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MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 49	Press Mis.
Dated 8-1-37	18 77

Not to be folded or roughly handled

JUDICIAL DEPARTMENT.

Bills—Legislative.

No. 49.

FROM

THE CHIEF SECRETARY TO THE GOVERNMENT, OF
FORT ST. GEORGE,
To
THE SECRETARY TO THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT.

SIR,

I am directed by the Governor in Council to acknowledge the receipt of your letter, dated 20th July 1876, No. 478, and in reply to forward, for submission to the Government of India, the accompanying copy of reports from the Inspector-General of Registration and the Advocate-General, on the Bill to amend the Registration Act, and of the Proceedings of this Government of this date on the subject.

I have the honor to be,

Sir,

Your most obedient servant,

FORT ST. GEORGE,
8th January 1877.

Chief Secretary.

From The Hon. V. RAMIENGAR, C.S.I., Inspector-General of Registration, to the Chief Secretary to Government, dated 3rd August 1876, No. 190.

I have the honor to lay before Government the accompanying letter from the Registrar of Madura submitting one from the Sub-Registrar of that place, in which

he offers certain suggestions in connexion with the Bill for amending the Indian Registration Act which has been introduced into the Council of the Governor-General for making Laws and Regulations.

2. The Sub-Registrar's proposals in paragraphs 1, 2, 4, 5, 6, 7, 8, 11, and 12 of his communication do not commend themselves to me. The suggestion in paragraph 3 is met by Section 3 of the Bill. The remarks in the ninth and tenth paragraphs deserve consideration.

ENCLOSURE No. 1.

From T. RAMA ROW, Registrar of Madura, to the Inspector-General of Registration, dated 25th July 1876, No. 62.

In submitting the accompanying letter from the Sub-Registrar of Madura, No. 35, of the 19th instant, for such notice as you may deem proper, I have the honor to state that I am unable to

endorse the suggestions contained in paragraphs 4, 6, 7, 8, 11, and 12, and in the concluding part of paragraph 1 regarding castes as the existing provisions of the Act as respects them do not in my opinion require any amendment. I see no objection to the suggestions contained in the other paragraphs being adopted.

ENCLOSURE I IN No. 1.

From R. SUBRAMANIYEN AIYER, Sub-Registrar of Madura, to the Registrar of Madura dated 19th July 1876, No. 35.

As a Bill has been introduced into the Legislative Council of the Governor-General of India for amending the Indian Registration Act VIII of 1871, I humbly beg permission to make the following suggestions, and request you will be good enough to forward this letter to the Inspector-General of Registration for such notice being taken of the suggestions as he may deem proper.

1. *Section 3 of Act VIII of 1871.*—In Regular Appeal, No. 75 of 1870, the Madras High Court have ruled that "a document creating and transferring a right of use of growing trees for a term of years is a document which purports to create or transfer an interest in immovable property within the meaning of Section 13 of the Registration Act of 1864; and therefore such document, if not registered, is inadmissible in evidence" (*vide* Madras High Court Reports, Vol. 6, page 71). From the judgment delivered in the suit it has to be inferred that a deed of lease of the right of use of fruit upon trees is to be regarded as relating to movable property only when it refers to a particular crop, and to immovable if it refers to the enjoyment of the crops generally which necessitates the existence and continuance of the trees in the state in which they were at the time of the execution of the lease. In other words, when the lease is for more than one year, a right is indirectly created in the trees which are immovable, as the right to the use of fruits cannot be properly exercised without the right in the permanence of the trees and security against injury to their quality. Such a view does not seem to be inconsistent with the definition given of movable property; for, in the expressions "standing timber," "growing crops," and "grass" which are included under "movable," the idea seems to be that the thing referred to by these expressions is by its very nature of a perishable and transitory character and in a state to be immediately severed from the land to which it is attached. As the expression "fruit upon trees" follows these terms, I think the thing referred to by the expression should be treated as movable only when it is of the like nature and has the same character as that appertaining to the thing expressed by the terms preceding it. When, therefore, from the terms of the document, the permanency of the trees has to be inferred, what is generally regarded as movable changes its character and becomes immovable. Hence, I beg to suggest that the expression "movable property" may be so defined as to recognise the distinction above stated in the case of "fruit upon trees;" or, illustrations annexed to the section so as to cover such cases. In the definition of the term "addition," I think the words "his caste (if any)" may be omitted, as the other particulars included in it are sufficient to identify the person, and as the entering of one's caste in the endorsement (Section 58) seems to be superfluous and undesirable. In India, caste distinctions are so intimately connected with the social status of the Hindus, that it is often, in actual practice, a very delicate point to ask a person to state his caste. To be plain, let us conceive how delicate it would be for a Registering Officer to ask a Native Deputy Collector, or a Sub-Judge, or a big Zemindar in the Southern District to state his caste, when the two former are of what is commonly called "low caste," and the last a Murava or Kalla, which terms invariably bring prominently to one's mind the thievish propensities of the class denoted by them. Besides, so far as the Madras Presidency is concerned, the title affixed to a Hindu name is sufficiently indicative in most cases of the caste of the person denoted by the name to which it is affixed. For example, if the title *Tévan* be affixed to a proper name, it indicates that the person is of the Murava caste; so *Nádán* indicates that he is of the Shánár caste; and likewise *Sérvai*, *Bhattan*, *Véln*, *Kulumban*, *Naidu*, *Aiyar*, *Pillai*, and *Kóne* indicate respectively that the person to whose name the title is affixed is of the Agambodia, Kammála, Kummara (potter), Palla, Balija, Bráhmán, Vellála, and Yálava caste. Hence, it will be clear that the entering of one's caste in the endorsement, when the full name is given, is in one sense a tautology; or, at any rate, something that may be conveniently omitted.

2. *Section 18.*—When we consider the very great facilities that are now afforded to the public for the registration of documents by the appointment of Special Sub-Registrars, by subdividing subdistricts and by appointing more Sub-Registrars than one in a subdistrict (where necessary), and that all obstacles in the way of registration are thus removed (which of course had to be duly considered when the Registration Act was first introduced into the country and which necessarily and reasonably induced the Legislature to defer from providing at the very commencement that every small transaction affecting immovable property should be registered); and when we consider that the system has become popular, and that the public are fully alive to the advantages of registration and appreciate them, I think the time has come for abolishing the distinction between compulsory and optional in respect to documents affecting immovable property. In consequence of the distinction now maintained, some people evade registration by executing two or more documents each of a value below Rupees 100 (this is becoming so general as to attract the attention of the Inspector-General—*vide* paragraph 5 of the Madras Administration Report of the Registration Department for 1874-75), just as they used to execute deeds of gift and exchange in the form of conveyances when one uniform prohibitive rate of 16 Rupees stamp was in force. As in matters of sanitation, where the masses will not attend to the cleanliness of their own houses unless taught to do so by coercive measures, so in the matter of registration the masses are not likely to register the documents affecting their property unless compelled to do so by law, notwithstanding they are fully aware of the advantages of registration, and that great facilities are afforded them. As the masses are generally poor, and as their transactions are in consequence of a limited pecuniary value, it is nothing but just that the State ought to teach them to protect their own interests in immovable property by a system of enforced registration. Besides, the injury and loss to a poor man when deprived of his small property by the subtleties and intrigues of his wily neighbours are greater than those a wealthy man suffers under similar circumstances.

3. *Clause 7 of Section 18.*—The High Court of Madras have ruled (*vide* Madras High Court Reports, Rulings, Vol. 6, page 9) that a partition deed affecting immovable property of any value whatever falls under Clause 7 of Section 18, and therefore need not necessarily be registered. In consequence of this ruling, Registering Officers have been instructed by the Inspector-General of Registration to bring such deeds under the optional class in preparing their statements and returns. The High Court of Bombay, on the other hand, have ruled otherwise (*vide* Indian Law Reports, Bombay Series, Vol. I, page 67). As deeds of partition belong to a very important class of documents among the Hindus, and as their registration will put an end to a good deal of unnecessary litigation in the case of members of an Hindu family, I think it very desirable that such deeds ought to be brought under Section 17, like deeds of gift (Clause 1 of Section 17).

4. *Section 24.*—By referring to Book II (Record of reasons for refusal) of this office, I find that during the five years Act VIII of 1871 has been in force there were only two cases in which the Registrar refused to comply with the request of the parties to admit their document on

* Of these, two out of sixteen refusals relate to my predecessor's time, whose connexion with the office ceased on the 4th January 1873, the date on which I took charge of the office. So, one out of forty-nine refusals was reversed during a period of three and a-half years.

Payment of penalty, and that only in three cases out of sixty-five refusals he reversed the order of the Sub-Registrar. This leads one to suppose that in most cases sufficient grounds are urged for the delay, and registration is ordered on payment of penalty as a matter of course; and that the Sub-Registrar's order is based on sufficient and proper grounds. While so, I think the reference to the Registrar is a formality and puts the party to needless delay and trouble, as he has to wait for the reply. I beg to suggest that Sub-Registrars be authorized to admit documents for registration on payment of penalty leviable under Sections 24 and 34, after proper inquiry into the cause for delay. The Registrars, in the course of their periodical inspections, may see whether the Sub-Registrars have properly exercised their discretion in the disposal of such cases. I think Colonel Macdonald, the late Inspector-General, made a similar suggestion when Act XX of 1866 was about to be repealed. If it should be considered unsafe to invest every Sub-Registrar with such a power, I think the Local Government may be empowered to authorize, on the recommendation of the Inspector-General, some standing Sub-Registrars of

5. *Section 31.*—This section is so worded in the Amendment Bill as to apply only to cases where a Registering Officer attends at the residence of any person desiring to *present* a document for registration or to *deposit* a will. In other words, it is inapplicable to cases where a Registering Officer attends at a private residence for the purpose of *registering* a document or examining a witness, which seem to fall under Section 38. The retention of the general expression "on special cause being shown" in the section in its new form is misleading, as if the circumstances under which the Registering Officer attends under Section 31 are different from those referred to in Section 38. In practice, it may *generally* be stated, that, when a Registering Officer attends at a private residence, the presentation and registration of a document take place simultaneously, and that he is authorized to attend at a private residence for whichever purpose (whether it be for receiving a document or for registering it or for examining a witness) only under the circumstances referred to in Section 38. It therefore seems to me that Section 38 may be omitted, and Section 31 may be so worded as to be applicable to the three cases above stated, with a note that under particular circumstances (*viz.*, those stated in Section 38) certain persons shall not be required to attend at a Registration Office. If this suggestion be adopted, it will no doubt necessitate a slight modification in the wording of Section 36 so as to restrain a Registering Officer from issuing a summons to any person who is sick or exempt by law.

6. *Section 36.*—This section as at present worded does not authorize a Registering Officer to issue a summons at the instance of the claiming party, if the document had been presented by the *executant*, and if he fails to appear again when the registration of the document produced by him is not completed on the very day on which it is presented and when its registration is postponed for some future date under certain unavoidable circumstances, such as when the document is impounded and forwarded to the Collector under Section 23 of the General Stamp Act, or where further inquiry is deemed necessary for want of satisfactory proof as to the identity of the person executing it. I therefore think that the section should be so worded as to enable a Registering Officer to issue a summons under *such* circumstances at the instance of the claiming party, and of his own motion whenever he thinks it necessary to do so. The absence of such a provision has caused some inconvenience in a few cases within my knowledge.

7. *Section 37.*—Both in this section and the preceding one, I think the word "execute" may be substituted for "issue." As a Registering Officer is a public servant, and as any proceeding held under the Registration Act is regarded as a "Judicial proceeding" within the meaning of the Indian Penal Code (Section 82 of the Registration Act), and as he is competent to administer oaths (Section 63), I am unable to understand why a Registering Officer is not competent to issue a summons. He cannot of course have the summons issued by him executed by his own establishment for want of process servers under the present system. But I see no reason to the Registering Officer not being allowed to draw up his own summons. If he be authorized to do so, I think the Magistrate will be relieved of some labor which the present system entails upon him (Registration Rule 11), and such a course will also facilitate despatch of business.

8. *Section 41.*—Under Section 27 of the Act, a will can be presented for registration at *any* time after its execution. If it is presented by the testator himself, it is not of any consequence when it is presented. But when it is presented after the death of the testator, the unlimited period allowed by that section gives room for fraud and forgery; and the procedure prescribed by Section 41 seems to afford great facilities for forging wills. If any document other than a will is presented for registration after the death of the executant, the law (Section 35) provides that the representative of the deceased should be afforded an opportunity for admitting or denying its execution, and that in the case of denial the Registering Officer should refuse its registration. In the case of a will, on the other hand, what has to be chiefly proved to admit it to registration (Section 41) is that it was executed by the testator and that he is dead, which facts can easily be testified to by suborned witnesses to the satisfaction of an inexperienced Registering Officer, whose course of examination is necessarily summary, whilst the representative is utterly ignorant of the execution of such a document and is not afforded an opportunity to question its genuineness. I beg to suggest that a provision be made in Section 41 making it obligatory on the part of Registering Officers to examine the representative of the deceased when a will is presented *after* the death of the testator, and

falsely denies its execution, it is of course open to the parties interested to appeal to the District Court, which has the power of directing its registration if it is satisfied of its execution by the deceased. I think I may safely go a step further and suggest that another provision be made to the effect that all *such* wills ought to be presented within a prescribed period (as in the case of all other optionally registerable documents), from the date of the death of the testator. The absence of any legal provision requiring a probate to be obtained in the case of wills executed by Hindus and Mahomedans residing in the Mofussil renders the introduction into the Registration Act of a provision like that suggested very necessary.

9. *Section 45.*—The object of the omission in the Bill of the second paragraph of Section 45 of the Act is not clear. It is doubtful as to what is to be done with the original will after the sealed cover containing it had been opened and the will copied in Book III.

10. *Section 57.*—The addition of the words "or their agents or representatives" after words "any person executing or claiming under the documents" in paragraph 2 of Section 57 seems to be very necessary to obviate the hardship and inconvenience arising in cases where the original registered deed is lost and when the claiming party cannot appear before the Registering Officer by reason of her sex, or when the representative of a deceased claiming party wants to sue the executant upon a missing bond, or when the representative of a deceased executant wants to know the extent of the liabilities of the deceased. At present such parties have no chance of obtaining copies of documents registered in Books III and IV except by patiently waiting until a suit is actually instituted in some Court in which the production of such document becomes relevant, and by summoning the Registering Officer to produce the register in which the said documents are copied. This is certainly a very great hardship to the public, and productive of much inconvenience, expense, and delay. I would therefore urge the insertion of the words "or their agents or representatives" after "document."

11. *Section 58.*—Until the Registrar-General issued his Circular, No. 9 of 1867, embodying the views of the Advocate-General of Madras that a Registering Officer can only record *voluntary* admission of receipt of consideration, it was the practice of most of the Registering Officers to ask the executants whether they admit the receipt of consideration, and to record admissions so obtained which in most cases were made as a matter of form like admission of execution, even when the consideration was not actually paid. Since the issue of the circular above quoted, the Registering Officers have of course ceased to put such a question, and they record receipt of consideration only when admission is voluntarily made by the executant. Still I think it would be much better if the words "and any admission... execution" in Clause 3 of Section 58 be altogether omitted, as I have reasons to think that some of the ignorant ryots make such admissions though in fact no cash or only a part has been received, simply through sheer ignorance of the consequences of such admission, and in most cases being prevailed upon by cunning and deceitful money-lenders to believe that a document cannot be registered unless there is admission of execution and receipt of consideration. If it is thought undesirable to omit the words as above stated, I beg to suggest that the words "if such admission appears to be voluntary to the Registering Officer" be added after the words "such execution" in Clause 3 of Section 58. My object in making the latter suggestion is that there is less evil in not recording a doubtful admission than in recording it, since if payment had been actually made, it could easily be proved by witnesses, as in those cases, where money is neither paid in the presence of the Registering Officer, nor admission of receipt of consideration made in his presence; whereas if the admission is recorded when in fact money had not been paid in whole or in part, such an endorsement disables the executant from proving otherwise afterwards, unless he is prepared to risk a criminal trial under Clause (a) of Section 80, for making a false statement before a Registering Officer.

12. *Section 73.*—The provision in the present Registration Act authorizing the Registering Officer to register documents if execution is admitted, though the executant is unwilling to have them registered and actually refuse to sign the endorsement, and allowing the parties to appeal directly to the District Court from orders of refusal by Sub-Registrar in cases of denial of execution, is a decided improvement upon Act XX of 1866, and has largely contributed to facilitate registration and put an end to needless delay and expense to the public, in addition to removing a good deal of unnecessary labor both to Registrars and District Courts. Still I think there is some room for improvement, and the restriction contained

in Section 73 that the appeal can be made directly to the District Court from orders of refusal by Sub-Registrars only in one case (denial of execution) seems to be unnecessary. I think the parties may be allowed to appeal directly to District Courts *at their option* (excepting cases of denial of execution) in all cases of refusal by Sub-Registrars, as appeals to Registrars in most cases even now are only formal. Instances have occurred within my knowledge in this district in which the parties have seriously suffered by a misconception of the language of Section 73, and by having appealed directly to the District Court from orders of refusal by Sub-Registrars, and the Court having inadvertently first allowed such appeals to be filed and finally rejected them at the time of hearing on the ground that the appeals should have been made through the Registrar (as they were not based on denial of execution). In the instances above stated, the period of thirty days prescribed in Section 72 having expired at the time the Court rejected the appeal, and as the Registrar has not a discretionary power to admit appeals after that period, the result was one of a serious consequence, as the documents were not admitted to registration.

From the Hon. V. RAMIENGAR, C.S.I., Inspector-General of Registration, to the Chief Secretary to Government, dated Madras, 19th August 1876, No. 200.

In acknowledging the receipt of G.O., 4th instant, No. 1591, I have the honor to submit the following remarks on the Bill to amend the Indian Registration Act.

2. The words "other than the powers conferred by Sections sixty-eight and seventy-two" occurring in the last clause of Section 1 of the Bill appear to me to be out of place and inserted by mistake. If a Sub-Registry office becomes amalgamated with or merged in the office of a Registrar, the officer in charge of the united offices is *ipso facto* still Registrar, and must exercise all the powers and duties of a Registrar without exception. The words in question very properly occur in Section 11 of the present Act, because in the case contemplated in that section, the Sub-Registrar will be only in temporary charge of the Registry office during the Registrar's absence on duty in the district, and the powers conferred by Sections 68 and 72 are so important that they should not be left to be exercised by a subordinate officer in temporary charge. In fact, the whole of the last clause of Section 1 should, I think, be omitted.

3. Section 45 of the present Act consists of two clauses, the second enjoining that when a copy of the will has been made, as directed in the first clause, the original will shall be redeposited. This second clause is omitted in the amended Section 45 inserted in Section 7 of the Bill, for what reason does not appear from the Statement of Objects and Reasons. To prevent any mistake on the part of Registrars, it is desirable that the clause should be retained.

4. Registration Rule 19 which, for convenience of reference, is transcribed in

19. 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 1 Rupee be paid for every month or part of a month during which it may have remained unclaimed beyond the above period. In such case the document may be delivered, on payment of the fine, to any person recorded as executing or claiming under it. 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.

the margin, appears to me to go beyond the law. The only cases in which the infliction of fines is authorized by the present Act are those of delay in presentation and attendance treated of in Sections 21 and 34. "Documents (other than wills) remaining unclaimed in any Registration office for a period exceeding two years may be destroyed" under Section 83, but there is no provision for imposing a fine upon them. On the contrary, Clause 2 of Section 61 expressly enjoins: "The registration shall thereupon be deemed complete, and the document shall then be returned

to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf, &c." Rule 19 professes indeed to have been framed under the power vested in the Inspector-General by Section 69 of the Act, but rules so framed must be consistent with the Act, and Rule 19 is not so but conflicts with Section 61. I have already noticed this point in my letters of the 18th February

G.O., 6th June 1876, No. 1130.

1876, No. 23, and 14th March 1876, No. 46,

and I am of opinion that the defect should be remedied by the insertion of an express provision in the Bill authorizing the levy of a fine on unclaimed documents.

5. A slight defect in Section 69 of the Act may also be noticed. Among the powers conferred by that section on the Inspector-General is that of "regulating the amount of fines imposed under Section 24." I would substitute for the words "under Section 24," "under Sections 24 and 34," for both sections are specified in the immediately following Section 70 which confers the power of remitting fines, and as a matter of fact the Inspector-General regulates the fines under both the Sections 24 and 34—*vide* Rule 3.

Bill to Amend the Indian Registration Act, 1871.

Some of the amendments suggested in this Bill appear to be valuable, *e.g.*, that provided by Section 1, some trivial, *e.g.*, those provided by Sections 5, 7, and 12 and one, viz., that made by Section 9 of the Bill in Section 50 of the Act to be of most questionable utility.

2. I have always regarded Section 50 as dangerous. The law is, however, by this time tolerably well understood, that certain documents *must* be registered, that certain other documents *may* be registered, and that of the documents which may be registered certain classes, viz., (1) and (2) of Section 13 take effect against all unregistered documents. But I should deprecate the extension of this rule of priority to all documents of which registration is compulsory. The law so amended might be easily made an engine of fraud. A purchaser sees in Section 17 that a sale of land for Rupees 99 need not be registered. Accordingly he does not register, and he would under the proposed law be liable at any time to be ejected by any one who held under a later registered deed. I think it would be far safer to make the registration of all instruments mentioned in Section 17 compulsory irrespective of the value, than to make the registration optional for deeds under a certain amount, and at the same time to provide that a registered instrument shall in such cases take effect against a prior unregistered instrument.

3. There are some rulings of the Madras High Court which might with advantage be embodied in the Act; *e.g.*, that sale certificates of immovable property over 100 Rupees in value under Section 259 of the Civil Procedure Code are documents of which the registration is compulsory (6, M. H. C., Ap. 39); that a deed of partition by Hindus of property worth over 100 Rupees is a document the registration of which is optional (6, M. H. C., Ap. 9); that an unregistered document, in which immovable property is made collateral security, is admissible to prove a personal liability (7, M. H. C., 296). There was also a letter of the High Court to Government, dated 30th November 1875, in which the High Court reasserted its view of Clause 7 of Section 18 of the Registration Act in opposition to that expressed in the Notification of the Government

of India on the subject. This divergence of opinion should be remedied in the new enactment.

MADRAS,
4th December 1876.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

To the Chief Secretary to Government, Fort St. George.

1877.

LEGISLATIVE DEPARTMENT.

from
*The Chief Secretary to Government,
Fort St. George,
to
The Secy. to the Govt. of India,
Legislative Department.*

18th January 1877.

No. 49.

Enclure.

of India on the subject. This divergence of opinion should be remedied in the new enactment.

MADRAS,

4th December 1876.

(Signed)

H. S. CUNNINGHAM,

Advocate-General.

To the Chief Secretary to Government, Fort St. George.

1877.

LEGISLATIVE DEPARTMENT.

from
The Chief Secretary to Government,
Fort St. George,

To
The Secy. to the Govt. of India,
Legislative Department.

1877.

No. 19.

1877.