documents to which the Government is a party has been considered by us. If such a change is made, documents in favour of Government will find no reflection in the registration records. That, of course, may not be a fatal objection by itself, as in most cases the possession would have been transferred to Government, so

1. See section 69, as proposed to be amended (relating to power to make rules).

2. See section 69 (1), as proposed to be amended (relating to re-copying).

3. See discussion relating to clause 74 (existing section 85).

4. See section 69, as proposed to be amended (relating to notice before destruction).

5. See discussion relating to clause 70—new point.

that persons intending to take the property can be expected to inquire about the Government's title. The Government's possession is usually—

- (i) overt,
- (ii) easily ascertainable,
- (iii) known to many persons, and
- (iv) exercised openly.

With reference to clause 77, it is not clear if in the Sixth Report¹, any change of *substance* in respect of documents executed on behalf of the Government, was intended with reference to section 90. The discussion in the Sixth Report speaks of "verbal changes". The draft of the clause² speaks of "Sanads, Inams, title-deeds, grants and other documents affecting *immovable property made by Government*". This wording is different from the wording in existing section 90(1)(d). (There is some controversy³ as to whether the existing words "other documents" in section 90(1) (d) are to be construed *ejusdem generis*, but those words are retained in the Sixth Report, clause 77 also).

In any case, it is unnecessary to exempt all Government documents.

Provision suggested in one of the comments, to empower the Central Government to exempt Government documents from fees, is also unnecessary.

Clause 78 embodies existing section 91 with very minor verbal changes, which need not be carried out as the whole Act is not to be re-enacted.

Certain sections were omitted from the existing Act in the Bill annexed to the earlier Report. Since comments have been received suggesting restoration of some of these sections, we may now consider them.

Existing section 17(1)(c) provides for the compulsory registration of non-testamentary instruments which acknowledge the receipts or payment of any consideration on account of the creation, declaration, etc., of any right, title or interest (in immovable property). This was omitted⁴ in the Sixth Report. The reason for the omission of this clause was, that there was a conflict of decisions on the question whether this clause came into operation only where the document effecting the substantive transaction was not

1. Sixth Report, page 38, paragraph 105 and page 83.

2. Sixth Report, page 71, clause 77 (1) (d).

3. See Mulla, (1963), page 281.

4. Sixth Report, page 13, paragraph 29.

registered, or whether, even if that transaction was evidenced by a registered instrument, the receipt of money thereunder required registration where payment was made on account of the creation, etc., of any such right, etc. The earlier Report recommended that the Transfer of Property Act should be extended to the whole of India, and that on that basis, this clause should be omitted.

If the Transfer of Property Act is extended to the whole of India, there would be no need to retain the clause, because most of the substantive transactions could in that event be effected by registered document. (Most of the cases under this clause relate to mortgages.)¹

A comment has been received to the effect, that so long as the Transfer of Property Act is not made applicable to all States and Union Territories, this clause should be retained. The comment may be accepted.² The section may be retained.

The alternative suggested in the Sixth Report was, that it should be made clear that section 17(1)(c) does not apply to a receipt in respect of a document already registered under existing section 17(1)(b). We have, however, decided, that the reverse provision should be adopted, namely, instruments which acknowledge the receipt or payment of any consideration on account of the creation, etc., of any right, etc., to or in immovable property should be compulsorily registrable, whether or not the document by which the right was created, etc., was registered. We think that this is desirable to ensure a comprehensive record. We recommend an amendment accordingly.³

Omitted
section 17
(2) (ii)

Existing section 17(2)(ii) exempt from compulsory registration any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of the company consist of immovable property. This was proposed to be omitted in the Sixth Report, for the reason⁴ that section 82 of the Companies Act, 1956 already lays down that a share in a company is movable property. Section 82 runs as follows:—

“82. The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company”.

A comment has been made to the effect that if the shares contain any contract for the sale of immovable property worth over Rs. 1,000, they should need registration. We do

1. See discussion in Mulla, (1963), page 60; also Mulla, page 59 under “Recital not received”.

2. See also discussion relating to clause 3 (1).

3. Sixth Report, page 14, paragraph 30, latter half.

4. See section 17 (1)(c), as proposed to be amended.

5. Sixth Report, page 17, paragraph 35.

not consider any such provision to be necessary. Another comment makes the point that even though the provision in the Registration Act has become redundant in view of section 82, Companies Act, it should be allowed to stand, since a statute which is intended to be a complete Code should show explicitly the nature of document requiring registration. We agree with the last comment. Section 17(2)(ii) should be *retained*.

Existing section 17(2)(vi) saves from compulsory registration a decree or order of a court (excepting certain decrees or orders made on compromise and comprising collateral immovable property). This has been proposed to be omitted by the earlier Report¹ Restoration of this provision has been suggested in the comments, as it serves a useful purpose. The matter has been considered separately.² Omitted section 17(2)(vi)

Existing section 23A, regarding re-registration of certain documents accepted for registration from a person not duly empowered to present the same, has been proposed to be omitted by the earlier Report,³ for the reason that the Report itself proposed to provide⁴ that irregularity or defect with respect to the presentant should not invalidate the registration. A comment has been received pointing out that under the existing section the right to represent the document is confined to the person claiming under the document and suggesting that the section should be widened so as to give the right to any person who would have been omitted to present the document in the first instance, under existing section 32. The comment seems to have been made with the object of codifying the view that the expression "claiming under such document" is intended to cover all persons enumerated in existing sections 32 and 40 and to include other persons not falling under that list. See the Madras case, where the facts were these. After the registration of a will had been held by the Privy Council to be invalid on the ground of its having been presented by unauthorised person, the will was presented again by a son adopted under a power conferred by the document. The re-registration was held to be valid by the Madras High Court.⁵ We do not consider it necessary to encumber the section with the suggested elaborate provision. We, however, *recommend*, that section 23A be retained as the saving provision which we propose,⁶ is narrower than that proposed by the Sixth Report. Omitted section 23A

1. Sixth Report, page 17, paragraph 39.

2. See discussion relating to clause 42 (1).

3. Sixth Report, page 20, paragraph 50.

4. Clause 41(2).

5. *Sudarsane Rao v. Seetharamamma*, (1933) Madras Weekly Notes 1148j; 1165 (Division Bench). See Mulla, (1963), p. 281.

6. See recommendation regarding clause 41 (2).

Omitted
section 70

Existing section 70, authorises the Inspector General of Registration to remit the difference between any fine levied under existing section 25 or section 34 and the amount of the proper registration fee. This section was omitted by the earlier Report,¹ in view of the fact that in the clauses relating to fines—clauses 10 and 18(1)—the earlier Report proposed a maximum fine of Rs. 10 only. As we are modifying this proposal,² it is necessary to *retain* existing section 70.

Omitted
section 72
and 73

Existing sections 72 and 73 provide for “application” to the Registrar in respect of orders of the Sub-Registrar refusing registration. These sections were omitted by the earlier Report,³ in view of the scheme proposed in that Report substituting reference in place of appeal. As that scheme is now to be abandoned,⁴ sections 72 and 73 will have to be *retained*.

Code of Civil Procedure

Amendments
in the Code
of Civil
Procedure

Certain amendments were suggested by the earlier Report in the Code of Civil Procedure, 1908. One was to the effect that under Order 21, Rule 16, Code of Civil Procedure, a provision be added making it obligatory on the part of the assignor of a decree to report the assignment to the court after notice to the judgment-debtor, within three months from the date of the assignment. This recommendation⁵ was made while proposing modification of section 17(1)(e) of the Registration Act so as to exclude executable decrees or orders. The reasoning was, that under Order 21, Rule 16, the assignment must be in writing, and therefore the further requirement of registration was unnecessary. The addition of a provision for reporting of the assignment under Order 21, Rule 16 was suggested in order that the requirement of registration [in section 17(1)(e)] would further lose its force. As the change proposed by the earlier Report in section 17(1)(e) is not to be maintained,⁶ this recommendation need not be carried out. (The comments received on this recommendation state that a decree cannot be executed at present unless the transfer is recognised by the court after notice to the judgment-debtor, and therefore, reporting by the assignor would serve no useful purpose. Another comment states that the obligation should be on the assignee, under the Code of Civil Procedure).

1. Sixth Report, page 33, paragraph 90.

2. See discussion relating to clause 10 and clause 18 (1) proviso.

3. Sixth Report, page 34, paragraph 92 and page 78, (notes), discussion relating to clauses 21 and 22.

4. See discussion relating to clauses 21 (1) and 22.

5. Sixth Report, page 15, paragraph 32.

6. See discussion relating to clause 3 (i) (d).

Another change recommended by the earlier Report was in relation to memoranda of appeal. In order to implement the scheme requiring Courts to send to the registering officer copies of plaints and memoranda of appeal involving immovable property, the Sixth Report recommended,¹ that appropriate rules should be inserted in the Code of Civil Procedure, requiring a schedule of property to be given in every memorandum of appeal relating to immovable property. This recommendation was linked up with the scheme embodied in clause 42(2). As clause 42(2) is to be dropped,² this recommendation need *not be implemented*. (The comments received on this recommendation oppose it. One comment makes the point, that a certified copy of the decree of the lower court must always accompany the memorandum of appeal and since the decree necessarily contains a schedule of property, there is no need to include the schedule in the memoranda of appeal. The comment need not be considered, if the recommendation is to be dropped).

Suggested new provisions

We may now consider comments which suggest additions of provisions on certain matters not covered by the existing Act or by the earlier Report. Suggested new provisions

One comment suggests that the registering officer should see not only whether the deed is registrable, but also whether it is valid. It is pointed out, that in some of the former Indian States, there were systems by which it was incumbent upon the person applying for registration to file a true copy of title-deed. This lessened the chances of cheating. Such a provision, it is said, would be based on prudence and expediency. Though the suggestion is an attractive one, we are afraid that it is outside the scope of the Registration Act. Enquiring as to title

It has been suggested, that there should be a provision on the lines of section 22A (as inserted by Bombay Amendment), empowering the State Government to declare by notification that the registration of any document or class of documents is opposed to public policy; the result of such notification would be that the registering officer has to refuse to register such documents. It would appear³ that under the section as added in Bombay, a notification was issued in 1959 declaring that the registration of a document containing a declaration as to proprietorship of trade marks is opposed to public policy. We are not convinced about the need for such a provision for the whole of the country and would leave the matter to be dealt with by local amendment, if necessary. We may also add, that it may be difficult to define what is opposed to "public policy" Registration of documents opposed to public policy

1. Sixth Report, page 37, paragraph 193.

2. See discussion relating to clause 42(2).

3. See Mulla, (1963) pages 117-118.

Copying by photograph

Another new provision suggested in one of the comments is the one for the copying of documents by photography in areas to be notified by the State Government. Reference has been made in this connection to sections 70A to 70E inserted by the Bombay Amendment. These sections were inserted in 1930 as "Part XI-A. Copying of documents by means of photographs".¹ This is a useful suggestion, and may be *accepted*.² Consequentially, it will be necessary to insert a provision in the rule-making section, section 69—clause 76(2) in the Sixth Report authorising the Government to make rules to regulate the procedure for transmitting documents for being photographed and incidental matters. The matter was dealt with by section 69(1)(gg) inserted originally by local amendment in Bombay, and is now dealt with by section 69(1)(ggg) inserted by Bombay Act 35 of 1958 (24th April 1958).³ Clause 76 (Existing section 69) may be *amended* accordingly.⁴

Transfer of proceedings

Another new provision suggested in the comments is as to transfer of appeals and applications under existing sections 72 and 73 from the file of one Registrar to another, and the transfer of an inquiry under existing section 41(2) from the file of Sub-Registrar to another. It has been suggested, that the insertion of such a provision may be conducive to efficient administration. We do not see any need for such a provision. The suggestion need not be *accepted*.

Remission of fees

A *new* provision for the remission of registration fees under an order of the State Government has been suggested. This point has already been dealt⁵ with.

Registration by Pancha- yats

One point dealt with by the earlier Report was that of registration by Panchayats. A suggestion had been made by one Member (Dr. Sen Gupta) that power should be given to Panchayats to register documents of a simple nature and, if the experiment succeeded, to enlarge the power gradually. The view of the majority of the members of the Commission⁶ was, that Panchayats have no knowledge or experience of the procedure for registration, and it would not be expedient or practicable to give them the power. Disagreeing with the majority, Dr. Sen Gupta had expressed⁷ the view that he had made the suggestion for conferring this power in a limited number of cases where the document related to land wholly within the jurisdiction of the Panchayats. Where registration

1. See Mulla (1963), pages 246—249.

2. See sections 70A *et seq.*, as proposed to be inserted.

3. See A. I. R. Manual, Vol. 9, page 939.

4. See section 69, as proposed to be amended (relating to photographed copies).

5. See discussion relating to clause 66.

6. Sixth Report, page 8, paragraph 18.

7. Sixth Report, page 94.

was acceptable to both the parties, the Executive Officer of the Panchayat, if authorised by the State Government, could register the document. If the document was not admitted, the presentant could refer it to the Sub-Registrar. The advantages of this procedure (according to Dr. Sen Gupta) would be that it would provide the Panchayat with a record of all transactions recorded in the office, it would simplify the process of registration, because the Panchayat was likely to know the executant personally. It would also lessen the chances of false allegation or denial of execution, and possibly would add to the revenues of the Panchayat. Certificate of registration in simple cases, he added, did not require much expert knowledge or experience; the maintenance of several registers, would be handled by the Sub-Registrars. The increased cost if any, would set off by the reduction of cost owing to reduction of work in the Sub-Registrar's office. Sub-Registrar, he observed, were sometimes seven miles or more away without any railway communication, so that a long journey delayed the registration of document after execution.

Most of the comments received on this topic agree with the views of Commission that Panchayats should not be vested with powers of registration. Panchayats, it is stated, are likely to commit mistakes in these technical matters. It is also pointed out, that having regard to the low standard of education in rural areas and lack of qualified people, the power might be misused. A small group of comments, however, agree with Dr. Sen Gupta; and the point is made that Panchayats should gradually be encouraged to shoulder responsibilities for registration of documents of a simple nature. There is also the alternative suggestion, that panchayats with proper and trained staff can be authorised to register deeds up to say Rs. 1,000.

Another alternative suggestion is, that there should be a provision for *optional* registration by the Executive Officers of notified Panchayats, and that copies of all documents registered with the Panchayats could be sent to the Office of the Sub-Registrar for future use and public reference.

We have given careful and anxious consideration to the subject. We feel that one has to balance here the advantages put forth by Dr. Sen Gupta against the injurious consequence that might follow if the scheme is adopted. It is true, that a limited number of Panchayats may be able to discharge the proposed functions satisfactorily; but then, from the opposition which the scheme has received, we venture to say that their number may not be large enough to justify a statutory provision. As regards conferring of power for registering documents of a limited value, it may be pointed out that even in respect of small documents, the questions that arise may be beyond the

capacity of the Panchayats in general. Optional registration as suggested may not prove to be of much legal value, if no sanctity is given to the record.

We may also like to add that registration is not a mere formality; it is a process which—

(i) affects immovable property, which will last for ever;

(ii) has permanent consequences by conferring validity on the documents;

(iii) is of importance not to one person but to all subsequent transferees; and

(iv) brings into being secondary evidence of a valuable nature.

These being the consequences, the process must be done not merely carefully, but with some sort of meticulousness, neatness, uniformity and efficiency. As at present advised, we do not suggest any change in the Law.

We may also, in this connection, refer to the need for an efficient institution of Panchayat Secretaries, a topic which has been discussed in detail by the study-team on Nayaya Panchayats¹. When the general administration of panchayats assumes a higher standard, it may be possible to reconsider the matter. The question is not really a legal one. It is more an administrative one, dependent on the capacity and resources of panchayats and their establishments.

Later Suggestions

Later suggestions

Apart from comments on the Sixth Report received by the Ministry of Law and forwarded to us, we had to consider a number of other suggestions, that is to say, suggestions not by way of comments but made independently². We proceed to consider them section by section.

(i) Section 30 (2)

(i) *Section 30 (2)*—A suggestion for extending section 30 (2) of the Act to Delhi has been made. We have dealt with this in a separate Report³. The Andhra Pradesh Amendment Act of 1966⁴ has deleted section 30 (2) and

1. See Report of the study-team on Nyaya Panchayats (April, 1962 Ministry of Lw), c 109, paragraph 3.

2. We shall refer to them as "Later suggestions", as they were received after the comments on the Sixth Report were forwarded to us for considerations.

3. See Thirty-first Report of the Law Commission (Section 30 (2) of the Indian Registration Act—Extension to Delhi), (May, 1967).

4. S. No. 14.

section 67, in their application to the State of Andhra Pradesh. We recommend¹ that suitable action should be taken to restore the application of these sections to the State of Andhra Pradesh, as otherwise section 30(2) would lose its practical utility in Andhra Pradesh, so that registration of a document would be invalid in a part of India and valid in the rest.

(ii) *Section 2(1)—definition of “addition”*—We recommend² that nationality may be added in the definition of “addition”. Although the expression “addition” does not seem to occur except in a few places³, this change is desirable to make the definition comprehensive, in view of the change which we proposed to section 34⁴.

(iii) *Section 34—and foreigners*—In the suggestion of a State Government⁵, several points relating to foreigners selling property in India and taking away this sale price in violation of the Foreign Exchange Regulation Act have been made. We have considered these at some length. Having regard to the paramount importance of conserving foreign exchange, we recommend⁶ that in section 34 a provision should be added, empowering the registering officer to make an inquiry into nationality for the purpose of checking such violation of the Foreign Exchange Act. It is not, in our opinion, necessary to insert a provision extending the time-limit for registration (as has been suggested⁷). Once the parties present the document in time and appear in time, there is no time-limit for completion of the registration; that is an act of the registering Officer, for which the Registration Act specifies no time-limit⁸.

(iv) We have considered a point raised by the Government of West Bengal⁹ in relation to section 66(2), and the provisions of rule 78 of the West Bengal Registration Rules, 1962.

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1. To be carried out by suitable action.
 2. See Section 2 (1), as proposed to be amended.
 3. See sections 55 (2), 55 (4), 55 (5), 58 (1) (a)(b),
 4. See below, under “Section 34 and foreigners”.
 5. S. No. 9.
 6. See section 34, as proposed to be amended (regarding inquiry into nationality).
 7. S. No. 9.
 8. See—
 - (i) Mulla (1963), pages 145 and 152.
 - (ii) Rustomji. Registration Act (1939), pages 179—180.
 9. S. No. 13.

The difficulty, as stated by the Government of West Bengal¹, is this. The Registrar has, under section 66(2), to send a copy of the document to every other Registrar within whose district any part of the property is situate. It may not be possible to send the copy on the very day of registration, and, to meet such contingency, the West Bengal Government has, by rules², made a provision to the effect that a "short note" in the prescribed form may be sent by the Registrar to the other Registrars. This "short note" is intended to be a kind of *ad interim* information. It is stated, however, that the Registrars in the other States (with two exceptions) do not accept the "short note". They return the "short note", and press for sending the full copy.

This problem has been brought by that Government to the notice of the Government of India, and a solution requested. The Government of West Bengal has referred to the absence of a specific provision on the subject, though it has not suggested any particular amendment.

We quote rule 78(1) of the West Bengal Registration Rules, 1962³:—

"78(1) When a copy of a document is sent to the Registrar of another district under sub-section (1) of section 65, sub-section (2) of section 66 or section 67, no memorandum required for any Sub-Registry office of that district need be sent along with the copy. The Registrar receiving the copy shall cause the required number of memoranda to be prepared in his own office and forward them to the Sub-Registrars subordinate to him. If the Registering Officer is unable to despatch copies of documents on the day they are admitted to registration a short note in Form No. 6A, Appendix I, shall be sent on that day".

1. S. No. 13.

2. Rule 78, West Bengal Registration Rules, 1962 (referred to in S. No. 13).

3. Taken from West Bengal Registration Manual (1966), Vol. 1, page 87.

Form 6A in Appendix 1 to the West Bengal Registration Rules, 1962 is as follows¹:—

"FORM NO. 6A
FORM OF SHORT NOTE
[See rule 78(1)]

Nature of document	Names of parties		Short name of the property affected or tauzi number where possible and the thana.
	Executants	Claimants	

The matter was discussed by us at some length. It was felt, that the proper solution would be to insert a provision in the Act enabling the sending out of "short notices" as in the West Bengal Rules², in cases where a copy of the document could not be sent as required by section 65(1), 66(2) or 67. (It was felt unnecessary to cover copies required to be sent by section 64, as section 64 is confined to Sub-Registrars in the same district). As it was not known whether there would be any practical difficulties in the implementation of such a provision, we felt somewhat diffident in suggesting a change. On the other hand, however, the usefulness of some such provision is obvious, as such a "short note" would prevent persons in the other States from being duped for absence of copy of the document (where there had been a delay in sending the copy, as in the case of lengthy documents).

We recommend a suitable provision on the subject³.

1. Taken from West Beng Registration Manual (1966), Vol. 1, page 106.

2. Rule 78, West Bengal Registration Rules, 1962.

3. See section 67A, as proposed to be inserted.

Recommended Changes

**Recommend-
ed changes** The changes which have been recommended by the previous Report fall into the three categories:—

- (i) changes of substance;
- (ii) verbal changes; and
- (iii) changes in the arrangement of clauses.

Some of the changes of *substance* will, according to our recommendations, have to be dropped. If that is done, the question arises whether the need for revising the whole Act and re-enacting it will still remain. We feel, that if the changes in substance are to be a few only, it would not be worthwhile to re-enact the whole Act. And if re-enactment is to be avoided, we feel that changes of the second category—verbal changes—should be kept to the minimum; and that changes of the third category—re-arrangement—should be avoided.

Appendix On this assumption, we venture to annex to this Report¹, a draft embodying, in the form of amendments to the existing Act, changes of substance and verbal changes that, we think, appear to be really needed, after a consideration of the earlier Report and the comments received thereon and on the basis of our own views expressed in the preceding paragraphs.

1. J. L. KAPUR—*Chairman.*

2. K. G. DATAR.

3. S. S. DULAT.

4. T. K. TOPE.

5. RAMA PRASAD
MOOKERJEE.

} *Members.*

P. M. BAKSHI,

Joint Secretary and
Legislative Counsel.
NEW DELHI;

The 30th September, 1967.

1. See Appendix.

APPENDIX

Draft amendments to the existing Act.[This is a rough draft only]¹.

Existing section	Gist of the amendment proposed	Reference to the discussion in this Report on which the amendment is based	Page of the Bill annexed to the Sixth Report
1	2	3	4
Section 2(1)	In section 2 of the Indian Registration Act, 1908, (16 of 1908) (hereinafter referred to as the principal Act) clause (1),— (a) after the words "place of residence" insert the word "nationality"; (b) after the words "then his mother's name", insert the words "and in the case of a married".	(i) As to nationality, see discussion under "Later Suggestions". (ii) As to married women, see discussion relating to clause 2(1).	(i) As to nationality, Sixth Report did not suggest a change. (ii) As to married women, see Sixth Report, page 40, clause 2(1). For reasons, see Sixth Report, page 9, paragraph 21(A).
Section 2(5)	In section 2, of the principal Act in clause (5), insert the following words at the end, namely— <i>"and to an entry in writing made by the registering officer on a sealed cover deposited under this Act".</i>	See discussion relating to clause 2(5).	Sixth Report did not suggest this change.
Section 2(6A)	In section 2 of the principal Act, clause (6A) shall be omitted.	See discussion relating to clause 2(8).	This change was not proposed in the Sixth Report, page 42, clause 2(8).
Section 2(7)	In section 2 of the principal Act, in clause (7), omit the words "and an agreement to lease", and, after the word, "kabuliyat" insert the word "and".	See discussion relating to clause 2(9).	Sixth Report, page 41.

1. In view of the nature of the materials which had to be examined the form of this Appendix is different in some respects from the form usually adopted in the Law Commission's Reports.

1	2	3	4
Section 2(9)	<p>In section 2 of the principal Act, in clause (9), for the words "fruit upon and juice in trees" substitute the words—</p> <p><i>"fruit upon and juice in trees whether in existence or to grow in future, machinery embedded in or attached to the earth, when dealt with apart from the land"</i>.</p>	See discussion relating to clause 2(7).	Sixth Report, page 41, clause 2(7), deals with these items by excluding them from the definition of "immovable property". For reasons see Sixth Report, page 9, paragraph 21 (B).
Section 2 (9A) (New)	<p>In section 2 of the principal Act, after clause (9), the following clause shall be inserted, namely :</p> <p><i>"(9A) 'prescribed' means prescribed by rules made under this Act"</i>.</p>	See discussion relating to clause 2(11).	Sixth Report, page 41, clause 2(11). For reasons, see Sixth Report (Notes), page 74.
Section 17 (1)(c)	<p>In section 17 of the principal Act,—</p> <p>(i) in sub-section (1), in clause (c), insert the following words at the end, namely:</p> <p><i>"whether or not the document, if any, by which the right, title or interest was created, declared, assigned, limited or extinguished, was registered"</i>.</p>	See discussion relating to omitted sections.	<p>Sixth Report had suggested—</p> <p>(i) Omission of section 17(1) (c);</p> <p>(ii) in the alternative, exclusion from section 17(1)(c) of receipts in respect of registered transactions. For reasons, see Sixth Report, pages—13—14, paragraph 29.</p>
Section 17 (2) (via)	<p>In section 17 (ii) in sub-section (2), after clause (vi), insert the following clause, namely,—</p> <p><i>"(via) a security bond executed in favour of a court or a public officer in his official capacity for the due fulfilment of a condition imposed by a decree or order of the court or public officer"</i>.</p>	See discussion relating to clause 42(1).	Sixth Report page 59, clause 42(1)(f) adopted a different scheme, whereunder the court or public officer was to send a copy to the registering officer within whose jurisdiction the immovable property to which the bond applies is situated.

1. This definition is to be inserted only if the expression "prescribed" is used in the Act.

1	2	3	4
Section 17(2)(xi)	<p>In section 17 of the principal Act, in sub-section (2), for clause (xi), substitute the following clause, namely—</p> <p>“(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage, <i>being an endorsement or other receipt which merely acknowledges receipt of the money or recites discharge of the mortgage-debt,</i> and does not purport to extinguish the mortgage <i>in whole or in part or</i>”</p>	<p>See discussion relating to clause 3(2)(c)</p>	<p>Sixth Report, page 43, clause 3(2)(c), is on different lines. For reasons, see Sixth Report, page 18, paragraph 41.</p>
Section 21(2)	<p>In section 21 of the principal Act, for sub-section (2), substitute the following sub-section, namely—</p> <p>“(2) Houses in towns shall be described as situated on the north or other side of the street or road (which should be specified), 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; <i>in all City surveyed areas, houses and lands shall also be described by their cadastral survey number as in the City survey maps and records</i>”.</p>	<p>See discussion relating to clause 7(2).</p>	<p>Sixth Report, page 44 is on different lines.</p>
Section 22(2)	<p>In section 22 of the principal Act, in sub-section (2), for the words, figures and brackets “Save as otherwise provided by any rule made under sub-section (1)”, substitute the words, figures and brackets</p>	<p>See discussion relating to clause 7, proviso.</p>	<p>Sixth Report, page 44.</p>

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"Except in the case of City surveyed areas and except as otherwise provided by any rule made under sub-section (1)".

Section 25(1) In section 25 of the principal Act, in sub-section (1), for the words "ten times the amount of the proper registration fee" substitute the words *"five times the amount of the proper registration fee, but not exceeding rupees two hundred"*.

See discussion relating to clause 10. Sixth Report, clause 10, reduced the amount still further.

Section 29 In section 29 of the principal Act, insert the following sub-section at the end, namely :—

See discussion relating to clause 12(4). Sixth Report, page 46, clause 12(4). For reasons see pages 21—25, paragraphs 55—57.

"(3) Notwithstanding anything contained in section 28 or in sub-section (1) of this section,—

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

"(b) nothing in this sub-section shall affect a person who, not being a party to the document and not claiming under the document, acquires rights in the property in good faith".

1	2	3	4
Section 30	See the separate Report on the subject ¹ .	See discussion relating to clause 13, and also separate Report on the subject. ¹	Sixth Report, page 46, clause 13, applies this provision to any Registrar, if he is satisfied that there is sufficient cause for doing so. For reasons, see Sixth Report, page 25, paragraph 60.
Section 33	<p>(i) In section 33 of the principal Act—</p> <p>(a) in sub-section (1),—</p> <p>(i) in clause (a), insert the following words at the end, namely :—</p> <p><i>“or a power of attorney executed before and authenticated by a Notary Public”.</i></p> <p>(ii) in clause (c), for the words “Indian Consul or Vice-Consul or representative of the Central Government”, substitute the words “Indian consular officer or diplomatic officer or other representative of the Central Government”.</p>	<p>As to Notary Public, see discussion relating to clause 16 and section 8 (1)(a), Notaries Act, 1952.</p> <p>The verbal change regarding diplomatic officers is proposed in view of the phraseology adopted in the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948). Section 3(1) of that Act authorises every diplomatic or consular officer in a foreign country to administer an oath and take any affidavit and to do any notarial act which any Notary Public may do within a State, and makes consequential provisions. Hence the proposed</p>	<p>Sixth Report, page 47, clause 16, does not make this change.</p> <p>Sixth Report, page 47, clause 16(1)(c), makes this change in a different form, by substituting “any Consular Representative of the Union Government”.</p>

1. Thirty-first Report of the Law Commission [section 30(2) of the Indian Registration Act, 1908—Extension to Delhi (May 1967)].

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change. The existing words "or representative of the Central Government" may, perhaps be retained for *other* representatives not falling within the category of "diplomatic or consular officer".

(iii) in the proviso, after the words "or court" insert the words "*or office of the Notary Public*".

(b) in sub-section (2), after the words "or Magistrate" the words "*or notary public*" shall be inserted.

(c) in sub-section (3), the following words shall be inserted at the end, namely :—
"and to satisfy himself about the voluntary nature of the execution, the Notary Public may go to such house or to such jail, and put questions to such person".

Section 34, proviso

In section 34 of the principal Act,—

See discussion relating to clause 18 (1), proviso.

Sixth Report, page 49, clause 18, suggests a maximum of ten rupees.

(i) in sub-section (1), in the proviso, for the words "ten times the amount of the proper registration fee", substitute the words "*five times the amount of the proper registration fee, but not exceeding rupees two hundred*".

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	(ii) after sub-section (3), insert the following sub-section ¹ , namely,—	As to nationality, see discussion under “Later Suggestions”.	This is a new point not dealt within the Sixth Report.
	<p>“(3A) The registering officer may, for the purpose of satisfying himself about the nationality of the parties to the document, hold such inquiry as he may consider necessary, in order to ensure that the provisions of the Foreign Exchange Regulation Act, 1947, (7 of 1947), have been and shall be complied with in relation to the consideration received or to be received for the transaction to which the document relates”.</p>		
Section 35(2)	In section 35 of the principal Act, for sub-section (2), substitute the following sub-section, namely :—	Discussion relating to clause 20(3).	Sixth Report, page 50, and reasons at page 78 (Notes).
	<p>“(2) For the purpose of any proceeding under this Act, a Sub-Registrar shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908, (5 of 1908), when trying a suit, in respect of the following matters, namely :—</p>		
	<p>(a) Summoning and enforcing the attendance of witnesses and examining them on oath ;</p>		
	<p>(b) discovery and inspection ;</p>		
	<p>(c) compelling the production of documents ;</p>		
	<p>(d) reception of evidence on affidavit ; and</p>		
	<p>(e) issuing commission for the examination of witnesses ; and any proceeding of existing section 84(3),</p>		

1. This is a new amendment not dealt with in the Sixth Report.

as to judicial proceeding before the Registrar shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, (45 of 1860).
Provided that the power under this sub-section shall not be exercised in respect of a person not residing¹ or carrying on business or personally working for gain within the local limits of the sub-district of the Sub-Registrar².

Section 42

Section 42 of the principal Act shall be re-numbered as sub-section thereof, and after sub-section (1), as so re-numbered, insert the following sub-section, namely :—

See discussion relating to clause 43(2), where voluntary nomination is recommended, in case of a testator who personally deposits a will.

Sixth Report, page 60, clause 43(2), runs on somewhat different lines, by making nomination compulsory.

“(2) A testator who personally deposits a will may also endorse on the cover the name and address of the person to whom the original document should be delivered after registration thereof after his death”.

Section 45

In section 45 of the principal Act, to sub-section (2) add the following proviso namely,—

“Provided that where the testator has, under sub-section (2) of section 42, endorsed on the cover the name and address of the person to whom the original document should be delivered after registration thereof after his death, the Registrar shall, after such copy has been made, deliver the original document to such person”.

See change proposed to existing section 42, and the discussion relating to clause 46, where delivery to nominee is recommended.

Sixth Report, page 61, clause 46 (2), and clause 48, are on somewhat different lines.

1. cf. section 20(a), Code of Civil Procedure, 1908.

2. The proviso modifies Order 16, Rule 19, Code of Civil Procedure, 1908 which would otherwise apply under the main paragraph of the section as proposed

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Section 46(1)	In section 46, in sub-section (1), for the words and figures "section 259 of the Indian Succession Act, 1865 or section 81 of the Probate and Administration Act, 1881", substitute the words and figures " <i>section 294 of the Indian Succession Act, 1925, (39 of 1925).</i> "	<i>See</i> discussion relating to clause 47(1) (recommendation for substituting up-to-date reference). ¹	<i>See</i> Sixth Report, clause 47 (1), wherein the section of the Indian Succession Act, 1925 is referred to.
Section 51— (Proposed new sub-sections)	<p>In section 51 of the principal Act,—</p> <p>(a) after sub-section (3), insert the following new sub-sections, namely :—</p> <p><i>"(3A) Rules made under this Act may provide for the maintenance of Additional or Supplementary Book 1 and Book 4 in the form of a File Book or other suitable form for registration of—</i></p> <p><i>(i) documents of a temporary character; or</i></p> <p><i>(ii) documents which are printed on paper and in respect of which entering by hand becomes unnecessary; or</i></p> <p><i>(iii) other documents or copies of a special character, which cannot be conveniently entered in the main Book 1 and Book 4.</i></p> <p><i>(3B) Such Supplementary or Additional Books shall, for the purpose of this Act, be deemed to form part of Book 1 or Book 4, as the case may be."</i></p>	<p><i>See</i> discussion relating to clause 61(2)(b) and clause 42 (3). The expressions "Supplementary" and "Additional" Books owe their origin to the comment received on clause 42 (3), which quotes the Madhya Pradesh rules on the subject which use the expression "Additional" and "Supplementary". (Rules 88 to 90, Madhya Pradesh Registration Rules).</p>	Sixth Report, page 65, does not make this change.

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(b) insert the following sub-section at the end, namely :—

See discussion relating to clause 61 (5). See also Bihar and Bombay Amendments¹ to section 51, reproduced in Mulla, (1963) pages 228-229.

See Sixth Report page 65, clause 61 (5). For reasons, see Sixth Report, page 32, paragraph 79.

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

Section 55(7) In section 55 of the principal Act, insert the following sub-section at the end, namely :—

See discussion relating to clause 64 (7).

Sixth Report, page 66. For reasons, see Sixth Report, page 32, paragraph 79 and page 82 (Notes).

“(7) If in the opinion of the Registrar, any of the indexes mentioned in sub-section (1) is in danger of being destroyed or becoming illegible

1. See Mulla (1963), pages 228-229.

wholly or partially, the Registrar may, by a written order, direct such index or portion thereof, as he thinks fit, to be recopied in such manner as may be prescribed, and copies so prepared shall for the purposes of this Act and of the Indian Evidence Act, 1872 (1 of 1872) be deemed to be the original index or portion, and all references in the Act to the original index or portion shall be deemed to be references to the indexes or portions prepared as aforesaid".

Section 67A (New) After Section 67 of the principal Act, insert the following section, namely :—

See discussion under "Later Suggestions".

Sending of short notices of documents

"67A (1) Where the registering officer is unable to despatch a copy of a document under sub-section (1) of section 65, sub-section (2) of section 66 or section 67 (hereinafter referred to as 'the requisite copy') on the day on which the document is admitted for registration, he shall send on that day a short note about the document in the prescribed¹ form, giving particulars of the nature of the document, the names of the parties (including the executants and claimants), and a description of the property affected, to the Registrar to whom the requisite

1. As to the expression "prescribed", see the definition of that expression (proposed).

copy is to be sent under any of the sections referred to in this sub-section.

(2) The Registrar receiving such note shall take action thereon as if it were the requisite copy of the document, and such short note shall be deemed to be the requisite copy until the requisite copy is received by the Registrar.

(3) When the requisite copy of the document is received by the Registrar, an endorsement to the effect that the copy cancels the short note shall be made on the copy and on the short note.

Section 69 In section 69 of the principal Act,—

See discussion relating to clause 76(1)

Compare Sixth Report, page 70, clause 76. For reasons, see Sixth Report page 33, paragraph 89.

(a) in sub-section (1),—

(i) for the words "and shall have power from time to time to make rules consistent with this Act", substitute the words "and the State Government may, by notification in the Official Gazette, make rules".

(ii) after clause (gg), insert the following new clauses, namely:—
"(ggg) regulating the procedure for transmitting documents

(i) As to photography, see discussion relating to "Suggested new sections",² and the Bombay Amendment.³

Sixth Report, page 70, clause 76 (2) (h), embodies only one of these amendments, namely regarding re-

1. cf. Sixth Report, page 70, clause 76.

2. See section 70A, as proposed.

3. For the Bombay Amendment, see Mulla (1963), page 44.

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for being photographed and the serial numbering, binding and preservation of the photographic prints and negatives the manner of fixing the signature at the end of a length of film, and the procedure generally in the Government Photo Registry"

copying of the indices.

(gggg) regulating the manner of re-copying indexes Nos. I, II, III and IV, respectively and portions thereof, under section 55.

(ii) As to manner of re-copying the indexes see clause 76(2)(h), and discussion relating thereto. This is consequential.¹

(ggggg) regulating the manner of re-copying and authentication of register books or portions thereof, under section 51.

(iii) As to manner of re-copying and authentication of register books, etc., see discussion relating to clause 76(2)(e). This is consequential.²

(iii) after clause (h), insert the following clause, namely—

"(hh) regulating the manner of issuing the notice referred to in section 85".

See discussion relating to clause 76(2)(f) and recommendation for issue of the prescribed notice before destruction.

Sixth Report, page 71, clause 76 (2) (i) suggested similar provision.

1. See section 55, as proposed to be amended.
2. See section 51, as proposed to be amended.

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	(b) Omit sub-section (2).	This is consequential on the change proposed in section 69 (1).	
Sections 70A to 70E, (photo-graphing of documents)	After section 70 of the principal Act, insert the following new sections, namely :—	See discussion relating to "Suggested new provisions", and the Bombay Amendment, sections 70A <i>et seq.</i>	This is a new provision. Sixth Report did not propose this change.

"PART XI-A

OF THE COPYING OF DOCUMENTS BY MEANS OF PHOTOGRAPHY.

70-A. *Application of this part.*—This Part shall apply to the areas only in respect of which a notification is issued by the State Government under Section 70-C.

70-B. *Definitions.*—In this Part,—

- (1) "Government Photo Registry" means the office where documents are photographed under the provisions of this Part;
- (2) "Manager, Government Photo Registry" means the person in charge of the Government Photo Registry;
- (3) "Photo Registrar" means any person appointed by the State Government to perform the duties of Photo Registrar under this Part.

70-C. *Documents may be photographed in areas notified by Government.*

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(1) *The State Government may, by notification in the official Gazette, direct that in any district or sub-district specified in the notification copies of documents admitted to registration under this Act shall be made by means of photography.*

(2) *On the issue of such notification it shall be translated into the language of the district and shall be posted in a conspicuous place at the Registration offices affected by the notification.*

70-D. Application of Act to areas notified under section 70-C.—

In any district or sub-district in respect of which a notification has been issued under section 70-C, the provision of this Act, shall, for the purposes of this Part, be subject to the following modifications, namely :—

(i) (a) *every document admitted to registration under section 35 or section 41 shall be carefully marked with an identification stamp and the serial number of the document on every page.*

(b) *It shall then be transmitted by the registering officer to the Manager, Government Photo Registry, who shall cause each side of each page of such document together with all stamps, endorsements, seals, signatures, thumb-impressions and certificates appearing*



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thereon to be photographed without subtraction or alteration. He may for this purpose cut or unite, without breaking any seals, the thread or ribbon wherewith the pages of the document, are sewn together in order to separate the pages of the document, and, as soon as the document has been photographed, he shall rebind the document exactly as before and if he has cut the thread or ribbon shall seal it over the joint with his seal ;

Provided that before transmission of the document to the Government Photo-Registrar the party presenting the document may require the registering officer to have it copied by hand under section 52 on payment of an additional copying fee.

- (c) There shall then be prepared and preserved the negative and at least one photographic print, and to each such negative and print the Photo-Registrar shall fix his signature and seal in token of the exact correspondence of the copy to the original document, as admitted for registration :

Provided that when more than one such negative is recorded on one length of film and the Photo-Registrar has affixed

his signature and seal at the end of such length of film certifying in the manner prescribed by rules made in this behalf, the exact correspondence of all copies on such length of film with the original documents, the photo-Registrar shall be deemed to have affixed his signature and seal to each such negative on such length of film.

Provided further that in case of documents containing plans or maps the negatives of such plans and maps may be prepared on paper instead of on films and where the negatives are so prepared the Photo-Registrar shall fix his signature and seal separately to each such negative and print of such plan or map in token of the exact correspondence of the copy to the original map or plan contained in the document as admitted for registration.

- (d) One set of such prints arranged in the order or their serial numbers shall be made up into books and sewn or bound together. To each such book the Registrar or Sub-Registrar shall prefix a certificate of the serial numbers it contains, and the books shall then be preserved in the records of the Sub-Registrar.

The negatives shall be preserved in such suitable place as the Inspector - General may direct ;

Provided that prints of plans or maps contained in documents may either be bound with the prints of such documents or filed separately in such manner as the Inspector-General may direct.

- (2) *All words and expressions used in this Act with reference to the making of copies of documents by hand or the entering or filing of documents or memorandum in books provided under section 16 shall, so far as may be necessary, be construed as referring to the making of such copies by means of photography or the entering or filing of documents or memorandum in books made up of copies prepared by means of photography.*

- (3) *Where this Part applies, the sections mentioned below shall be deemed to be modified as follows :—*

- (a) *In section 19 the words 'and also by a true copy' shall be omitted ;*
- (b) *Sub-section (4) of section 21 shall be omitted ;*
- (c) *the words 'according to the*

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order of its admission' occurring in clause (c) of sub-section (1) of section 52 shall be omitted;

(d) section 53 shall be omitted;

(e) in sub-section (1) of section 60 the words 'and page' shall be omitted;

(f) sub-section (1) of section 61 shall be omitted;

(g) in sub-section 1 of section 62,—

f(i) or the word 'transcribed' the word 'copied' shall be substituted; and

(ii) for the words and figures 'copy referred to in section 19' the words 'photographs of the original' shall be substituted.

70-E.(1) Nothing in this Part shall apply to any document which is prepared on a printed or lithographed form or which in the opinion of the registering officer is not in a fit condition to be photographed.

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(2) Notwithstanding anything contained in this Part, in the case of any document containing a map, plan or trade mark label if the party presenting the document so desires, the registering officer may accept true copies of such map, plan or trade mark label and where such true copies are accepted the map, plan or trade mark label shall not be photographed and such copies thereof shall be filed in the appropriate book".

Section 77(1) In section 77 of the Principal Act, (i) to sub-section (1) add the following Explanation, namely :—

See discussion relating to clause 23.

Sixth Report, pages 52-53 did not recommend this change.

"Explanation : In counting the period of thirty days referred to in the sub-section, the time requisite for obtaining a copy of the order of refusal shall be excluded".

Section 77 (2) (ii) to sub-section (2), add the following proviso, namely :—

See discussion relating to clause 23 (2) proviso.

Sixth Report, page 53.

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

Section 78 Renumber section 78 of the principal Act as sub-section (1) thereof, and after sub-section (1) as so renumbered, insert the following sub-section, namely :—

See discussion relating to clause 66, and the West Bengal Amendment Act, 1955.¹

Sixth Report, page 67, clause 66 is silent on this point.

“(2) The State Government, if it is of opinion that there are reasonable grounds for doing so, may by order publish in the official Gazette, remit in the whole or any part of the State any fee or fees in respect of any matter or matters enumerated in clauses (a) to (i) of sub-section (1), either generally or for any class or classes of cases and in respect of persons generally or of any particular classes of persons”.

Section 82 In section 82 of the principal Act, in clause (c), after the words “personates another”, insert the words

See discussion relating to clause 70(c).

Sixth Report, page 68, clause 40 is silent on this point.

“whether the individual personated is a real or an imaginary person”.

Section 33(1) In section 83 of the principal Act, in sub-section (1), for the words “A prosecution for any offence under this Act coming to the knowledge of registering officer in his official capacity may be commenced” substitute the words “No prosecution for any offence under this Act shall be commenced except”.

See discussion relating to clause 71.

Sixth Report, page 68, bottom.

Section 85 In section 85, insert the following words at the end, namely :—

“after such notice as may be prescribed”.

See discussion relating to clause 74—recommendation relating to destruction after notice.

Sixth Report, page 70, clause 74, also provides for notice.

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Section 87	Re-number section 87 of the principal Act as sub-section (1) thereof, and after sub-section (1), as so renumbered, insert the following sub-section, namely:— “(2) <i>A person who has before the registering officer admitted execution of a document or assented to its registration, shall not be allowed to question the validity of its registration on the ground of any defect in, or the want, of authority of a person presenting the document</i> ”.	<i>See</i> discussion relating to clause 41(2).	Sixth Report, page 58, clause 41(2) proposed a wider provision. For reasons, <i>see</i> Sixth Report, page 36, paragraph 99, and page 80.



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