M.R.O. 1—39,000—16-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1632-33-34 Press ~~Mis.~~

Dated 17-11-~~1934~~

Not to be folded or roughly handled

Read the following letters.

No. 5. From C. F. CHAMIER, Esq., Acting Register to the Court of Sudder Udalut; to T. PYCROFT, Esq., Chief Secretary to Government, dated 1st November 1858, No. 102, A.

SIR,

1. I have the honor by direction of the Judges of the Sudder Udalut to forward the accompanying Draft of "an Act for affording protection to rights on property," prepared by them after duly weighing the suggestions made by the Government in Extract from the Minutes of Consultation under date the 19th May last, and communicating with the Board of Revenue and Government Pleader.

2. With regard to the fees for registration, and for searching the registers and taking copies of documents, the Judges before abstained from making any suggestion, as it appeared to them a matter involving financial considerations, with which they thought the Government were better able to deal, than themselves. They now direct me to state that to save the parties the double trouble of procuring stamps for their documents and then having to register them, they consider the use of stamps for documents requiring to be registered, might be done away with, and an *ad valorem* fee laid upon the registration; for which the existing rates prescribed for stamps would suffice. Where documents already on stamps might be brought for registration, under the option to be allowed of registering old deeds and others not compulsorily to be registered, no further fee, they think, should be exacted. For searching the registers four Annas might be a sufficient charge; and for furnishing copies, such rate of remuneration of the labor entailed, as may now obtain in public offices in each Zillah. The above propositions have been embodied in the Draft Act submitted herewith.

3. As respects the endorsements on stamps, the confining the parties to the use of the stamp for the particular purpose stated in the endorsement, and the return to parties of the value of unused stamps, the Judges attach much value to these measures. They observe that to provide no other safe-guard than the preparation of separate stamps for different descriptions of documents, would be to guard merely against the use of one sort of stamp for another; and would be no protection, as between transaction and transaction, against forgery. The person wishing to forge a bond would merely have to be careful to purchase a stamp designed for a bond, and not one intended for a receipt, &c.; whereas, if limited to use the stamp for no other purpose than the particular transaction to be described in the endorsement, a publicity would be incurred as respects the transaction, which would certainly be a great check against forgery.

4. The Board of Revenue have suggested that Talook Serishtadars, Deputy Tahsildars, and Peshkars might be added to the number of Deputy Registrars; and have expressed their opinion that the village Moonsiffs, whom the Judges had proposed, would be found unqualified for the office. The Judges, however, observe that the Talook Officials first named would be too few in number; and that the village Moonsiffs could be aided by the Kurnums, by whose means more intricate matters of business, than the mere passing on of documents, are already performed. In the Draft Act no mention is made of the particular classes of public Officers who are to be Registrars and Deputy Registrars; their selection and appointment being left to the discretion of the Government.

5. In concluding their observations on this subject, the Judges would express the hope that the Government will not allow to drop the suggestions made by them, which are adverted to and the value of which is admitted in the closing para. of the Minutes of Consultation under reply; the Judges considering their adoption necessary to the due improvement of the present Judicial system, the defects of which have of late become so publicly apparent.

No. 6. ORDER THEREON, No. 1632; dated 17th November 1858.

Copy of this letter, and four copies of the printed Draft which accompanied it, will be transmitted to the Member of the Legislative Council for *Madras*, in reference to para. 12, Extract Minutes Consultation, No. 656, dated 19th May last. It is observed, that copy of that order of Government, together with copy of all previous papers on the subject of the registration of bonds and other documents, has already been furnished to *Mr. H. Forbes*, with whom indeed

the correspondence originated in a Memorandum, dated 2nd July 1857, and reviewed by Government on the 18th Idem, Order No. 854.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

No. 7. From C. F. CHAMIER, Esq., Acting Register to the Court of Sudder Udalut; to W H. BAYLEY, Esq., Acting Secretary to Government, dated 13th November 1858, No. 107.

SIR,

I am directed by the Judges of the Sudder Udalut to request that the remarks contained in the accompanying paper may be read with their Draft Act for affording protection to rights on property, submitted on the 1st Instant; and be considered as an explanatory note to Section XXXVI.

No. 8. ORDER THEREON, No. 1633; dated 17th November 1858.

These papers will be forwarded to the Legislative Councillor for *Madras*, with the letter of the *Sudder* Court, dated 1st Instant, and the Draft Act enclosed therein.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

No. 9. To H. FORBES, Esq., Member of the Legislative Council of India, dated Fort St. George, 17th November 1858, No. 1634.

SIR,

Referring to your letter of the 20th October last, I have the honor, by desire of the Gover-
4 Copies sent. nor in Council, to transmit the Draft "Act for affording protection to rights on property," which was received from the *Sudder Udalut* on the 5th Instant, together with a copy of the orders of Government of this date, No. 1632.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

P. S.—Since the foregoing was written, the Government have received a further letter from the *Sudder Udalut*, submitting an 'explanatory note' to Section XXXVI of the Draft Act. This correspondence is also furnished.

(Signed) W. H. BAYLEY,
Acting Secretary to Govt.

for stamps would suffice. Where documents already on stamps might be brought for registration under the option to be allowed of registering old deeds and others not compulsorily to be registered, no further fee, they think, should be exacted. For searching the registers four annas might be a sufficient charge; and for furnishing copies, such rate of remuneration of the labor entailed, as may now obtain in public offices in each Zillah. The above propositions have been embodied in the Draft Act submitted herewith.

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See note 1.

See para. 31 of the report of the Sudder Udalut on registering assurances, and note 2.

An Act
for Affording Protection to rights on Property.

Preamble.

Whereas the existing laws are found insufficient for the protection of rights founded on property, movable and immovable, and for the repression of false claims raised thereon, and it is necessary to afford better assurance of such rights; it is enacted as follows:—

Laws repealed.

I. Regulations XXXVI of 1793, XXVIII of 1795, XVII of 1803, Section XVII, Regulation VIII of 1805 so far as it relates to Regulation XVII of 1803, Section XXXII, Regulation XII of 1805, and Regulations XX of 1812, and IV of 1824 of the Bengal Code; Regulations XVII of 1802 and XI of 1831 of the Madras Code; Regulation IX of 1827 of the Bombay Code; and Acts XXX of 1838, I of 1843, XIX of 1843, IV of 1845, XVIII of 1847 and XI of 1851, are hereby repealed.

Claims, &c., and releases to be assured by written evidence.

II. No title to immovable property, no mortgage or other claim thereupon, no lease thereof for a term exceeding a year, no contract for value of rupees ten and upwards, no claim for or upon money or other movable property for value of rupees ten and upwards, save what may arise upon a running account or partnership,—conferred, granted, or entered into, from and after the period of six months from the passing of this act, and no cancellation or discharge, in part or in whole, of any such title, obligation, or claim, obtained or incur

red from and after the said period, shall be valid, unless assured by a written instrument describing, as respects instruments relating to immovable property, the right and object claimable under such instrument, or for which it may give discharge, and, as respects instruments relating to movable property, the object and value claimable under such instrument, or for which it may give discharge.

See note 3.

Name-using made ineffectual.

III. In every such instrument the title or claim of the party named therein, as possessing such title or claim, and that of his heirs, representatives and assigns, shall alone be recognised, and no allegation that such name has been used for convenience, or other cause, and that the title or claim really rests in another not mentioned in the instrument, shall be admitted to alter or qualify the terms or effect of the instrument, as regards the person entitled to take under the instrument, according to the express terms of the instrument.

Parole evidence excluded where written evidence is requisite.

IV. No oral evidence to qualify, alter, or contradict the terms of any such instrument shall be admitted, but all provisions and allegations appearing in such instrument shall be allowed full force according to the express terms of such instrument. Provided, that nothing herein contained shall exclude redress from being given where an instrument may embody penal consequences, or have been executed under fraud, duress, or other circumstances affording ground for equitable relief.

See paras. 10 to 12 of the report.

Instruments required peremptorily to be registered.

V. No deed of sale or gift of immovable property, no deed of mortgage of such property, or of acquittance of a mortgage thereof, no deed of lease of such property for any term exceeding one year, no will conveying rights to movable or immovable property, any of which instruments may have been executed within the period of six months from and after the passing of this act, and no instrument qualifying, altering, or discharging any registered instrument of any description whatever, shall be valid, unless the same be registered in the manner prescribed by this act. Provided, that it shall not be necessary that any deed of security, required from a party or parties by any public officer authorized to require the same, shall be registered.

See para. 16 of the report, and note 4.

Periods within which the instruments described in section V, must be presented for registration.

VI. No instrument such as is described in section V of this act, saving and excepting a will, which may have been executed from and after the period of six months from the passing of this act, shall be accepted for registration, unless presented for the purpose to the proper officer within thirty days from the date of execution thereof; and no will executed from and after the period of six months from the passing of this act, shall be accepted for registration, unless so presented within thirty days from the demise of the testator, or from the discovery of the will.

See para. 17 of the report.

Instruments which it is optional to register.

VII. All parties holding instruments of the descriptions mentioned in section V, which may have been executed before the passing of this act, or before the expiration of six months from the passing of this act, shall be at liberty to have such instruments registered; provided they may be presented for registration within two years from the passing of this act.

Do. Do.

VIII. All parties holding bonds for money, or other instruments not such as are described in

section V, shall be at liberty to have such instruments registered; provided, in the case of such instruments as may be executed from and after the period of six months from the passing of this act, they may be presented for registration within thirty days from the date of execution thereof, and in the case of such as may have been executed before the passing of this act, or before the expiration of six months from the passing of this act, they may be so presented within two years from the passing of the act.

See para. 20 of the report.

Registry Offices to be be established.

IX. For the purpose of the registration of all instruments such as are described in sections V, VII, and VIII, there shall be established in each presidency, under the orders of the Government of such presidency, the Office of a Registrar for each zillah or district in the presidency, and as many Offices of Deputy Registrars under each Registrar as may be deemed necessary.

See para. 20 of the report, and note 5.

When presentations may be made to deputy registrars.

X. Instruments may be presented for registration to a deputy registrar, provided in the case of instruments executed from and after the expiration of six months from the passing of this act, they be presented by all the parties thereto, both grantors and grantees, and in the case of instruments executed before the passing of this act, or before the expiration of six months from the passing of this act, they be presented by the grantees or their heirs, representatives, or assigns; provided also, that one or more of the said parties presenting the instrument habitually reside within the limits in the zillah assigned to such deputy registrar for his sphere of duty, or that any immovable property affected by such instrument may be situated, in part or in whole, within such limits; and provided further-

more, that any party concerned in presenting the instrument, who may be unknown personally to such deputy registrar, be attended by some person in whom the deputy registrar may be able to confide, who shall answer for his identity.

Parties guilty of false personation to be punished.

XI. Any person presenting an instrument for registration to a deputy registrar, who may be guilty of personating with fraudulent intent a party to such instrument, or the heir, representative, or assign of such party, and any person who may aid and abet such fraudulent personation, shall, on conviction before the Criminal Court of the zillah, be liable to a sentence by such court not exceeding two years' imprisonment, with or without hard labor in irons, and lashes with a cat o' nine tails not exceeding one hundred.

Deputy registrars punishable for connivance or neglect in cases of false personation.

XII. Any deputy registrar by whom an instrument may have been accepted and forwarded to the registrar of his zillah for registration, any party to which, or heir, representative, or assign of such party, may have been fraudulently personated by another at the presentation of such instrument to such deputy registrar, shall, upon conviction before the Criminal Court of the zillah of connivance in such fraudulent personation, be liable to a sentence by such court not exceeding two years' imprisonment, with or without hard labor in irons, and a fine not exceeding rupees one hundred; and, upon conviction before such court of culpable negligence whereby such personation may have been effectually carried out, to a sentence not exceeding six months, imprisonment, or a fine not exceeding rupees fifty, or both: and in all cases that a sentence of fine may be imposed under this section the same shall be levied summarily by distraint.

See para. 22 of the report, and note 6.

XIII. Where it may be inconvenient for any of the parties to an instrument, the registration of which is required, or the heirs representatives or assigns of such parties, to appear before a deputy registrar personally, for presentation of such instrument for registration, such instrument may be presented for registration to the registrar of the zillah, by means of one of the vakeels of the zillah court duly constituted for such purpose by the said parties, their heirs, representatives, or assigns. But no instrument shall be received by the registrar for registration from the parties themselves, their heirs, representatives, or assigns, without the intervention of a vakeel. And any vakeel guilty, by connivance or culpable negligence, of presenting for registration any instrument to the registration of which the real parties named therein, or their heirs, representatives, or assigns, may not have assented, shall be liable to the penal consequences provided in the case of deputy registrars, so guilty, by section XII of this act.

Presentations may be made to registrar by vakeel.

XIV. No instrument shall be accepted for registration unless at the time of its presentation a fee according to the following scale be deposited:—

Scale of fees to be paid for registration.

If the instrument be in value not above Rs. 50, two annas.

If above Rs. 50 and not exceeding Rs. 125, four annas.

If above Rs. 125 and not exceeding Rs. 250, eight annas.

If above Rs. 250 and not exceeding Rs. 500, one rupee.

If above Rs. 500 and not exceeding Rs. 1,000, two rupees.

If above Rs. 1,000 and not exceeding Rs. 2,000, four rupees.

If above Rs. 2,000 and not exceeding Rs. 5,000, eight rupees.

If above Rs. 5,000 and not exceeding Rs. 10,000, sixteen rupees.

If above Rs. 10,000 and not exceeding Rs. 20,000, thirty-two rupees.

If above Rs. 20,000 and not exceeding Rs. 50,000, fifty rupees.

If above Rs. 50,000 and not exceeding Rs. 1,00,000, one hundred rupees.

If above Rs. 1,00,000, one hundred and fifty rupees.

The valuation for the purposes of this section of instruments affecting landed property, other than mortgages thereon, shall be according to the gross produce of such property for one year, and of all other instruments according to the expressed or estimated value of the object affected by the instrument. Provided, that if any instrument presented for registration shall be on a stamp, the value of such stamp shall be deducted from the sum of the fee chargeable upon such instrument according to the above scale.

See para. 21 of the report.

XV. On the presentation of any instrument for registration to a deputy registrar, all the parties to which, that is, the grantors and grantees, or their heirs, representatives, or assigns, may have appeared therewith, that officer shall prepare a paper, in the following form, taking the

Presentation paper to be prepared.

signatures of the said parties thereto, as well as those of the persons who may have appeared and testified to their identity.

1858.

Date of Presentment.			Species of instrument.	By whom granted.	To whom granted.	Signatures of parties presenting the instrument.
Month.	Day.	Hour.				
June.	12th	10 to 11	Bill of Sale; mortgage; contract; bond, &c. as the case may be.	A. B. C. D.	E. F.	A. B. answered for by K. L. G. H. } heirs of I. J. } C. D. E. F.

X. Y. Z.
Deputy Registrar.

At the foot of the said paper all interlineations, erasures, and alterations appearing in the instrument, shall be certified by the signatures of the parties presenting it and that of the deputy registrar; and the said paper shall be despatched by the deputy registrar to the registrar, together with the instrument, within twenty four hours from the presentation of the instrument.

Notice to be issued to absent grantors, their heirs and assigns.

XVI. Where an instrument executed before the passing of this act, or before the expiration of six months from the passing of this act, may be presented to a deputy registrar for registration by the grantee only, or his heirs, representatives, or assigns, such party shall with the instrument deposit with the deputy registrar a copy thereof also, and furthermore such costs as may be necessary for the issue of notices as hereunder described, according to a scale to be fixed by the registrar. The deputy registrar shall then compare the said copy with the original, and certify the same with his signature, and shall issue notice, directly or through any other deputy registrar in his own or any other zillah, to the grantor, his heirs, representatives, or assigns, to appear within a

reasonable time, either personally before himself, or by vakeel before the registrar, to show cause against the registration of the said instrument; and he shall, within twenty four hours of the presentation of the instrument, despatch to the registrar a presentation paper after the form above given, together with the said copy of the instrument, retaining the original to be shown to the said person or persons on their appearance before him, or to their vakeel should they appear by vakeel before the registrar.

Second notice where the first cannot be served.

XVII. If service of the said notice cannot be effected, the deputy registrar shall issue copies thereof to be affixed, one in his own office, one in the office of the registrar, and one on the ordinary dwelling house of each of the persons whose appearance is called for, appointing a fresh time for their appearance.

Assent of grantors, &c., to registration, to be asked on appearance.

XVIII. If the said person or persons appear pursuant to one or other of the said notices, the original instrument shall be shown to them, and their assent to its registration asked. If they do not so appear their assent shall be assumed, unless cause be shown against such assumption in the manner permitted by sections XX, XXI, and XXII of this act.

Above duties to be performed by registrars.

XIX. If any instrument be presented to a registrar for registration, he shall go through the same duties, as to preparation of a presentation paper and issue of notice, required as above of a deputy registrar.

See para. 23 of the report.

Notification of the instrument to be made by registrar in the district gazette, &c.

XX. The registrar on receipt of a presentation paper from a deputy registrar, together with its accompanying instrument or

copy of instrument, or on the direct presentment of an instrument for registration to himself, shall without loss of time proclaim the fact of such presentation in the district gazette, if there be one, or otherwise in such way as may best insure publicity, inviting any one named in the instrument, or, in case where such may appear, the heirs, respresentatives, or assigns of such person, or any one who may come forward on the behalf of any such party aforesaid, and prove the necessary absence of such party; to appear within one month and show cause against the registration of the instrument.

Course to be pursued where any one comes forward on behalf of an absent party.

XXI. Where, on any one coming forward under the above section in the behalf of a necessarily absent party, means may appear for serving such absent party with notice of the application made for registration, the processes enjoined by sections XVI and XVII shall be put in force in respect of such party, and on his appearing, his assent to the registration shall be asked pursuant to section XVIII.

Instruments duly objected to not to be registered.

See para. 15 of the report.

XXII. If any party to an instrument brought for registration, or his heirs, representatives, or assigns, shall at the time of the presentation of the instrument withhold assent to its registration; or if any such party, or his heirs, representatives, or assigns, who may not have attended at the presentation of the instrument, but have appeared pursuant to notice or otherwise, shall, at any time before the registration of the instrument may have been effected, refuse assent thereto; or if any one coming forward on behalf of any such party, shall appear and show his necessary absence, and that no notice can be served upon him;

such instrument shall not be registered but shall be returned, in the manner most convenient, to the party who presented it, with an endorsement under the signature of the registrar or deputy registrar showing the fact and reasons of the return. And every person endamaged by the non-registration of the instrument may sue for specific performance of the matter provided for in the instrument, or for recovery of the damages incurred by him by the non-performance thereof, notwithstanding that he may have no written evidence of having incurred such damages but what may arise out of or be afforded by the said instrument: provided, that such suit be brought within the period of six months from the date on which registration of the instrument may be refused. But it shall not be competent to any person who may have assented to the registration of an instrument to withdraw such assent, and impede the registration of the instrument, unless all parties to the instrument, or their heirs, representations, or assigns, shall concur in withdrawing such instrument from registration; in which case the registration of the instrument shall not be proceeded with.

Disputes connected with registration to be settled by registrar.

XXIII. All disputes, and questions that may arise in connection with any proceeding enjoined by this act towards effecting the registration of an instrument, shall be inquired into by the registrar, or by the deputy registrar acting under his orders, and shall be disposed of by the registrar, whose orders thereupon shall be final.

See para. 23 of the report.

Books to registry to be kept.

XXIV. The registrar shall keep three books of registry, which shall be entitled thus:—I, Register of title deeds; II, Register of mortgages, and leases; and III, General Register. The latter book shall embrace all instruments not belonging to the two former. These books shall be paged, and made up for each year.

See paras. 23 and 24 of the report.

Mode of registration,

XXV. On the expiration of the periods that may be fixed in any notices or proclamations issued for appearance of grantors, their heirs, representatives or assigns, or of persons coming forward on behalf of any such, pursuant to sections XVI, XVII, XIX, XX and XXI of this act, the registrar shall proceed to cause registration to be made of every instrument presented for registration, the registration of which may not have been objected to by a party entitled to make objection thereto. Every instrument shall be entered in its appropriate book according to the order of its presentation, and shall be numbered accordingly. The entry shall begin with a copy of the presentation paper, the form of which is given in section XV, after which the instrument shall be transcribed in full. All names of persons, and places appearing therein shall be inserted in double capitals. These entries shall be compared with the originals by an examiner, who shall certify by his signature that he has made such examination, and the signature of the registrar shall be superadded. The original instrument shall then be returned, in the manner most convenient, to the party who may have presented the same for registration, together with an endorsement inscribed thereon showing the year of the registration, the number of the book of registry in which the entry of the instrument may have been made, and the page in such book at which such entry appears; which endorsement shall be certified by the seal and signature of the registrar. And such registration and return of the instrument registered shall be effected within six weeks from the time at which it may be lawful, as prescribed at the commencement of this section, for the registrar to proceed to have the registration made.

See para. 24 of the report.

Indices to be prepared.

XXVI. At the close of the year two Indices shall be prepared for each register; one showing the names of all persons mentioned in the instruments registered, and the other the names of all places. These names shall be entered in the indices in alphabetical order. At the end of every seven years the several indices embraced by that period shall be embodied together; the index for each description of register being however kept distinct. In all such indices reference shall be made to the pages of the register in which the names entered in the indices appear.

See para. 26 of the report.

Registers may be searched.

XXVII. Any person desiring to search the registers shall be permitted to do so on payment of a fee of four annas; and certificates of the result of a search made in the registers, whether positive or negative, shall be granted to such person, on application, by the registrar without further fee than that paid for the search.

Copies of registered instruments may be obtained.

XXVIII. Any person producing authority from any court, or the head of any public office, for the same, shall be furnished with a copy of any registered instrument, authenticated by the signature of the registrar, on production of stamps of the value of eight annas per roll whereon to engross such copy, and on deposit of costs for making such copy according to a scale to be fixed by the registrar.

See note 7.

Government may enforce observance of the rules in the act upon the several registry offices.

XXIX. It shall be competent to the Government of each presidency to take such steps, and to issue such orders, as may be deemed necessary to secure the due observance of the rules laid down in this act, for the registration of instruments by the several registry offices within the presidency.

XXX. All claims founded on registered instruments, uninterfered with by other instruments subsequently registered, or by decrees of court or public sales, shall be enforced on application to the court having jurisdiction in the matter of such instruments, by a miscellaneous petition. But if it be found that the instrument is not conclusive as to the effect to be given thereto, and that judicial inquiry, to warrant the enforcing the same, is necessary, the party making the application shall be referred to a civil action.

Claims on registered instruments may be enforced by miscellaneous petition.

See para. 27 of the report.

XXXI. No party whose name may appear in a registered instrument sought as above to be enforced, and no heir, representative or assign of such party, shall be permitted to dispute the act ascribed to such party in the said instrument, or the obligation attaching to him thereunder, unless he can show that, from causes not within his power to control, he was unable to appear before the registration of the instrument, and object to its registration. All such pleas in justification of such default shall be dealt with summarily in disposing of the said miscellaneous petition: should the default be not justified, the instrument shall be enforced, notwithstanding the objection taken thereto by the person so objecting: should the default be justified, the instrument shall not be invalidated because of the objection so taken thereto, but the matter of the objection shall be decided by means of a suit to be perferred by any party named in the instrument, or their heirs, representatives, or assigns, who may be interested in bringing such objection to an issue; provided, that such suit be instituted within six months from the date on which decision on

Parties to registered instruments and their heirs &c., cannot dispute the instruments.

the default, necessitating such suit, may have been given.

XXXII. All judgments or orders passed in pursuance of the above sections XXX and XXXI, shall be final.

Judgments on registered instruments to be final.

XXXIII. Section III, regulation X of 1829, of the Bengal Code; sections XI and XII, regulation XIII of 1816, and sections III and IV, regulation II of 1825, of the Madras Code; and sections X, XI, XII, and XIX, regulation XVIII of 1827, of the Bombay Code, are hereby repealed from and after the period of ~~three~~ months from the passing of this act.

Regulations repealed.

See note 3.

XXXIV. From and after the period of six months from the passing of this act, no instrument required to be made pursuant to section II of this act, shall be valid, unless inscribed upon stamped paper, the value of which shall be regulated upon the value held under such instruments according to the scale of valuation laid down in section XIV of this act; save and except that it shall not be requisite to inscribe upon stamped paper any instrument brought for registration under the rules perscribed in this act, nor any promissory notes issued by the Government of India, leases granted by the Government of any of the presidencies of India, receipts issued for payment of public revenue, deeds of security required from a party or parties by any public officer authorized to require the same, receipts between landlord and tenant for agricultural rents, bills of exchange, bills of lading, drafts on bankers and agents, and assurances relating to shares in any public or private works or undertakings of any corporation, company, or society, such as are required to be registered, or other-

Instruments required to be on stamps.

See note 9.

wise entered or minuted in the books of the corporation, company, or society.

Deputy registrars to be dispensers of stamps.

XXXV. The deputy registrars mentioned in section IX of this act, shall be agents for the supply of stamps.

None but the intending grantor to purchase the stamp for any instrument.

XXXVI. No person shall purchase a stamp, other than one required for a vakálutnamah, a deed of security called for by a public officer, a pleading, or any other use in the conduct of any judicial proceeding, but the intending grantor of the instrument to be inscribed on such stamp, or his agent. Such purchase shall be made only through the deputy registrar of the village or district in which the said grantor may ordinarily reside; and should the grantor or his agent be unknown to such deputy registrar, he shall be attended by some other person in whom the deputy registrar may be able to confide, who shall answer for his identity.

Stamps to be obtained only through deputy registrars.

Parties guilty of false personation, in making purchase of stamps, to be punished.

XXXVII. Any person appearing to purchase such stamp, who may be guilty of personating, with fraudulent intent, another whose name he may put forward as the grantor or his agent; any person aiding and abetting in such personation; and any person purchasing, with fraudulent intent, a stamp in behalf of another who may not have authorized him to make the purchase, shall, on conviction before the Criminal Court of the zillah, be liable to a sentence by such court not exceeding two years' imprisonment with or without hard labor in irons, and lashes with a cat o' nine tails, not exceeding one hundred.

Deputy registrars punishable for connivance or neglect in cases of such false personation.

XXXVIII. Any deputy registrar who may sell to, or procure a stamp for a person who may have fraudulently personated the grantor or his agent, shall, upon conviction before the Criminal Court of connivance in such fraudulent personation, be liable to a sentence by such court not exceeding two years' imprisonment, with or without hard labor in irons, and a fine not exceeding rupees one hundred; and, upon conviction before such court of culpable negligence whereby such personation may have been effectually carried out, to a sentence not exceeding six months' imprisonment, or a fine not exceeding rupees fifty, or both: and in all cases that a sentence of fine may be imposed under this section, the same shall be levied summarily by distraint.

See para. 29 of the report.

Stamps to have an endorsement, and not to be transferable.

XXXIX. On the sale of a stamp, other than of the nature excepted in section XXXVI of this act, the deputy registrar shall endorse on the back of the stamp the purpose for which purchase thereof is made, including the names of the grantors and grantees in the instrument to be inscribed thereon, together with the name of the purchaser, whether the grantor or his agent, and of the person, if any, certifying the identity of the grantor or his agent, and date of sale of the stamp; taking thereto the signature of the person appearing to obtain the stamp and that of the person, if any, certifying his identity; and no instrument requiring to be on a stamp, shall, if called in question, be held valid, if inscribed upon a stamp issued for any other purpose, than the purpose of such instrument, or if the endorsment thereon be not made in all respects conformably to the provisions of this act.

XL. No instrument requiring to be on a stamp, shall be valid, unless it have been executed within a period not exceeding three months from the date on which the stamp was purchased. But any person who may have purchased a stamp, the need for employing which may have ceased, shall be entitled to receive back the value of the stamp on returning the same to the deputy registrar from whom it may have been obtained, within three months from the date of the purchase thereof.

Stamps not valid unless used within a given period.

See para. 30 of the report.

NOTES.

1. (Title, preamble and section I.) The act has been drawn up for operation within the sphere of the Company's Courts only. If to be extended to the Supreme Courts, adaptations must be made accordingly.

2. (Section II, &c.) Six months are allowed before the act is to come into operation, as this time will be requisite to insure full publicity to the act being given. It is an act so affecting the interests of the people in all their dealings with each other, that no pains should be spared to have its provisions universally made known. Translations of the act in all the vernacular languages should be made, and copies thereof deposited in all public offices and with the village moonsiffs, and attention thereto should be called by beat of tom tom, or in any other sufficient way.

3. (Sections III and IV). The Judges are aware that the effect to be given in law to section II would render unnecessary sections III and IV, as, where the law required a matter to be proved by written evidence, parole evidence thereof would be inadmissible. Moreover, they are aware that section IV embraces the matter of section III. Still as the people whose transactions are to be governed by the proposed law would not generally understand the comprehensiveness of section II, or of section IV, they have thought it advisable that the full intent of the law should be thus plainly stated. The process of name-using, against which section III is aimed, is so common that it has appeared to them that it should be put down in distinct terms. The object of these sections, as it will be obvious, is to exclude as much as possible parole evidence, this being of such an untrustworthy and unsatisfactory nature among a people so addicted to falsehood as those of India, and among whom corrupt testimony is to be had in such abundance and at so cheap a price.

4. (Section VII). The Judges propose to extend the limit within which past transactions may be registered to two years in order to afford the people sufficient opportunity of judging of the benefits of registration, especially of those secured by sections XXX and XXXI.

5. (Section X). It will be observed that the parties themselves must appear in instruments of recent execution, and that their heirs or assigns can only do so in those of more remote execution. The recent instruments are not really made, so as to be valid, until registered, and therefore the attendance of none but actual parties for registration may be required; and it is of importance that the operations of the registry offices should be the exact counterpart of those of the parties, and not complicated by the inquiries, and explanations necessary on a change of parties. If a party to an instrument should demise between the execution of the instrument, and its registration, there is little hardship in requiring that the instrument should be re-made with the heir, especially as by section XXXIV, the expense of a stamp will not have been incurred.

6. (Section XIII). The prohibition against a registrar receiving instuments for reg. tration from the parties themselves, is made because the difficulty of identifying the parties will ordinarily be great in a place remote from their residence, as the zillah station, and personations might be made successfully. The vakeel will have his own means of inquiry, and will be a guarantee to the court against such false appearances, and he himself will be subject to penal consequences where there may be false representation of parties made through his fraudulent connivance or culpable negligence.

7. (Section XXIX). As, for the reasons shown at para. 20 of the report, there will be no need of a central registry office at the presidencies, it will be necessary that powers such as herein provided for be conferred upon the Government.

8. (Section XXXIV). To render the operations required by the act as little burdensome as possible to the people, both as to the trouble and the expense involved thereby, the Judges have thought that the registration of an instrument should do away with the need of having it inscribed on a stamp. The costs of registration, and of stamps, are therefore put upon the same scale; and this is that at present in force for stamps. The allowing the cost of the stamp to stand in lieu of the fee for registration, where an instrument may be already on a stamp, is only carrying out the equity of the rule; and thereby, what is very desirable, encouragement will be afforded to parties holding instuments executed before this act is brought into operation, to come forward and register them.

9 It is proposed, as will be seen in section XXXIII, that section XII, regulation XIII of 1816, should be cancelled; but it is here thought advisable to retain the exemption of Government leases, and receipts for agricultural rents from stamps, as provided for in the said enactment, since to require that these instruments should be on stamps would be to impose a fresh burden upon land, which could with difficulty be borne. *(vide to Section XXXII)*

By order of the Court of Sudder Udalut.

C. F. CHAMIER,
Acting Register.

MADRAS,
1st *November* 1858.

DRAFT

OF

AN ACT

FOR AFFORDING PROTECTION TO RIGHTS ON PROPERTY.

PREPARED BY THE JUDGES OF THE

SUDDER UDALUT, MADRAS.

13

My dear Bayley,

Mr Strange has asked me to write and desire that the alterations made in sections ~~XXII~~, ~~XXIII~~, and in margin of section ~~XXXIV~~, and in the last para: of the Notes, may be made in each of the 10 Copies of the Draft Act. Will you kindly have this neatly done, and return me the accompanying pattern?

Yours sincerely
C. J. Chambers

6 Nov. 1858.

DRAFT

No. 1632.

Copy of this Letter, & four copies of the printed Draft wh accompanied it, will be transmitted to the Members of the Legislative Council for Madras, in reference to Para 12 Ex. In. Con - No 656 d/ 19th May last - It is observed that copy of that order of Govt, together with copy of all previous papers on the subject of the registration of lands & other documents, has already been furnished to Mr H. Forbes, with whom indeed the correspondence originated in a Memorandum d/ 2d July/57, & renewed by Govt on the 18th idem, order No 852. D. L. C. 9/11.

ordered that following Letter be despatched

To the Hon'ble Sir Peregrine Maitland &c &c &c
Fort St George
17th November 1858.

* To the Members for Madras of the Legislative Council of India.

DRAFT

No 1633.

16

Here papers will be forwarded to the Legislative Councillors for Sanction, with the Letters of the Sudder Ct dd/1st inst, & the Draft Act enclosed herein.

Fort St. George,
17th November 1858.

W.M.B

To the Sudr Adalut— Dispd 20th

No 1633.

From The Asst Register of the Sudder Adalut.

To The Chief Secretary to Government.

Dated 1st Decr 1858.
Rec'd 3rd November, 1858.

Ansd No 102 A.

Forwarding the Draft of an Act for affording protection to rights on resumption.

Copy sent

Collector of Chingleput

Judicial Letter from Sudder Adalut dated 1st May 1833 & upwards.

Sudder Adalut Judicial 1858 Despatch Nos.

Fort St. George, 1st May 1833.

Sir,

I am directed by the Board of Revenue to acknowledge the receipt of your Letter noted in the margin, and to request that you will inform the Court of Sudder Adalut that the Board of Revenue have no objection to the Draft of an Act for affording protection to rights on resumption.

I am, Sir,
Your most obedient Servant,
(Signed) W. Cracroft
Secy to the Board of Revenue.

To
The Registrar of the Court of Sudder Adalut.

A Copy of the Draft Act sent to the Hon'ble the Advocate General for perusal.

Cracroft
Secy

Judicial Depot

No 1634 of 1858.

17

From A.G. Chichester

to Lt.-Forbes. Q.M.G.

Members of the Legislative Commn
of Inquiry

Sir/

Reporting to you the letter of the 20th Oct/ last, I have the honour by desire of the Q.in C. to transmit the Draft Act for affording protection to rights & property" which was received from the Lucknow Tribunal on the 5th inst: together with a copy of the orders of Govt. of this date, No 1632.

4 copies sent

Fort St George
17 November 1858.

D.A.C.
9/11/58

P.S. Since the foregoing was written, the Govt have recd a further letter from the Lucknow Tribunal, submitting an "explanatory note" to Sect XXXVI of the draft Act. This correspondence is also furnished.

D.A.C.

Ind. Ltr. to Engd. 15th Feby. No. 7 of 1859 Para 23-

In Jud. & Comn. 23d November Judicial 1858 Dept.

No. 1634.

The Member of the Legislative Council of India.

Dated 17th November 1858.

Forwarding to the Legislative Councillor for Madras the Sudr Courts letter of the 1st & 13 Instant together with the Draft Act for affording protection to rights in property, and a Copy of the Orders of Government thereon.

5 @ 9.

515.