

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 41	Press
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Dated 11 — 1 — 19	1864

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,
11th January 1864.*

Read the following papers:—

No. 63. Proceedings of the Board of Revenue, dated 23rd October 1863, No. 6792.
From E. B. FOORD, Esq., Acting Collector of the Kistna District; to W. HUDLESTON,
Esq., Secretary to the Board of Revenue, dated Masulipatam, 9th October 1863,
No. 223.

1. With reference to the Board's Miscellaneous Circular,* No. XLVI, referring to the Draft Bill to provide for the Registration of Assurances, I have the honor to state that the general principle of the Bill is, in my opinion, suitable for the purposes intended.

* Dated 10th June 1863.
Board No. 338.

2. I have nothing to suggest regarding it, except that it appears to me that until an Act legalizing Hindoo Wills, which are opposed to Hindoo Law, be passed, Section 22 is not likely to be of much use.

3. As directed in paragraph 2 of the Board's Circular, I enclose copies of the Sub-Collector's and Acting Head Assistant Collector's letters on the subject of the Bill. Other subordinates have given no opinion.

4. The original vernacular papers with translations received from some of the leading men of the District, who replied to the requisition for their opinions on the Bill, are also enclosed.

ENCLOSURE No. 1.

From W. WILSON, Esq., Acting Head Assistant Collector; to E. B. FOORD, Esq., Acting Collector of the Kistna District, dated Bezoarah, 13th July 1863.

1. In answer to your letter, No. 29, dated 6th instant, requesting me to give my opinion on the Bill referred to in the Board's Miscellaneous Circular, No. XLVI, I have the honor to inform you that, in my opinion, the Registration of Assurances respecting real property is a very desirable thing, though to judge from the experience of England (see Stephen's New Commentaries on the Laws of England, Volume 1, page 612, where it is remarked that general Registers for York and Middlesex had been long established, though it is said not with effect decidedly beneficial), it may not be in practice attended with success.

2. Respecting Registration of Assurances relating to personality, I should imagine that mercantile men would be of all the best qualified to give an opinion, but I do not think that they would be inclined to favor any scheme of Registration of Assurances which must, in the natural course of business, frequently change hands.

3. Nor do I consider that the local distinctions raised in Sections 18, 19 and 65 of the proposed Act are at all fair, for residents within the ordinary original Civil Jurisdiction of a Court established by Royal Charter, would be invested with privileges, which those residing out of those limits would not enjoy. It has been my experience in the Division at present under my charge, that the registration of the transfers of real property in the public accounts has been eagerly sought for by the parties interested, and this leads me to believe that a plan of registering such Assurances would be successful. I however think, so far as reality is concerned, that the purposes of the proposed Act would be satisfied by opening a register of transfers in every Taluk.

4. I have requested four native gentlemen to favor me with their opinions on the Act, which on receipt will be forwarded, as requested in your letter.

From W. D. HORSLEY, Esq., Acting Sub-Collector of the Kistna District; to E. B. FOORD, Esq., Acting Collector of the Kistna District, dated Guntur, 14th September 1863, No. 203.

In reply to your letter of the 6th July last, No. 20, forwarding copy of Miscellaneous Circular, No. XLVI, I have the honor to state that I approve of the general principles of the Draft Bill for Registration of Assurances, and have no changes to suggest in its detail.

(True Copies.)

(Signed) E. B. FOORD,
Acting Collector.

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ENCLOSURE No. 2.

Opinion of Pamedighantam Ramadoss, Tahsildar of Nandigamah Taluk, dated 29th July 1863.

1. With respect to transferring the right of property moveable or immoveable by one party to another, it is desirable that the grantor and grantee of documents (with the exception of deeds of gift) should appear with those documents, before the local authorities, such as the Collector, Sub-Collector, Head Assistant Collector, or the Zillah Judge, and produce to them the said documents, and then both parties should unanimously agree to have the documents registered in their offices, as thereby the fact of the registration would at any future time establish the execution of such documents, in the event of the person executing them denying the execution of the same, and would protect the grantee from any loss or trouble it would contribute to his benefit.

2. I think it desirable that in cases where a party executes a will, *i. e.*, document by which he transfers at his death, his moveable or immoveable property to any person, the testator should in his life-time, and while in his right sense, attend before the Tahsildar to whom the village of his residence belongs, and get the will registered, as thereby the document proves useful both to the testator and the person to whom it is granted. But I think the document affects a little the interests of the heirs or persons who might have any right to a share in the immoveable property specified in that document, which is registered, and under which the property therein referred to is possessed by the person to whom it is transferred. However, in order to remove the evil, a proclamation should be issued, after the registration of the said document requiring persons who might have any claim on the property referred to in the said document, to set up their claims within a given time. If so the persons who might have claims, would immediately come forward and claim their shares by which justice would be done to them, and their right would, I think, be secured to them.

(True Translation.)

(Signed) E. B. FOORD,
Acting Collector.

ENCLOSURE No. 3.

Opinion of Manapaka Venkatarreddi Naidu, Tahsildar of Bezawada, dated 22nd July 1863.

1. I beg to state that the rule provided for the Registration above alluded to, is useful to regular claims inasmuch as it is a just one.

2. It therefore seems a good provision to the people in general.

3. If deeds are made to be registered under this provision, through the proper village authorities, and an extract therefrom be sent within a given time to the higher authority, who is to issue a notice (to be returned within a proper time), with a view to ascertain the correctness of the registration, requiring the parties concerned to state whether there exist any objections to the registration, and if that authority is made to dispose of the matter, the proceeding would be good.

4. As it is difficult to procure in every village an intelligent village authority, it would be expedient to amalgamate four or five villages, and define the limits of the jurisdiction of the same. If so, the provisions of the Act would, I think, be beneficial to some extent.

ENCLOSURE No. 4.

Opinion of Gooppala Venkata Ramanappah Naidu, District Munsiff of Bezawada Taluk.

I beg to state that the Registration of instruments is to verify the execution of the same, but it is not made after duly ascertaining the right or otherwise (to property); consequently several documents which were registered under the Regulation in force are in many instances annulled on judicial inquiry. Registration therefore might not be considered important. Under such circumstance the clause providing that except deeds of gift no other instruments shall be admitted in evidence in Judicial inquiry unless registered is, it would appear, greatly prejudicial to people, for such instruments would be executed at any time, without loss of time, according to the emergency of the case in town and village, but to say that instruments so executed shall

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not be admitted in evidence unless registered, is to give trouble and loss to the people. Consequently the proposed Bill of Act under consideration does not appear to be beneficial to the people generally.

(Signed) E. B. FOORD,
Acting Collector.

ENCLOSURE No. 5.

Opinion of Marvadi Sait Ram Gopal, Sowkar, an inhabitant of Jaggayapett, dated 4th August 1863.

I therefore beg to state that in all cases, if documents, by which the right of property is made to be transferred to others, should be registered and authenticated by the public authorities, strictly in accordance with the provisions of the Bill, presented to the Governor General in Council, and the Act be passed accordingly, the enactment would be most beneficial and just to the public, because there would be no room in future in matters thus settled before public Officers to fabricate irregular documents; besides this, the enactment would enable Government Officers to discover easily the right principle of justice. Some of my friends, who are Sowkars and traders, have likewise coincided in my opinion that this enactment is very beneficial to the people in general. I therefore beg to represent this for your Honor's information.

From the Collector of Malabar, dated 17th October 1863, No. 227.

In continuation of my letter of the 3rd instant, No. 218, on the Registration of Assurances, I have the honor to enclose a communication just received from C. Kanaran, Deputy Collector, Southern Division, in this District.

ENCLOSURE No. 1.

From C. KANARAN, Deputy Collector, Southern Division; to G. A. BALLARD, Esq.,
Collector of Malabar, dated Calicut, 13th October 1863.

1. I beg to submit a few remarks on the Assurance Draft Act.
2. On the whole it will be a useful enactment, but some evils are likely to arise from its operation.

3. The duties of the Registrar will devolve on the Civil Judge of the Zillah. Whether this Officer will be able to perform them as satisfactorily as may be required, in addition to his own duties as the highest local judicial functionary, I extremely doubt.

4. In my opinion a separate Officer should be appointed for the duties of the Registrar.

The charges which this measure will entail on the State, can be amply compensated for by a gradual reduction of expenses in the Judicial Department after the introduction of the Act. Suits in reference to land sales, transfers, &c., will diminish in number, and some of the existing Courts can then be well dispensed with.

5. Under the proposed enactment, Deeds of all and every description, however insignificant the transactions may be, must be registered.

The majority of the tenants in Malabar are composed of the lower class of people, the value of their lands, and the amount of rent which they pay for the lands, vary from 2 to 10 Rupees. It is not at all probable that the Jenmies or Proprietors of land, or even the mortgagees, from whom the tenants in many instances obtain lands, would undergo, for the sake of their poor tenants, the inconvenience which the registration of Deeds would inevitably involve.

6. Many of the Native Princes and large Jenmies or Proprietors of land have in their service persons employed for the express purpose of attesting as witnesses all Deeds and Receipts executed in connection with their properties; and the Proprietors are in most cases men of high position in society. They would certainly feel it degrading to themselves to be obliged to appear before the Registering Officer in order to testify to the genuineness of petty Deeds, Receipts, &c., requiring Registration, and it can hardly be expected that they would yield to the entreaties of their tenants for personal attendance at the Register Office for such purposes, or that they would condescend to appoint Vakeels to represent them in such trivial matters.

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7. Under these circumstances numerous instruments may remain unregistered, and the result will be that when disputes arise, and necessitate legal proceedings, the documents produced will not be received in evidence under the provisions of the Act. This will cause serious grievance, and unless some effectual remedy is provided in the Act itself, cases of the nature referred will be numberless, and the salutary object of the enactment cannot be fully attained.

Besides the above there is another point deserving consideration. If, after the sale or transfer of a land a difference arises between the seller or transferer and the purchaser or transferee, the former will in all probability refrain from attending personally to effect the registration of the Deed executed. For such cases also some provision must be made in the Act.

Ordered that the foregoing letters be submitted to Government in continuation of Board's letter of 21st October 1863.

(True Copies and Extract.)

(Signed) W. HUDLESTON,

Secretary.

To the Honorable A. J. Arbuthnot, Chief Secretary to Government.

No. 64. Proceedings of the Board of Revenue, dated 30th October 1863, No. 6942.

From G. BANBURY, Esq., Acting Collector of Madras; to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Saidapet, 27th October 1863, No. 447.

1. With reference to the Board's Miscellaneous Circular No. XLVI of 1863, of the 10th June last, I have the honor to forward herewith copy of my letter, as Sub-Collector, to Mr. Ellis, under date the 26th ultimo, in which I have given my opinion on the Draft Bill for the Registration of Assurances.

2. I have also forwarded herewith copies of letters on this subject received from Rungasawmy yengar, Deputy Collector of Madras, and Narasimulu Naidu, District Munsiff of Carangooly, for whose opinions Mr. Ellis had referred the Bill.

ENCLOSURE No. 1.

From G. BANBURY, Esq., Sub-Collector of Madras; to the Honorable R. S. ELLIS, C. B., Collector of Madras, dated Saidapet, 26th September 1863, No. 172.

1. In reply to your letter dated 1st July last, requesting my opinion upon the Bill regarding the Registration of Assurances, I have the honor to state that my experience in the legal branch of the service has been so slight, that any expressions of mine regarding this important and difficult subject are put forward with considerable diffidence.

2. Forgery of documents of all kinds exists to such an alarming extent in this country, that any measures tending to check this great hindrance to the administration of justice should, doubtless, be cordially supported. The fraudulent preparation of Bonds is so skilfully carried out, particularly in the South of India, where a false Cadian Deed is subjected to baking proportionate to the number of years it purports to have existed, that the Registration system now under discussion must even in this respect be looked upon as a great boon, apart from the other advantages purposed to be conferred by the Act.

3. Great care should, I think, be taken in publishing the provisions of this Bill, affecting as it does so importantly the rights of property. Numerous copies of the notices drawn up should be printed for distribution from the Taluk Cutcheries. Notice of intention to register should also be published before the final registration, and thus enable those connected with the family of the intended transferer, to urge any objections they may have to make; the parties themselves should also be required to come forward in person when the registration takes place; this transaction should not be allowed to be conducted by Agents and Vakeels.

4. That portion of the Bill which treats of the enforcement of registered Bonds, and other instruments, appears to me highly salutary; this will expedite, simplify, and cause confidence to be placed in the administration of justice. I have heard that fictitious suits have been filed on forged documents, in order to bring about a Razinamah before the Court, this title being deemed more reliable and less likely to be subjected to roguery than any other system of legal security.

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5. Under Sections 18 and 19, Deeds of gift and other instruments will not be received in evidence, unless they are registered under the provisions of this Act; this will doubtless place a check upon forgery; but by Hindoo Law, transfers of property can be made orally, a person evilly disposed, can consequently effect by perjury what the new law will not allow him to carry out by forgery. It is worthwhile considering, whether transactions of the kind referred to in these two Sections, should not be regarded as invalid where unsubstantiated by written instruments duly registered.

6. It seems doubtful whether personal property should come under this enactment, and the registration or otherwise of personal effects should be perfectly voluntary. A proper system of registration for transfers of landed property would secure a valid title, and be an immense benefit. In the South, all holdings are surveyed and numbered, and their conveyance might be effected as expeditiously, and as securely as a transfer of so much Consols at the Bank of England. The Lord Chancellor has, I believe, carried his Registration Bill in spite of the formidable phalanx arrayed against him in the shape of Solicitors and Conveyancers naturally unwilling to see their hitherto close borough so summarily invaded.

(True Copy.)

(Signed) G. BANBURY,
Acting Collector.

ENCLOSURE No. 2.

From V. RANGASAMI AYANGAR, Deputy Collector of Madras; to G. BANBURY, Esq., Acting Collector of Madras, dated 24th October 1863, No. 166.

1. With reference to the Collector's letter, No. 421 of the 26th ultimo, I have the honor to submit my observations on the proposed Draft Bill, for the Registration of Assurances.

2. I would suggest that instruments falling within Section 21 be, if registered, declared to have priority over that which may not have been registered.

3. I would have the time prescribed in Sections 23, 24 and 25, for registration, extended to six months and three months.

4. The Bill nowhere provides for registration of instruments falling within Sections 21 and 22, and executed before the date on which this Act shall come into operation. The mere prescribing of time for registration, without providing for registration itself, should only lead to doubts, and the Registering Officer will be but right under the Bill, as it now stands, in refusing registration.

5. Section 31 provides for Registering Officer satisfying himself of the identity of the parties. If he cannot, or as it may often occur, will not be satisfied, what is to become of the application for registration. There are minds which would not be satisfied with any amount of evidence. There are minds also which would be satisfied with a known falsehood. Is the registration to be under the circumstances, refused? I would have this provision to operate as being merely directory, the party liable being, by the subsequent portion of the Bill, at liberty to challenge the identity.

6. I would not assign to the Registering Officer, the duty of satisfying himself of the right of any person to appear as heir or assignee of any party, whom he shall claim to represent. This point must always be compounded of questions of both fact and law, which have taxed the ablest judicial minds. It is dangerous to make the Registering Officers judges of these important questions, and leave them to act on their judgment, by either registering or refusing registration. I would omit this provision, and insert in its place this, "that if any party or parties, who appeared at the registration as the heir or assignee of any party or parties to any instrument, shall by a decree of Court be pronounced not such heir or assignee, the instrument shall be treated as if it had not been registered."

7. I object to the provision in Section 42, for enforcement of Bonds or other obligations for sums exceeding 100 Rupees, if the obligee at the time of registration signified his assent to such enforcement, and it was endorsed on the instrument, I am of opinion that nothing can be equally unwise, in the present state of the general intelligence of the country. The natives seldom seek professional aid, except when they are actually in Court, and where in one out of one hundred

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cases, such aid is sought, we scarcely have a man in the Provinces, whose advice is worth having, considering the Agencies that may be employed in the carrying out of the Act. I must certainly pause, before I can advocate the introduction of such provision.

8. I would object to the latter part of Section 47. I suggest the omission of it altogether. I am unable to see the impropriety or unreasonableness of the debtor being left to set up all these legal objections to the validity of the instrument, which by Law of the country may be permitted to do, notwithstanding that instrument should have been pronounced genuine.

9. I would modify the latter part of Section 30, by providing that in special cases, power of attorney may be accepted, on proof thereof by two or more respectable witnesses.

10. I would omit the Section 64 altogether, and leave the suits therein contemplated to be governed by the general Law of Limitation, the restriction herein prescribed being too insufficient.

(True Copy.)

(Signed) G. BANBURY,
Acting Collector.

ENCLOSURE No. 3.

From S. NARASIMHULU NAIDOO, District Munsiff of Carangooly; to G. BANBURY, Esq.,
Acting Collector of Madras, dated 19th October 1863.

1. In returning the Draft Bill for the Registration of Assurances, and the printed Miscellaneous Circular of the Board of Revenue forwarded with your predecessor's letter dated 26th ultimo, requesting my opinion on the general principle of the said Bill, I have the honor to state that in my humble opinion the general principle on which the Bill in question is framed, is most laudable as calculating to secure, in the best possible manner, the interests of all contracting parties in their various transactions.

2. The Bill contains more specific rules than any of the previous enactments, for the registry and better security of every description of documents, and provides against the reception, in evidence, of unregistered deeds in respect of immoveable property, which of course would no doubt prevent to some extent frauds and forgeries regarding the titles of parties to real property, and diminish the labours of the Courts in deciding such titles. It is gratifying to observe that the Bill in question also provides for the easy recovery of registered bond debts, saving to the people the trouble, expense, and often vexatious delays usually attending a regular suit in a Court of Justice, since execution can be obtained on a registered bond under the provisions of the said Bill, upon a simple application to a Civil Court. This is indeed a decided improvement on the former law, and is best calculated to offer greater security to the increasing traders and dealers in money, and in fact the Bill in question is a vast improvement on the previous enactments on the subject of Registration. I would, however, beg to suggest that the exception made in Section 19, in respect of documents for real property for less than 100 Rupees, be taken away, as otherwise I am led to think that forgery will still continue in respect of real property, though not to the same extent as before, and that the provisions in Section 30, forbidding the admission of powers of Attorney by the Deputy or District Registrar, unless delivered in person by the party executing such power, and leaving it optional with the District Registrar to admit or not such power of Attorney, where the party is unable to attend in person be modified, and the powers of Attorney be declared admissible, when presented by the agents of the parties duly certified by sworn public Officers, for fear they should prove hard in the case of women, sickly men, and men in public employment.

(True Copy.)

(Signed) G. BANBURY,
Acting Collector.

Ordered to be submitted for the information of Government, in continuation of Board's letter dated 21st October 1863, No. 6734.

(True Copies and Extract.)

(Signed) W. HUDLESTON,

Secretary.

To the Honorable A. J. Arbuthnot, Chief Secretary to Government.

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No. 65. Proceedings of the Board of Revenue, dated 9th November 1863, No. 7121.

From J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 28th October 1863, No. 351.

1. With reference to the Board's Miscellaneous Circular, No. LV, dated the 10th June 1863, and the Draft Bill for the Registration of Assurances therein referred to, I have the honor to state that all my subordinate Officers and Assistants in the District whom I have consulted are unanimously of opinion that the Bill, when passed into Law, will be extremely beneficial in its results to the country generally, but that their experience of such matters precludes their offering any suggestions as to its details.

2. I enclose for the information of the Board a copy of the file of replies received.

ENCLOSURE No. 1.

ABSTRACT.—Copies of letters from his subordinate Officers and Assistants, giving their opinion on the general principles of the Draft Bill for the Registration of Assurances.

From W. M. CADELL, Esq., Collector of Tanjore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Vellum, 30th October 1863, No. 407.

1. With reference to your Miscellaneous Circular of the 10th June last, No. XLVI, I have the honor to state that I have given my best consideration to the Draft Bill which provides for the Registration of Assurances, and I most decidedly acquiesce in the general principle of the Bill, and the necessity which exists for such an enactment for checking the system of fabricating documents which at present unfortunately prevails to a considerable extent, as also for preventing the litigation which in this District in particular is carried on to an undue and vexatious length.

2. I have consulted with such public servants and leading members of the Native Community as are competent to form a correct judgment on the subject, and they have one and all concurred in the opinion above expressed.

3. I would, however, take leave to offer the following observations on some of the provisions of the Bill.

4. The Bill, as it now stands, provides for the compulsory* registration of only deeds of gift and deeds relating to real property of the value of Rupees 100 and upwards, but I conceive that it is highly desirable to extend this provision also to simple bonds and instruments relating to moveable property above a certain limit. It cannot be supposed that the temptation to forgery, which exists in the case of documents of the former description, prevails to a less extent in the case of those of the latter description, be their value however large.

5. It is true that Section 44 reduces the period allowed by the existing Law of Limitation for suits being brought on instruments of the description last mentioned, thereby rendering the successful resort to forgery to some extent impossible, inasmuch as suits based on fabricated instruments will have to be brought when means for their detection are available; it is, however, to be remembered that the period of limitation begins only from the date on which the cause of action arises, and parties so inclined can manage to put off the operation of the Law of Limitation by the same means by which they can make documents themselves.

6. To avoid, however, unnecessary inconvenience and hardship to the community, I would propose that transactions of a purely mercantile nature, as also all others within a certain limit as to value (say Rupees 500) be exempted, and that the rest be subjected to compulsory Registration in like manner with transactions relating to real property; those within the limits speci-

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fied being actionable within the restricted term of six months as proposed. The exemption thus made will prevent all inconvenience to trade, and will amply guard against the transactions of respectable mercantile firms which are incapable of having recourse to fraud, as also all small dealings among the people generally, and which are matters of every day occurrence, being unnecessarily subjected to registration. I do not conceive that, subject to these exemptions, transactions relating to personal property are of more frequent occurrence than those relating to real property of Rupees 100 and upwards, and the compulsory registration, therefore, of the former cannot, I think, inflict any more hardship on the people than that of the latter.

7. The Bill provides for the registration of instruments executed previous to its coming into operation, only in the cases of those classes of instruments which relate to personalities and to realities of less than Rupees 100 value. I see no reason why the instruments relating to real property above the limit specified should be exempted from this provision. The proportion of such instruments is by no means small, and by their exemption, I apprehended the object of the Bill will, to a considerable extent, be defeated, as it will leave a wide field open not only for the employment of fabricated instruments bearing dates anterior to this Act, but also for the perpetuation of their legal existence by means of forged endorsements of last payments of interest, with the view of taking them out of the Law of Limitation. It is true, that it cannot always be practicable for the holders of old Assurances to obtain the assent of the parties liable under them to their registration, but in such cases, the Assurances might perhaps be registered in a separate book, and though such registration cannot have the effect of insuring their genuineness, it will at least have the effect of putting a stop to all subsequent fabrications, a result by no means to be slighted. In the case of instruments thus registered without the consent of the parties liable under them, the limitation period for suing can be reduced to six months as in the case of instruments exempted from registration, thereby restricting the scope for fraud.

8. The Bill restricts the enforcement without regular suits, of bonds or other obligations for the payment of money exceeding Rupees 100 in those cases only in which the parties shall have signified their assent at the time of registration to their being so enforced, while it dispenses with such assent for the enforcement of bonds not exceeding Rupees 100 in value. I cannot, however, see the reason of this distinction, which appears to me calculated to defeat one of the very desirable objects of the proposed law. Where a party has expressly admitted his liability, it seems to me that it is immaterial whether he has consented to the summary enforcement of such liability or not, and I conceive that the question of whether a bond should be summarily enforced, or left to the ordinary course of a regular suit, is one which depends entirely upon other issues than the genuineness of the instrument being raised, and not on the consent previously given by the party liable.

9. The Bill gives discretionary power to the Courts either to enforce the registered bonds on summary application, or to refer the applicants to a regular suit. It is to be observed that it is only simple bonds that can at all be enforced without regular suits; and where the genuineness of a bond is established beyond a doubt, and were no other issue than the genuineness of the instrument is involved, there appears to me to be no reason why the bond should not be enforced. To make its enforcement dependant in every case on the discretion of the Courts would, I conceive, still leave much room for unnecessary litigation, and those who lend money cannot feel that security in respect of their loans, which the system of registration provided for in this Bill is in other respects so well calculated to ensure. I would, therefore, propose that bonds duly registered, according to the provisions of this Bill, should be declared to be capable of being summarily enforced, unless the party against whom

Compulsory registration to be extended to documents relating to real as well as personal property executed before the Act.

Sections 21 and 22.

Enforcement of Bonds of Rupees 100 and upwards even where consent has not been given by the obligers for such enforcement.

Section 42.

No discretion to be given to Courts for refusing enforcement except where any of certain given issues is involved.

Section 48.

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execution is claimed, sets up in bar of such execution any of the pleas enumerated in Section 47 of the Bill, viz.,

1st.—That he was no party to the registration.

2ndly.—That the bond has been paid.

3rdly.—That the amount of claim exceeds that remaining due, and

4thly.—That he is not the representative of the party against whom execution is claimed.

To these might perhaps be added the plea of illegality of consideration, and any other that may be deemed necessary.

10. The Bill requires that when a party deposes an Agent for the purpose of Registration under a Power of Attorney, he shall deliver the same to the Registrar in person, and that should he be unable to do so, it is left to the discretion of the District Registrar to admit such Powers of Attorney to be verified by means of a commission when parties may not be able to attend in person for Registration.

Section 30.

Power of Attorney or not as he may think fit. In these matters, the question of identity is one of vital importance, and it appears to me unadvisable to accept a Power of Attorney at all without verifying the signature of the party executing it. I would, therefore, propose that where a party to an instrument or his legal representative may be unable to attend in person before the Registrar, the fact of his having executed the Power of Attorney to the Agent by whom he is represented should be ascertained by means of a Commission as provided for in Section 175 of Act VIII of 1859.

11. Where the heirs or representatives of a party to an instrument appear for the purpose of registration, the Bill requires [that the Registrar should satisfy himself of the representative character of such persons. It would, I conceive, simplify the duties of the Registrar, and relieve him from an undue responsibility if it were provided that no person should be recognized as heir or representative of a party to an instrument, unless he produces a certificate under Act XXVII of 1860, declaring him to be such heir or representative.

No person to be recognized as heir or representative, unless he produces a Certificate in proof of his representative character.

Section 31.

and relieve him from an undue responsibility if it were provided that no person should be recognized as heir or representative of a party to an instrument, unless he produces a certificate under Act XXVII of 1860, declaring him to be such heir or representative.

12. I would lastly propose that to guard against all possibility of false personation for the purpose of registration, a notice should be affixed to the house of every party whom it affects, showing the fact of the instrument having been registered, in order that in the event of his having been falsely represented, the real party may come forward to disavow all liability thereto. Further, to meet cases in which the party falsely represented might happen to be absent, I would suggest that a list of all instruments registered, showing also the names of all the parties thereto, be published quarterly (or oftener if found necessary) in the District Gazette.

Notice to parties to guard against false personation.

13. I beg to submit the enclosed communications from the Acting Sub-Collector Mr. Plumer, the Deputy Collector T. Muttusami Aiyar, and the District Munsiff of Tiruvadi V. Jayaram Row, containing their views and suggestions on the subject of the Bill under consideration.

ENCLOSURE No. 1.

From C. G. PLUMER, Esq., Acting Sub-Collector of Tanjore; to W. M. CADELL, Esq., Collector of Tanjore, dated Combaconum, 28th September 1863.

1. I have the honor to reply to your letter of the 24th instant, No. 939. I have given the subject of the proposed Bill for the Registration of Assurances my most careful attention, and I have consulted with a few intelligent natives on the merits of the Bill. I am fully convinced of the necessity of an enactment of this description, and approve cordially of the present Bill; it will, I think, when fully brought into action, tend greatly to prevent litigation, and will act as a powerful check upon the system of fabricating documents at present so prevalent. A similar enactment has for some years been in force at Karikal, and I understand is found to work admirably. No doubt some instances will occur in which injustice may be done through ignorance of the ex-

ence of the Bill, and the greatest publicity must be given to it. Great care too must be taken in the choice of Deputy Registrars as their office will be a most important and responsible one. The necessity of registering documents in full will make the working of the Act somewhat cumbersome, and I would suggest that, in cases where all parties should give their consent, an abstract of the document only should be registered. I would also suggest that some provisions, similar to that contained in Section 24, should be made for the registration of instruments of the description mentioned in Sections 18 and 19; otherwise, if no such limitation is made, I fear that the provision of the Act will be constantly evaded by the excuse that the instrument was executed before the Act came into operation. Some confusion will no doubt occur from the similarity of names in this country, and the greatest care will be required on the part of the Deputy Registrars to make sure that the right parties are before them. I am perfectly satisfied that this Bill will be found most useful in checking fraud, and in establishing, on a secure basis, the title upon which much of the land in this country is held, and I have no doubt that it will in time be thoroughly appreciated by all classes.

ENCLOSURE No 2.

Memorandum.

1. I have but a few remarks to offer respecting the Bill to provide for the Registration of Assurances.

2. The quality of evidence within the reach of Courts has so much deteriorated, and forgery and perjury in support thereof are so generally prevalent, even when the interest at stake is inconsiderable, that the importance of a Bill

Object of the Bill.

like the one under consideration can hardly be over-rated. A few years' experience in the Mofussil is sufficient to convince any person that the solemn affirmation now administered in Courts of Justice seldom touches the religious scruples of ordinary native witnesses; that people are so loath to come forward to denounce forgery and perjury among their neighbours; that chances of detection and punishment are considered small enough to enable several designing men readily to make up their minds to defy them; and that the Regulation XVII of 1802, and Act XIX of 1843, are not availed of largely by the community in general to render them at all effectual in guarding against forgery, and that a Bill, therefore, providing for the compulsory registration of important classes of documents can seldom fail to improve the evidence now available to Courts of Justice.

3. It is enacted that Deeds of gift and Deeds relating to real property of more than 100 Rupees value are invalid, unless registered

Kinds of instruments to be registered.

within the prescribed time, that instruments relating to personalities of any value whatever and to real property of less than 100 Rupees value are actionable if unregistered within six months and two years respectively from the dates of their causes of action. I consider it desirable to extend compulsory registry to instruments relating to moveable property of more than 500 Rupees value; the temptation to commit forgery as regards them is not less strong than it is in case of instruments relating to real property of one to five hundred Rupees value, while greater facility exists in the one case than in the other owing to the comparatively small amount of caution with which bonds for less than 500 Rupees are executed. It may be alleged that the proposed amendment will embarrass men in compelling them to go to Court for entering into every petty transaction they choose to negotiate, but I think that transactions for personalities exceeding 500 Rupees are not more frequent than those on account of real property from 100 to 500 Rupees in value; and that less inconvenience is not likely to be entailed upon parties by allowing the Law of Limitation to operate from the seventh month. I would, therefore, amend the Bill by proposing to exempt Wills and Codicils to Wills instruments purely mercantile in their nature altogether from the operation of the Bill, and to extend the system of compulsory registry to other Deeds relating to personal property of more than 500 Rupees value, and to leave instruments for smaller sums to be sued under within six months.

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4. The number of Deputy Registrars to be allowed for each District is left to be determined by the local Government; but in fixing the number it should be borne in mind that Regulation XVII of 1802, and Act XIX of 1843,

Establishment.

failed to produce beneficial results from there being one Registry Office at the Zillah station for the whole District, and from the amount of inconvenience and expense parties were put to in travelling to the Registry Office. I apprehend that a law prescribing compulsory registry will cause more mischief than good if the offices of Registry are not sufficiently numerous and scattered over the District. I should therefore suggest to empower District Munsiffs, and if necessary, even Tahsildars to register documents, say within 500 or 1000 Rupees, and to add their labours to those of the Deputy Registrars in giving extended operation to the proposed Registry Act.

5. It is enacted that documents described in Sections 21 and 22, and executed before the date on which the Act is to come into operation, shall be registered within twelve months from that date. I see no reason why the instruments specified in Sections 18 and 19 are exempted from this provision of the Bill, as the present unsatisfactory character of documentary evidence respecting them is thereby likely to continue for 12 years more, by which time all such instruments must be either renewed or sued under or suffered to become unactionable. If it is alleged that the parties liable under them may not assent to the registry, it is, I think, desirable to encourage their being sued for by rendering the statutory period less than what it is at present, as is done in case of the same class of instruments when their value is less than 100 Rupees. I would propose that retrospective effect be conditionally given to the one class of instruments as to the other, Wills and Codicils to Wills being excepted.

Time of Registration.

6. I.—It is proposed to render it competent to authorized agents of parties to apply for registration as a matter of right where the Power of Attorney is admitted to be genuine by the party that executes it; and where it is not so admitted, to leave it to the District Registrar to order the reception of the Power of Attorney for purposes of this Act. It seems to me to be open to objection to arm even the District Registrar with discretionary authority in a matter where the question of identity is of vital importance, and I would, therefore, propose to render it compulsory in such cases to issue a commission for ascertaining whether the party alleged to have executed the Power of Attorney admits its execution as is now done in case of females of rank and others who are privileged or otherwise prevented from attending the Courts to give evidence when necessary.

Mode of Registration.

II.—It is next stated in the Bill that instruments may be registered by the Heirs, Administrators and Assigns of parties thereto, and that the Deputy Registrar should satisfy himself about the representative character of the applicants. I think it desirable to alter the provision and to enact that none are to be recognized as Heirs, Administrators or Assigns, unless a Certificate or Probate is produced in proof of their representative capacity, the time taken up in obtaining such Certificates, or Probates, being allowed not to count in admitting applications presented for registration of documents. I think that the functions of a Registrar might be thereby simplified and restricted to ascertaining the identity of parties that affirm before him the genuineness of particular instruments.

III.—It is next provided that the Registrar, unless personally acquainted with the parties before him, should satisfy himself from examination of witnesses about their identity. Considering the readiness with which witnesses can be had to swear to anything, and considering also the importance of guarding against all chance of cheating by false personation, I would suggest that a notice of registry be ordered to be stuck up on the outer wall of the house in which the party liable under the instrument is alleged to reside, in order that any imposition if attempted may be brought to light at once.

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7. It is proposed in Section 42, that registered Bonds for the payment of sums not exceeding 100 Rupees shall be enforced without a regular suit, unless the Court so enforcing them directs that a regular suit be brought. This

Enforcement of Registered Bonds.

provision is extended to Bonds, &c., for payment of sums exceeding 100 Rupees in case the parties thereto should signify their assent so to enforce them at the time of registration. The distinction whether they are to be enforced or not without a regular suit ought to be made with reference to the chance of issues being joined in matters other than the genuineness of Bonds, and not with regard to the value of Bonds. I should, therefore, propose that all registered instruments relating to personalities should be directed to be enforced without a regular suit, unless the

Court enforcing them directs one to be brought.

Effect of registry.

It is provided in Section 47 that no party shall be allowed to set up pleas other than "No party

to the instruments, satisfaction in full or part, no representative character involving a legal liability." Illegal consideration cannot be set up as a plea according to the strict wording of the Section by a party to the instrument. I would propose to enact that no party to the instrument is to be allowed to question its genuineness.

8. No other provision of the Bill seems to me to call for remarks.

(Signed) T. MUTTUSAMI AIYAR,
Deputy Collector.

TANJORE, 22nd October 1863.

ENCLOSURE No. 3.

Memorandum on the Bill for Registry of Assurances.

1. I attentively perused the Bill to provide for the Registration of Assurances now pending before the Council of the Governor General for the purpose of making Laws and Regulations, and I am of opinion that a law requiring the absolute registry of all Assurances, excepting any which may be specially reserved for sufficient cause, is most urgently called for by the unsatisfactory character of documentary evidence now available to Courts of Justice. In this view even an Act meeting the said requirement only to the extent contemplated in the Bill, would, no doubt, prove a great boon to the society at large by rendering the Courts of Justice much more speedy and sure, but if the Legislature should stop just at the point indicated in the Bill, the necessity which calls for legislation in the matter, I think, would not be fully answered. The Bill is not sufficiently stringent as it leaves it to the option of parties to register Assurances, the registration of which should be made compulsory. As far as I can see, the object of the Bill ought to be to diminish, to the least possible extent, the amount of forgery and the perjury consequent upon it, by creating difficulties so far in the way of the success of forgery, as may not unnecessarily interfere with the public convenience; but this end, in my opinion, will not be attained if the Bill should be passed with its existing provisions only; for nothing can tend to public convenience which leaves much opening for forgery. The temptation for forgery shall not be withdrawn as long as the Act excludes from its operation Assurances relating to personalities, which from the largeness of their consideration, might, under ordinary circumstances, offer any inducement for it.

2. Deeds of gift of immoveable property, be the value of it ever so trifling, are absolutely required to be registered. Other instruments (excepting leave for a period not exceeding one year) relating to immoveable property, as also those which acknowledge the receipt or payment

Section 18.

Section 19.

of the consideration shown in the said instruments relating to immoveable property, when the consideration is Rupees 100 or upwards, in the same manner are also to be brought under the operation of the intended Act. While so, the Bill does not insist upon the registry of Assurances referred to in Nos. 1, 3 and 4, Section 22, be their consideration however large it may as if moveable property of any value, or money to any amount, would not hold out sufficient inducement for setting at work the cupidity and ill-feelings of dishonest and designing men. In refutation of this objection it may perhaps be stated that,

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1stly. (3.) Section 44 of the Bill reduces the period for instituting suits to be brought on Assurances, which, though they could have been registered, are not so registered only from parties having exercised their option of keeping back the Assurances from the Registry Office, and this provision secures the two-fold objects of deterring the prevalence of forgery and of bringing to the Registry Office Assurances not absolutely required to be registered. That it secures the first object by rendering the utterance of forged Assurances necessary at a time when the proof wanted to expose the forgery may still be traced out; and the second object by curtailing the limitation period, and thus holding out inducements to holders of Assurances to have recourse to the Registry Office, even when they are not compelled to do so.

2ndly. (4.) At the same time that they create such safe-guards as are mentioned in the last paragraph against the successful practice of forgery and non-registry of the great majority of Assurances, the provisions of the Bill relieve from unnecessary expense and trouble constant or large dealers in trade, &c., such as respectable Firms of merchants, who, in absence of all other extraneous obligations, would feel interested in maintaining their credit, and punctually and properly discharging their liabilities; and

3rdly. (5.) Property of an immoveable character being from their nature lasting, are likely to change hands infinitely, and to form the subject of numerous disputes, and for all time to come. A register thereof, when of a particular value, calculated to show the parties through whom it might pass, and other necessary particulars, would always therefore be of much use, and have the effect of preventing injustice and much individual loss, and also facilitate the course of justice: whereas disputes about moveable property based on particular instruments must, from their nature, and as affected by the Law of Limitation, necessarily end within a comparatively very short period.

6. Now as regards the first of the above reasons, I have to observe that if it is all admitted that it is desirable to have the majority of instruments registered, and with this view to hold out inducements to holders of certain Assurances, I cannot see why the Legislature should not at once make the registration compulsory; and, again, even taking it for granted that, as a rule, recent forgeries can be brought to light, very often it can't have the effect of deterring forgery in the way above pointed out, for the limitation period begins at the time the cause of action arises. Cause of action does not in many instances arise after years from the date of the execution of the Assurance, and it will not be difficult for designing men to postpone the cause of action till a convenient and safe time by making the Assurance embody suitable provisions.

7. It will be admitted, I think, that the detection of forgery will not always be practicable even when a forged instrument makes its appearance soon after its execution, unless some extraneous circumstances should fortunately aid the detector or exposor, or those who were in the clique of the forger should happen to desert his cause. It is not often that one engaged in the detection of forgery is able to command or at least to secure such useful aids.

8. There can be no difficulty in obtaining the material required for forgery: To this day any instrument may be forged on plain paper or cadjan affixing a date only prior to the passing of Act XXXVI of 1860, the Stamp Act repealed by the present Stamp Act X of 1862. It may, perhaps, be stated the said Act X of 1862 requires a stamp for the majority of instruments, and that the stamps (with water-marks) now in use in this country will ward off the evil of antedating instruments: but this effect it can't certainly produce in cases of Assurances being dated a time prior to the issue of stamps with water-marks, or when they were allowed to be drawn on plain material. Moreover, the present rules do not require the recording of any Memorandum to show the purpose for which each stamp is sold, and parties are in no way restrained from using a stamp bought with a particular object to any other purpose. Dishonest and designing men (such will not be wanting as long as there is any opening left for the successful practice of their tricks) may easily buy stamps and keep in hand, to be used in after-times as occasion may require.

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9. Every one that has presided over a Court of original jurisdiction for some time can at once say how far the mass of oral evidence generally produced before the Courts of the country has deteriorated. Consequently Mr. Strange, the late Judge of the High Court, and Mr. Beauchamp in the Decree in Special Appeal Suit No. 230 of 1859, published at page 98 of the printed reports for the year 1860, have proceeded on the principle that all those rules of evidence, which have the tendency of making the Courts independent of oral testimony, should be adopted and enforced.

10. An allusion to this fact, I have thought necessary here to show that for a forger, as in the case of obtaining material, there can be no difficulty also in adducing that amount of legal oral evidence which may be required for the success of his wickedness.

11. Now to proceed to the second of the above reasons; on this I would observe when legislating as the Bill proposes to do, for the mass of people, rules should not be framed which promote the convenience, or only suit the case of a particular class who form but a very small portion of the community.

12. As connected with this subject, I have to observe that in my opinion the hardship and inconvenience, &c. attending the registry of Assurances might be obviated by introducing, under Section 54 of the Bill, a graduated scale of fees for registry, &c., varying with the consideration of instruments up to a certain amount, say Rupees 250 (beyond which an uniform scale be adopted), and by bringing a Registry Office near to everybody's home. This latter object can well be attained, without much additional expense to the State, by constituting the following Courts, &c., the Divisional Registry Offices contemplated in Section 7 of the Bill; namely, the Courts of all the District Moonsiffs, and, if necessary, the office of any Magistrate above the rank of Village Magistrate or Collector, and the Court of a Principal Sudder Amin, or of Small Causes. The reason why I propose that all District Munsiffs' Courts should be constituted Divisional Registry Offices is, that they are generally located in central spots so as to be within reach of the people.

13. With these facilities afforded for the Registration of Assurances, and with the power given for granting general Powers of Attorney (see Section 30), which will not frequently compel people to absent themselves from their more legitimate avocations, no one can have any real or substantial ground of complaint.

14. With regard to the third reason, I have only to remark, that a registry of transactions about other than immoveable property is not likely to be useful for a very considerable period, is no reason for not doing what ought to be done for effectually securing the moveable property of the public, and it can't be denied that very often the interests of the public are equally or more at stake by moveable property (under which term I include ready money too) being endangered than the immoveable property.

15. Having thus far endeavored to show the necessity of framing rules for the compulsory Registry of Assurances about transactions connected either with moveable or immoveable property when exceeding a certain value, I next proceed to state what is the amount the Assurances relating to which might, with any safety, be excluded from the operation of the Act. I would say that this amount should not be any sum above 50 Rupees, and that this limitation should alike apply to the case of moveable and immoveable property. It can be easily shown that the same limitations should be applicable to both kinds of property, for it can't be denied that, in a merely pecuniary point of view, the loss of the amount of a bond for Rupees 50, and of a house-ground purchased for the same sum, can't but be equally felt. Besides transactions about moveable property being much more frequent and numerous than about immoveables, even when the dealings are confined to small sums, much mischief and individual loss must ensue, if the same care is not shown by the Legislature in securing moveable property of the same value with the immoveable property. I have now to explain why I have fixed the sum of Rupees 50 as the maximum amount which may be excluded. It is because in the Mofussil any sum exceeding that amount cannot be viewed as

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a small sum generally dealt in by the people. To prove this assertion of mine, I have only to refer to the present file of the Small Cause Court of this District, which, I hear, is not one-third of what it used to be when the suits for value up to Rupees 50 were not withdrawn from its cognizance. Section 18 of the Bill itself confirms my view by enjoining compulsory registry of all gifts of immoveable property, without reference to value.

16. I shall now conclude by offering a few remarks on Sections 23, 24, 25, 42 and 47 of the Bill.

Sections 23 and 25.

17. As it is proposed that there should be Registry Offices within reach of people, and as the tendering for registry of one kind of instruments cannot require more time than that of the other, I would propose that also in the cases referred to in Section 23, the period to be ordinarily allowed should be six weeks, to be extended in all cases referred to in both the Sections to three months, on satisfactory cause being shown for granting such an indulgence.

Section 24.

18. In my opinion, with the exception of Assurances relating to personalities for sums exempted, compulsory registry should be extended to all instruments of the descriptions mentioned in this Section and in Section 19 which shall have been passed before the commencement of the Act.

19. What I have said above will sufficiently prove the necessity of enacting this provision for effectually checking forgery. I have made no exclusion in the case of immoveable property, because in the Trivadi Taluk there have been forthcoming mortgage bonds for the smallest considerations, dated a time prior to half or more than half a century, and involving claims to lands which, according to current high prices, are worth thousands of Rupees.

20. It may not, indeed, be often easy for the holder of an old Assurance to bring the obligee or his heirs and to co-operate with him towards the registry thereof. To meet such cases a separate book must be opened for the registration of old Assurances only on the verification of such of the parties thereto as may appear. Though such registry may not go to that extent in speaking for the genuineness of the Assurance as in the other case, it will effectually put a stop to forgeries by ante-dating documents, after the provision of the Act requiring such registration may come into operation, and this result is by no means to be slighted.

21. I would also add that the time to be granted for registration of Assurances executed before the Act should come into operation must not be less than 18 months or 2 years; for some months must necessarily elapse before the Act gets general publicity.

22. That there may be the least chance possible for one pleading that he was no party to the registration, I would suggest that the Act should require the issue of a notice to all parties who may have any part of the contract to per-

Section 47.

form showing such of the particulars connected with the registered Assurance as may be sufficient for its identification, and for enabling the addressee to learn how far he is concerned in it. This notice should be issued immediately after the registry of each Assurance, and posted to the outer door of the dwelling house of the addressee only in cases in which a personal service, or service on a male member of his family living with him, may be impossible. Service of the notice in either way must be made before the village officer, and two or more of the addressee's neighbours, who must be made to attest the return of the serving officer. Non-service in the manner shown in the return should be made a penal crime to be visited with heavy punishment; and the serving officer and the attestors should alike be made open for prosecution.

23. If this could not be done, I would suggest that at least a periodical publication should be made in the District Gazette, showing the above particulars connected with each registered Assurance.

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24. I cannot see why the operation of this Section should not be extended without the consent of the contracting parties. I would enforce this Section, even when the parties withhold their consent, without reference to the value of the bonds, subject, of course, to the proviso contained in Section 48.

Section 42.

22nd October 1863.

(Signed) V. JAYARAM ROW.

Ordered to be submitted for the information of Government, in continuation of Board's letter dated 21st October 1863, No. 6734.

(True Copies and Extract)

(Signed) W. HUDLESTON,

Secretary.

To the Chief Secretary to Government, Fort Saint George.

No. 66.

ORDER THEREON, 11th January 1864, No. 41.

Ordered that the foregoing papers be recorded in reference to the Proceedings of Government, dated the 30th ultimo, Nos. 2026 and 2027.

(Signed) A. J. ARBUTHNOT,

Chief Secretary.

Exd. J. Tulloch.

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

*Read the following
Proceedings of the Board of
of Revenue.*

*[Here enter 23rd & 30th Oct & 9th Nov 1863
Nos 6792, 6942 & 7121-]*

Order thereon 11 January 1864 No 41

*Ordered that the fore-
going papers be recorded
in reference to the Proceed-
ings of Government dated
the 30th Ultimo Nos 2026 & 2027-*

Bill for the registration
 of arms
 41
list of 26 Jan 1864

63066

PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES

186 . Department.

No. 41

PROCEEDINGS OF GOVERNMENT.

Dated

List

10,083

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