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H.O. 1-32,403-23-11-53.

MADRAS RECORD OFFICE.

Government of Madras.

Financial DEPARTMENT.

G.O. No. 404

Press
~~Mis.~~

Dated 2-3

1876.

Not to be folded or roughly handled

Bills—Legislative.

Read the following papers:—

No. 32. From A. HOWELL, Esq., Officiating Secretary to the Government of India, Home Department (Public), to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Fort William, 1st February 1876, No. 3—171.

It is proposed to revise the Indian Registration Act, 1871, with the view of making certain amendments in the Sections 17, 34, 44, 45, 46, 50, 71, and 73. Sections marginally noted, as explained in the enclosed Draft Bill. I am, therefore, directed to inquire whether His Excellency the Governor in Council wishes to suggest any other alterations in those sections, or any modifications in other parts of the Act. The reply to this reference should reach the Home Department before the end of this month (February).

No. 164.

Referred to the Inspector-General of Registration for his remarks.

FORT ST. GEORGE,
7th February 1876.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 33. From Colonel R. M. MACDONALD, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 14th February 1876.

I have the honor, in returning the accompanying letter, No. 3 of the 1st instant, from the Officiating Secretary to the Government of India, to state that the amendments proposed in the Indian Registration Act seem to me unobjectionable.

2. I have very few suggestions to make regarding additional amendments.

3. The marginal entry against Section 23 is obviously erroneous. It implies that the section relates only to the time for presenting documents of which the registration is compulsory, whereas this section also prescribes the time for presenting documents of which the registration is optional, making an exception in the case of Wills, and laying down a specific rule regarding copies of decrees and orders.

4. A doubt has arisen as to whether, under Sections 64 and 65, Sub-Registrars are required to forward copies or memoranda of Wills relating to immovable property. These sections do not make any exception in favor of Wills, and in

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this respect they are inconsistent with other portions of the Act. Under Section 21 Wills are expressly exempted from the provision which requires that all immovable property shall be described in such a manner as to identify it. It might therefore be impossible to know to what Registrar or Sub-Registrar a copy or memorandum should be sent. Wills are also exempt under Section 21 from the general rule requiring copies of maps and plans to be furnished. As Section 63 cannot be fully carried out, this seems an additional reason for supposing that it is not intended to apply to Wills. In addition to all this there is the fact that Registrars are not required to forward copies or memoranda of Wills relating to immovable property, the words used in Section 66 being "document not testamentary." I have no doubt that the absence of these words in Sections 64 and 65 is an oversight, arising from the fact that under the previous Act the Sub-Registrars had no Wills to register and that therefore no such exception was at that time necessary.

5. Government are aware that various interpretations have been put on Clause 7 of Section 18 when read with Clauses 2 and 3 of Section 17. The Government of India in their Resolution of the 10th July 1874, recorded in G.O., No. 1332, of the 20th July 1874, have ruled that the provisions of Clause 7, Section 18 are only applicable to documents relating to immovable property of the value of Rupees 100 and upwards, which do not come within the scope of Clauses 2 and 3 of Section 17. I have already reported that a different construction has been placed on this clause by the Madras High Court in their Proceedings of the 9th December 1870, ruling that a partition deed relating to immovable property of the value of more than Rupees 100 falls under Clause 7 of Section 18 and not under Clause 2, Section 17. The wording of Clause 7, Section 18 might be modified with a view to prevent any doubt arising as to the meaning of the Act on this point.

6. Under Section 72 an appeal lies against an order of a Sub-Registrar refusing to admit a document to registration to the Registrar, if presented within thirty days from the date of the order. A case, which is given in extenso in my Circular Order No. 7 of 1st October 1873, occurred in the Madura District, in which the District Judge, Mr. P. P. Hutchins, held that the Registrar could under no circumstances receive an appeal after the expiration of thirty days, because the Limitation Act applies only to Courts and not to the office of a Registrar. The result in this particular case was that the Court was also precluded from entertaining the appeal. I think that the Limitation Act should apply to appeals preferred to a Registrar.

No. 7.
CIRCULAR ORDER.

The annexed judgment of the District Judge of Madura is published for the information and guidance of all Registering Officers.

OFFICE OF INSPECTOR-GENERAL
OF REGISTRATION, MADRAS,
1st October 1873.

(Signed) R. M. MACDONALD,
Inspector-General of Registration.

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2nd March 1876.*

IN THE DISTRICT COURT OF MADURA,
The 13th day of September 1873.

PRESENT.

P. P. HUTCHINS, Esquire, District Judge.
Civil Miscellaneous Petition No. 303 of 1873.
Counter-Petition No. 445 of 1873.

RAMAIAH Appellant (Petitioner)

versus

RANGAMMAL, widow of late Annaiyan, the obligor Respondents.
KRISHNAIAH, the alleged adopted son of do. (Counter-Petitioners).

Appeal from an order of the Sub-Registrar of Periacolam Taluq, dated 1st April 1873, refusing registration of a certain instrument on the ground that the executant was not sensible and in proper health as certified to by the Hospital Dresser at the time when the Sub-Registrar proceeded to examine him about the execution of the instrument.

This petition coming on for hearing, upon reading the petition of appeal, the counter-petition, the orders of the Sub-Registrar and District Registrar, and upon hearing the arguments of S. Subramaniya Aiyar, Vakil for the Appellant, and of Annasamy Aiyar, Vakil for the Respondents, the Court delivered the following:—

Judgment.—This is an appeal against an order of a Sub-Registrar refusing to register a deed of sale purporting to be executed by one Annaiyan. The facts set out in the order of refusal are that Annaiyan was very ill, that his wife (i.e., his representative by anticipation,) alleged that he was on his death-bed and had not really executed the instrument, and that the state of his health seemed to have been correctly described by her. The counter-petitioners are the widow and the alleged adopted son of the deceased. Both state that the deceased did not execute the document and that he died on the 1st April, the very day on which the Sub-Registrar made his order.

The appeal was made to me within thirty days. As the order did not state either that deceased or his actual representative denied execution, I thought that there should be an appeal in the first instance to the District Registrar. He, however, has declined to interfere because thirty days had expired before the appeal came to him and because the delay was unreasonable. That the delay is not unreasonable is shown by Section 15 of the Limitation Act, but it may be that he has no power to extend the time in any circumstances however strong. I think that he has no such power. Section 5 (C) of the Limitation Act, and indeed the whole Act only applies to Courts, and the "Office" of a Registrar is not a Court. That being so, I have now to consider whether I can receive an appeal from the Registrar's order or revive the appeal originally made against the order of the Sub-Registrar. With much reluctance, I have come to the conclusion that I cannot. As to the Registrar's order it is unfortunately correct. The appeal was presented to him after the limited time and he had no authority to receive it after the time. As to the Sub-Registrar's order, the appeal to me will only lie if I can treat it as a refusal to register, grounded on the denial of execution. That I have tried to regard it in this light, or at all events as an order grounded on the anticipated denial of the only person likely to be able to admit or deny, will be apparent from the way I have put the facts at the commencement of this judgment. Unfortunately the refusal to register, though reciting those facts, is really based on the sole ground that Annaiyan was not "sensible or in proper health." Against such an order, however objectionable, and it is of course obviously wrong, the appeal did not lie to me.

The case is certainly a very hard one if the document is true and the money was really advanced, but the desire to do substantial justice must not lead to a straining of the law. With much reluctance, therefore, I dismiss the appeal.

A copy of this judgment will be sent to the Inspector-General of Registration. The Sub-Registrar will also be requested to explain through the District Registrar how he came to make

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such an order. The only proper course would have been to wait till Annaiyan died or recovered. It is to be hoped that he had some better reason than a wish to clear off an arrear.

(Signed) P. P. HUTCHINS,
District Judge.

(True Copy.)

R. M. MACDONALD,
Inspector-General of Registration.

No. 34. From the Hon. V. RAMIENGAR, C.S.I., Inspector-General of Registration, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 18th February 1876, No. 23.

I have the honor to acknowledge the receipt of your docket, dated 7th instant, No. 164, referring, for my remarks, a Bill received from the Government of India, to amend the Indian Registration Act.

2. PARAGRAPH 3 OF THE BILL.—I have only one or two remarks to offer respecting the amendments proposed:—

In Sections 44 and 45, in addition to the alteration proposed, it will be well to substitute the word "such" for "the" before the word "depositor" which occurs in the latter part of the sections. This appears necessary to prevent any confusion, as, under Section 44, an authorized agent may still be "the depositor," and confounded in the case of Section 45 at least with the "testator who has deposited."

3. PARAGRAPH 5 OF THE BILL.—I am not sure that I quite understand the object of the proposed addition to Section 50. By the immediately preceding Section 49, no document required by Section 17 to be registered can affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered in accordance with the provisions of the Act. Such being the case, I do not see what is sought to be gained by declaring that such compulsorily registrable documents shall, if duly registered, take effect against every unregistered document relating to the same property—such unregistered document being *ipso facto* mere waste paper according to Section 49. Section 50, as it stands, is intelligible enough, because it being optional with parties to register or not, as they choose, documents of the kinds mentioned in Clauses 1 and 2 of Section 18, it is declared that such documents of the optional class, if registered, shall take effect as regards the property comprised therein, against every unregistered document relating to the same property. If, however, the addition proposed is necessary for reasons which I am unable to perceive, the question arises whether "authorities to adopt a son, executed after the 1st of January 1872, and not conferred by a Will," which are also mentioned in Section 17, should not also be included in the words to be prefixed to Section 50.

4. PARAGRAPH 7 OF THE BILL.—I do not know what has occurred to render the addition of the proposed "explanation" to Section 73 necessary. But if we take the case of the District of Tanjore there is only one Registrar in it, but two District Courts. Supposing the Registrar of Tanjore refuses to direct registration of a document in the Sub-Registry Office at Tranquebar or Tritrapundi, to what

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District Court is the party to appeal—to of North or South Tanjore? According to the "explanation" he will have appeal, I imagine, to the latter which is at Tanjore, because the office of the Registrar who has passed the order of refusal to direct registration is situated within the local limits of that Court; but the parties concerned, and the Sub-Registry Office of Tranquebar are within the jurisdiction of the District Court of North Tanjore at Negapatam, and it can scarcely be intended that they should take their appeal to a distant Court instead of to their own at Negapatam. On the other hand, if the appeal supposed was from the Sub-Registrar of Tranquebar himself on the ground that the executant had denied execution, it would lie, not to the Court at Tanjore, but to that at Negapatam.

5. With reference to the inquiry whether any modifications in other parts of the Act are called for, I may be permitted to notice one or two points. Rule 19, framed under Section 69, enjoin that "in the event of a registered document being left unclaimed for more than one month from the date of its admission to registration, it shall not be returned, unless a fine of one Rupee be paid for every month or part of a month during which it may have remained unclaimed beyond the above period," and further "the Inspector-General may, in his discretion, remit the fine when it appears to him that its exaction would be productive of injustice or hardship." It seems to me that there is nothing either in Section 69 or any other part of the Act which warrants the imposition of the fine authorized by the rule. Sections 24 and 34 require the infliction of fines in certain cases, while Section 70 empowers the head of the department to remit them wholly or in part at his discretion; but there is no similar provision in the Act in regard to the levy or remission of fines on unclaimed documents. The question therefore arises whether, if the payment of the fine demanded under Rule 19 is in any case refused, the registered document can be legally withheld from the party entitled to receive it, in the face of the requirement of the latter part of Section 61. The rule is found wholesome in practice as checking the unnecessary accumulation of documents in the Registration Offices, but in the absence of an express provision in the Act empowering the infliction of the fine, it appears to me to be illegal.

6. The question has been raised whether, under Sections 64 and 65, Sub-Registrars are required to forward copies or memoranda of Wills relating to immovable property. Under Section 21, Wills are expressly exempted from the provision which requires that all immovable property shall be described in such a manner as to identify it, and they are likewise exempt from the general rule requiring copies of maps and plans to be furnished. Further, Registrars are not required to forward copies or memoranda of Wills registered by them, the words "not testamentary" being expressly used in Section 66. The omission of the same words in the immediately preceding Sections 64 and 65 would seem to be due to oversight. If so, their insertion in them after the word *document* would remove the doubts now entertained.

No. 35. ORDER THEREON, 2nd March 1876, No. 404.

The foregoing letters convey the remarks of the late and present Inspectors-General of Registration on the Bill now before the Imperial Legislature to amend the Indian Registration Act VIII of 1871.

2. Colonel Macdonald considers the amendments proposed by the Bill to be unobjectionable, but he puts forward a few suggestions by way of further improving the provisions of the Act.

3. He brings to notice the doubt that exists whether, under Sections 64 and 65 of the Act, Sub-Registrars are required to forward copies, or memoranda, of Wills relating to immovable property, with special reference to the exemption in respect to Wills in Section 21. The Hon. V. Ramiengar (paragraph 6) also brings forward the same question; and both agree that the defect is apparently owing to oversight in omitting the word, "not testamentary" which occur in Section 21 as well in Section 66 of the Act. The Government agree with these officers that the existing doubt should be removed by inserting the words "not testamentary" after the word "document" in Sections 64 and 65 of the Act.

4. Colonel Macdonald next refers to the point which has formed the subject of the correspondence that has passed between the Government of India and this Government, on the construction placed by the High Court of Madras on Clause 7, Section 18 of the Act, in respect to partition deeds affecting immovable property of the value of 100 Rupees and upwards—the Government of India holding that such deeds are compulsorily registrable under Clauses 2 and 3 of Section 17, and the High Court holding that they are only optionally registrable under Clause 7, Section 18. In the letter of this Government, dated 27th December 1875, No. 2641, the subject was finally reported upon, and the suggestion submitted to the Government of India that the Act should be amended to remove all doubt, and a provision inserted that a Notification by the Government of India interpreting the Act is conclusive evidence of the meaning of the point so interpreted. The Government would again invite attention to this point, and would suggest that the opportunity should now be taken to insert such sufficient provision in the amending Bill as will remove all doubt and will secure a uniform practice in the Registration Department in all the three Presidencies.

5. Adverting to Section 72 of the Act, providing a limitation of thirty days from appeal against an order of a Sub-Registrar refusing to admit a document to registration, Colonel Macdonald submits copy of a judgment of the Madras Court showing the failure of a case carried before it on the point of limitation, and suggests that the provisions of the Limitation Act should be applied to appeals from a Sub-Registrar; but as the Act, evidently for good reasons, provides a special limitation for such appeals, the Government are not disposed to make any recommendation on this point.

6. The Government concur with the Hon. V. Ramiengar, that the word "such" should be substituted for "the" before the word *depositor* in the latter part of Sections 44 and 45, to avoid any confusion that may arise from the liberty given by Section 42 to a testator to deposit his Will by a duly authorized Agent.

7. Consideration will need to be given to the observations of the Inspector-General in paragraph 3 of his letter, that the object of the addition proposed by the Bill to Section 50 of the Act is not apparent. The addition proposes that documents registered under Clauses 1 to 4 of Section 17 shall take effect against all unregistered documents affecting the same property; but Section 49 expressly provides that no documents required to be registered by Section 17 shall be

received in evidence unless registered. If, however, the addition is deemed necessary, the Government agree with the Hon. V. Ramiengar that it is a question whether the proposed addition should not also include "authorities to adopt a son executed after the 1st of January 1872, and not conferred by a Will," which are mentioned in Section 17, but not in Clauses 1 to 4 thereof.

8. Similarly, consideration will need to be given to the observations of the Inspector-General in paragraph 4 of his letter, with reference to the EXPLANATION proposed by the Bill to be attached to Section 73 of the Act.

9. Adverting to paragraph 5 of the Inspector's letter, the Government observe that the matter of Rules framed under Section 69 of the Act does not affect the amendment of the Act itself. The Inspector-General will therefore separately submit for consideration and orders a question mooted by him in connection with Rule 19, to be dealt with by this Government under the provisions of Section 69 of the Act.

(True Extract.)

Chief Secretary.

To the Inspector-General of Registration.
.. Colonel R. M. Macdonald.

Exd. T. O'Connor.

Govt. of 1876 30th Dec.

JUDICIAL.

To

THE INSPECTOR-GENERAL OF
REGISTRATION,

CC, CC, CC, CC.

Dated March, 2nd.

Issued

Recd.

Encl.

G.O. 2nd March 1876, No. 404.

MARCH.

Nos. 32-33.

Bills—Legislative—Submitting Papers in connection with the Bill to amend the Indian Registration Act to the Government of India for consideration.

2. Colonel Macdonald considers the amendments proposed by the Bill to be unobjectionable, but he puts forward a few suggestions by way of further improving the provisions of the Act.

3. He brings to notice the doubt that exists whether, under Sections 64 and 65 of the Act, Sub-Registrars are required to forward copies, or memoranda, of Wills relating to immovable property, with special reference to the exemption in respect to Wills in Section 21. The Hon. V. Ramiengar (paragraph 6) also brings forward the same question; and both agree that the defect is apparently owing to oversight in omitting the word, "*not testamentary*" which occur in Section 21 as well in Section 66 of the Act. The Government agree with these officers that the existing doubt should be removed by inserting the words "*not testamentary*" after the word "*document*" in Sections 64 and 65 of the Act.

4. Colonel Macdonald next refers to the point which has formed the subject of the correspondence that has passed between the Government of India and this Government, on the construction placed by the High Court of Madras on Clause 7, Section 18 of the Act, in respect to partition deeds affecting immovable property of the value of 100 Rupees and upwards—the Government of India holding that such deeds are compulsorily registrable under Clauses 2 and 3 of Section 17, and the High Court holding that they are only optionally registrable under Clause 7, Section 18. In the letter of this Government, dated 27th December 1875, No. 2641, the subject was finally reported upon, and the suggestion submitted to the Government of India that the Act should be amended to remove all doubt, and a provision inserted that a Notification by the Government of India interpreting the Act is conclusive evidence of the meaning of the point so interpreted. The Government would again invite attention to this point, and would suggest that the opportunity should now be taken to insert such sufficient provision in the amending Bill as will remove all doubt and will secure a uniform practice in the Registration Department in all the three Presidencies.

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6. The Government concur with the Hon. V. Ramiengar, that the word "*such*" should be substituted for "*the*" before the word *depositor* in the latter part of Sections 44 and 45, to avoid any confusion that may arise from the liberty given by Section 42 to a testator to deposit his Will by a duly authorized Agent.

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received in evidence unless registered. If, however, the addition is deemed necessary, the Government agree with the Hon. V. Ramiengar that it is a question whether the proposed addition should not also include "authorities to adopt a son executed after the 1st of January 1872, and not conferred by a Will," which are mentioned in Section 17, but not in Clauses 1 to 4 thereof.

8. Similarly, consideration will need to be given to the observations of the Inspector-General in paragraph 4 of his letter, with reference to the EXPLANATION proposed by the Bill to be attached to Section 73 of the Act.

9. Adverting to paragraph 5 of the Inspector's letter, the Government observe that the matter of Rules framed under Section 69 of the Act does not affect the amendment of the Act itself. The Inspector-General will therefore separately submit for consideration and orders a question mooted by him in connection with Rule 19, to be dealt with by this Government under the provisions of Section 69 of the Act.

(True Extract.)

Chief Secretary.

To the Inspector-General of Registration.
.. Colonel R. M. Macdonald.

Exd. T. O'Connor.

Colt. of 1876 33rd.

JUDICIAL.

To

THE INSPECTOR-GENERAL, OF
REGISTRATION,

CC, CC, CC.

Dated March, 2nd.

For

Recd.

Encl.

G.O., 2nd March 1876, No. 401.

MARCH.

Nos. 32-33.

Bills—Legislative—Submitting papers in connection with the Bill to amend the Indian Registration Act to the Government of India for consideration.