THE

REGISTRATION ACT

(ACT NO. XVI OF 1908)[1]

[18*th december* 1908]

An Act to consolidate the enactments relating to the Registration of Documents.

Whereas it is expedient to consolidate the enactments relating to the registration of documents ;

It is hereby enacted as follows :

PART I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT—**(1) This Act may be called the [2]* Registration Act, 1908.**

(2) It extends to the whole of [3][Bangladesh], except such districts or tracts of country as the [4][Government] may [5]* * * exclude from its operation.

(3) It shall come into force on the first day of January, 1909.

2. DEFINITIONS—**In this Act, unless there is anything repugnant in the subject or context—**

(1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, [6]* * * and his father's name, or where he is usually described as the son of his mother, then his mother's name :

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

[7][(2a) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 11 of 1912, or under any other law for the time being in force relating to the registration of co-operative societies :]

(3) "district" and "sub-district" respectively mean a district and sub-district formed under this Act :

(4) "District Court" includes the High Court Division in its ordinary original civil jurisdiction :

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

[8][(6) "immoveable property" includes land, buildings, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth, hereditary allowances, rights to ways, lights, ferries and fisheries but does not include—

(a) standing timber, growing crops or grass whether immediate severance thereof it intended or not ;

(b) fruit upon and juice in trees whether in existence or to grow in future ; and

(c) machinery embedded in or attached to the earth, when dealt with apart from the land :]

[9][(7) "lease" includes a counter-part, kabuliyat and an undertaking to cultivate or occupy :]

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority :

[9][(9) "moveable property" means property of every description, except immoveable property :]

(10) "representative" includes the guardian of a minor and the the committee or other legal curator of a lunatic or idiot.

2(6) : **Definition**—a nim tree is a timber tree ; a tree which is essentially a timber tree and is intended to be cut down and used as a timber is not immovable property within S. 2(6) of the Registration Act. 93 I.C. 358 : 1926 All. 350.

—mango trees being fruit bearing trees and not standing timber, fall within the category of immovable property as defined in S. 2. 112 I.C. 335 ; 1928 Patna 652: 7. Patna 646 contra 24. B. 31.

—a right to enter upon given piece of land is not benefit arising out of land. 27A—462.

—a right to collect and remove leases from the trees is a grant of immoveable property. 1938 Nag. 377 : 181 I.C. 126.

—a machinery fixed to a cement platform and attached to iron pillars fixed in the ground is immovable property. 1944 Mad. 492, 1944, 2 M.L.J. 60.

—a right of way is immoveable property. 20 C.W.N. 1158, 1943 Mad. 522 : 209 I. C. 202.

Hereditary allowance—What is.

The hereditary allowances referred in the section are allowances which are payable out of the income of land and buildings and also allowances incidental to a hereditary office. The payment made to a Panda of Muttra by his jaman is not a hereditary allowance mentioned in the Registration Act. *Bal Kishan Vs. Sali Ram.* AIR (33) 1946 All. 476 (D.B.)

S 2(6)(7) : Licence to use slaughter house—Not a lease –No registration necessary.

Gopal Ds. Jethmal Vs. The Municipality, Hyderabad. PLD 1959 Sind.

PART II

OF THE REGISTRATION-ESTABLISHMENT

3. INSPECTOR-GENERAL OF REGISTRATION—(1) The Government shall appoint an officer to be the Inspector-General of Registration for [10][Bangladesh].

Provided that the [4][Government] may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the [4][Government] appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office in the service of the [10A][Republic].

4. [Branch Inspector-General of Sindh.] Rep. by A. O. 1937.

5. DISTRICT AND SUB-DISTRICTS. (1) For the purposes of this Act, the [Government] shall [11]form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the [12][Official Gazette].

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

[13]6. REGISTRARS AND SUB-REGISTRARS—The [Government] may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

[14]* * * * * * *

7. OFFICES OF REGISTRAR AND SUB-REGISTRAR—(1) The [Government] shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The [Government] may [15]amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

7. Offices of Registrar and Sub-Registrar—Where the office of Sub-registrar has been amalgamated with that of Registrar, the Sub-registrar may be authorised to exercise and perform all or any of the powers and duties of the Registrar.
1924 Cal. 348, 3 C.L.J. 165.

8. INSPECTORS OF REGISTRATION-OFFICES. (1) The [Government] may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers[16].

(2) Every such Inspector shall be subordinate to the Inspector-General.

9. [*Military cantonments may be declared sub-districts or districts.*] *Rep. by the Repealing and Amending Act*, 1927 (*X of* 1927), *s.* 3 *and Second Schedule.*

10. ABSENCE OF REGISTRAR OR VACANCY IN HIS OFFICE. (1)—When any Registrar, [17]* * * absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the [Government] fills up the vacancy.

[18]* * * * * * *

11. ABSENCE OF REGISTRAR ON DUTY IN HIS DISTRICT—When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

12. ABSENCE OF SUB-REGISTRAR OR VACANCY IN HIS OFFICE—When any Sub-Registrar is absent or when his office is temporarily vacant, any persons whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence or until [10][the vacancy is filled up]

13. REPORT TO PROVINCIAL GOVERNMENT OF APPOINTMENTS UNDER SECTIONS 10, 11 and 12. (1) [20]* * * * All appointments made under section 10, section 11 or section 12 shall be reported to the [Government] by the Inspector-General.

(2) Such resort shall be either special or general, as the [Government] directs.

[21]* * * * * * *

14. ESTABLISHMENTS OF REGISTERING OFFICERS.

[21]* * * * * * *

(2) The [Government] may allow proper establishments for the several offices under this Act.

15. SEAL OF REGISTERING OFFICERS.—The several Registrar and Sub-Registrars shall use a seal bearing the following inscription in English and [22][Bengali] :—"The seal of the Registrar (or of the Sub-Registrar) of

16. REGISTRAR-BOOKS AND FIRE-PROOF BOXES. (1) The [Government] shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General with the sanction of the [Government and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The [Government] shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III

OF REGISTERABLE DOCUMENTS

17. DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which [23][* * *] this Act came or comes into force, namely :—

(a) instruments of gift of immoveable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

[24]*Explanation*—In the case of an assignment of a mortgage the consideration for the deed of assignment shall be deemed to be the value for registration ;]

(c) non-testamentary instruments [25][(other than the acknowledgement of a receipt or payment made in respect of any transaction to which an instrument registered under clause (o) relates)] which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and

(d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent ;

[26](e) non-testamentary instruments transferring or assigning any decree or order of Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immoveable property :]

Provided that the (Government) may, by order published in the [27](Official Gazette), exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed ; or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property ; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged conveyed or otherwise transferred the whole or part of its immoveable property or any interst therin to trustees upon trust for the benefit of the holders of such debentures ; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company ; or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document, which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [28][except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immoveable property by [29][the Government]; or

(viii) any instrument of partition made by a Revenue-officer; or

(ix) any order granting a loan or instrument of collaterel security granted under the Land Improvement Act, (XXVI of 1871,) or the Land Improvement Loans Act, (XIX of 1883;) or

[30][(x) any order granting a loan under the Agriculturists' Loans Act, (XII of 1884,) the [31][Bangladesh Krishi Bank Order, 1973] or under any other law for the time being in force relating to the advancement of loans for agricultural purposes, or any instrument under which a loan is granted by a co-operative society for any such purpose, or any instrument made for securing the repayment of a loan so granted; or]

(xi) any endorsement or a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money and any other receipt for payment of money due under a mortgage [32]* * *; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer [33][; or]

[34](xiii) any counter-part of a lease, where the lease corresponding thereto has itself been registered.

[35](Explanation.—A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the

fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Synopsis

1. Applicability.
2. Arbitration award.
3. Charge on immoveable property.
4. Family arrangement.
5. Lease.
6. Mortgage.
7. Partition.
8. Reconveyance.
9. Unregistered document—use of.

1. Applicability.

17 : Applicability—Document not expressly transferring property—Not compulsorily registerable.

Khawaja Vs. Nur Alam PLD 1953 Lah. 277 : PLR 1953 Lah. 614 (D. B) Dist. ILR 47 Cal. 485 ; Lah.

No rights created in property by a document—Document not compulsorily registerable.

Fateh Muhammad Vs. Muhammad Shafi PLD 1953 Lah. 251 (D.B.)

Document not created any interest in immovable property and not operated as assignment of future rents, is not compulsorily registerable under section 17 of the Registration Act, 1908. *Riazul Ambia Vs. Ibrahim* PLD 1961 Supreme Court 43 : PLR 1961 (2) W.P. 17 : 1960(2) PSCR, 140: 13 DLR (SC) 32 (D B.)

Power of attorney—Not compulsorily registerable. *Ghandpur Mills Ltd. Vs. Dad Ltd.* PLD 1959 Dacca 636 (D.B.)

Agreement of sale of immovable property containing recital as to payment of price—Registration not required. *Banaras Vs. Farman* PLD 1963 (W.P.) Peshwar 128.

Charge on future rents—Instrument creating charge is compulsorily registerable. *Abdur Razzak Vs. Mohd. Shafi* PLD 1962 (SC) 134.

Document described as award but in fact an agreement—Not compulsorily registerable. *Mohd. Akram Vs. Mohd. Salim* PLD 1964 (W.P.) Lahore 490.

Where an agreement to sell does not create any present right in property. It only recites an agreement arrived at between the parties that the plaintiff respondent would transfer the property in dispute to the defendants—appellant either by registration of a document or by means of mutation—It is not a document requiring registration. *Mohd. Akram Vs. Mohd. Salim* PLD 1964 (W.P.) Lahore 490.

Registration alone does not pass title. It can not be laid down as a general rule that mere registration of an instrument without reference to other circumstances operates to transfer the property (1955) 7 DLR 443.

Where there is neither possession of the property alleged to have been sold, nor any proof of the payment of consideration, mere registration of the sale-deed does not operate to pass title to the vender (1955) 7 DLR (W.P.C) 62.

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Endorsement, requiring registration but not registered in a lease is admissible for collateral purposes. (1955) 7 DLR 60.

In order that document may operate as a transfer either in the present or in the future there must be dispositive words. The executant must say expressly or by implication "I transfer" although he may make the transfer conditional on the happening of a certain event. 1953 PLR (Lahore) 614.

Ss. 17, 19. Rent suit—Petition of compromise—Compulsorily registerable. Where on a suit the annual rent of land was enhanced and a compromise decree was passed on a compromise petition filed by the parties. On question of admissibility of the decree in subsequent proceedings.

Held: That as the compromise petition amounted to a present demise which did not come within any exception is section 17(2) of the Registration Act, it was compulsorily registerable under section 17 (1) of the Act, and is inadmissible under section 49 of the Act in the absence of rsgistration *Azizur Rahman Vs. Satyendra Kumar Saha* PLR 1958 Dacca. 394.

Spes successions, mentioned in document—Registration Act necessary. *Sisu Bala Ghose Vs. Profulla Chandra Mondal* (1961) 13 DLR 307 PLD 1962 Dacca 490.

Lease

S. 17. Lease of immoveable property for period exceeding one year—created without registered instrument—lease is good for one year—Holding over subsequently may be proved by lessee. *Bashirullah Vs. Province of East Pakistan* PLD 1962 Dacca 126. PLD 1961 Dacca 1000.

Ss. 17(2) and 49. Agreement for lease not liable to compulsory registration. Such document is admissible in evidence in support of transaction. *Pakistan Employees Co-operative Housing Society Ltd.* (1969) 21 DLR (W P) 345.

S. 17. Agreement to lease—No demise of property at the time—Agreement does not require registration.

The petitioner was to remain as a licencee after the payment of rupees fifty thousand and before the deposit of rupees five lakhs odd. When the property was to be transferred to him. Therefore there is no actual and present demise involved in the case. *Hossen Brothers Ltd. Vs. Pakistan Textile Mills Ltd.* PLD; 1954 Sind 1.

Endorsement on lease not registered—Lease admissible to prove nature of possession.

If an endorsement on a lease is not admissible in evidence for want of registration, for the purpose of proving that a certain plot was included in the lease or to explain the possession of the lessee and the extent of the land in his possession on the basis of the lease. *Khan Muhammad Vs. Chitter Jan Sen* (1955) 7 DLR 60.

Mortgage.

S. 17. Mortgage—Document—Witnessing deposit of title deed and conditions of mortgage—compulsorily registerable—Document could not be treated merely as a memorandum of deposit of title deeds. It could not contain all the terms of the bargain between the parties assuming that such a bargain took place—Construing the document as a whole it came within the mischief of section 49 of the Registration Act and not having been registered was not admissible in evidence. *Begum Vs. Fatima Bhai* PLD 1961 (W. P) Karachi 537.

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S. 17. Equitable mortgage—Mortgage by deposit of title deeds—Memorandum of deposit of title deeds purporting to create in present interest in property in favour of plaintiff—Such writing constitutes contract of mortgage and not mere record of completed transaction, and is compulsorily registerable—Such writing, in absence of registration, held not only inadmissible in evidence but also does not create any mortgage—Deposit of title deeds not independent of sue writing—No right or interest, in circumstances, held could be created in properly even by deposit of title deeds. *M/s. Eagle Star Insurance Co. Ltd.* (1969) 21 PLD Karachi 133.

Transfer of the interest of a partner in a partnership firm, is to be any registered instrument. Transfer of the interest of a partner in a partnerships firm can be effected only by an instrument in writing the share in a partnership being of the nature of a beneficial interest in movable property, and it has also to be registered according to the provisions of section 17(1)(b) of the Registration Act when the firm is possessed of immovable property as the transfer operates to create an interest in immovable property. *The Eastend Agencies* (1968) 20 DLR 1056.

S. 17(2). A mere receipt by the mortgagee of the payment of mortgage money without references to the fact that the mortgage is being redeemed does not require registration. *Sale Lon Muhammad* PLD 1958 (W.P) Lahore 1023.

Recital as to previous Mortgage by deposit of title deeds Registration not required. *Subha Karan* (1962) 14 DLR 193 PLD 1963 Dacca 352.

Oral Transaction

Ss. 17, 49. Oral sale of immovable property title in property does not pass without registration of sale deed *Sohna Vs. Allah Dad* PLD 1962 Baghdad-ul Jadid.

oral transfer of immovable property—Mutation effected in State of Kashmir. *Saida Vs. Noor Mohd.* PLD 1962 Azad J. & K. 11

Reconveyance.

S. 17. Reconveyance not be registered—Not a proper reconveyance.

Where reconveyance was not by way of a registered document, but was sought to be effected only by an endorsement on the back of the original kabala for sale.

Held : that it could neither be admissible in evidence nor could it be treated as a conveyance, *Abdul Sattar V. Yunus.* 12 DLR 849 (D.B) PLD 1961 Dacca 512.

Trausfer of property.

Ss. 17(b)(49)—Dissolution of partnership—Relinquishment of share in partnership by one partner—Deed must be registered. *Zainab Bai Vs. Ibrahimji* PLD 1962 (W.P) Karachi 209.

Declaration as to transfer of property in unregistered document—Property is not transferred. *Manzoor Ahmed Vs. P&T Housing Society* PLD 1962 Karachi 476.

Immovable property of one partner sought to be brought into common stock of firm—Registration Necessary. *Zainab Bai Vs. Ibrahimji* PLD 1962 (W.P) Karachi 209.

Transfer of property by a Muslim—Registration of deed of transfer necessary.

If any Muslim desires to transfer his property in the name of somebody, he can do so only by a registered deed. *Faqirullah Vs. Mir Khan* PLD 1958 Azad J. & 19 (D.B).

—S. 17

7. Unregistered Document.

S. 17(1)(b). Unregistered document—May be used to prove nature of possession—Cannot be used to prove nature and character of transaction.

An unregistered document—Which requires registration under section 17 of the Registration Act can be admitted in evidence for a collateral purpose, viz, to prove the nature and character of possession, though the character and nature of the possession cannot be separated from the main transaction evidenced by the document. A distinction has, however, to be drawn between the character and the nature of the possession and character and nature of the transaction. While the document is admissible to prove the character and nature of the former, it is not admissible to prove the character and nature, of the former, it is not possible to prove the character and nature of the latter. The fact whether a lease of immovable property is made for a certain term express or implied, or in perpetuity, or for a certain consideration is not covered by the term "collateral purpose". They are the essential terms of the lease and cannot be proved by a document which is not by the law governing such document admissible in evidence. *Nur Khanum Vs. Sheikh Ahmed* 9 DLR (W.P) 8 PLD 1957 (W.P) Pesh. 50: PLR 1957 (1)W.P. 1089 (D.B.)

S. 17(b). Where the agreement of sale of immovable property was not registered, and subsequently on the non-performance of the agreement by the vender a suit was brought for the refind of earnest money. It was held that the agreement was admissible in evidence because it was required to be looked at only for a collateral matter. *Moosa Vs. Mohd. Yaqub* PLD 1966 Karachi 376.

Unregistered deed of transfer of title—May be looked into to determine nature of possession of holder of property. *Zainab Bai Vs. Ibrahimji* PLD 1962 (W.P.) Karachi 209.

Unregistered deed of transfer of title—May be looked into for collateral purpose. *Dawood & Co.* PLD 1962 (W.P) Karachi 368.

Petition of compromise in a rent suit enhancing rent whether requires registration. In a suit for rent of agricultural land the annual rental was enhanced from Rs. 16 to Rs. 25 by an unregistered solenama which was incorporated in the decree. In a subsequent suit for rent at the enhanced rate of rent, the question arose whether in the absence of registration, the compromise decree in the earlier rent suit incorporating the terms of the compromise was admissible in evidence in view of Sec. 49 of the Registration Act.

Held : As the compromise petition amounted to a present demise which did not come within any exception in section 17(2) of the Registration Act, it was compulsorily registerable under Sec. 17(1) of the act, and is a inadmissible under Sec. 49 of the Act in the absence of registration. 8 PLR Dacca 394.

Partition.

S. 17. Partition—Document intended to be part of transaction of partition—Registration necessary.

If a document relating to partition is intended by the parties to be embodied in the transaction of partition, it is compulsorily registerable but if it is intended to be used merely as a record of an already effected partition, it need not be registered.

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Where a document executed by the parties within one hour of an alleged completed oral partition, started with the recital of details in the past tense but concluded in the present tense and described itself as a deed of partition.

Held : That the document was a part of the partition transaction and not a mere record or acknowledgement of a completed transaction. Hence it was compulsorily registerable under S. 17(1) (b). *Laxappa Vs. Bhimmappa.* AIR (33) 1946 Bom. 126 (D.B) Dist. AIR 1938 Bom. 257 : AIR 1920 Bom. 46, 2 Bom. LR 800 ; 5 Bom. 232.

S. 17(1)(b). Deed of exchange without registration passes no title. *Jabed Ali Bepari Vs. Abdul Bari Bepari* (1967) 19 DLR 192.

The interest of an executor in the testator's property is not an interest in land and although properties worth Rs. 100/- had vested to executor, the deed of appointment by which he appoints an executor in his place, could not be said to have created such an interest as would bring the document under section 17(b) and require registration (1950) 2 DLR 265.

Agricultural lease does not require registration, *Shamsuddin Sarder Vs. Amjan Bewa* (1966) 19 DLR 192.

Recital of existing state of affairs—Document not creating any rights—Not registerable.

Where recitals of a document are a record of a past transaction or at the outside an admission of a pre-existing state of affairs, such recitals are not a declaration such as is contemplated under section 17(1)(b). A mere statement of an existing fact in a universal document would have no effect upon the legal relations of the parties and cannot be considered to be a declaration of their rights.

The test to determine whether the document requires registration is; did the document constitute the bargain between the parties or was it merely the record of an already contemplated transaction.

The word "declare" in section 17 implies a definite change of legal relation to the property by an expression of will embodied in the document. *Ghulam Mohiuddin Vs. Haji Muhammad* PLD 1957 (W.P) Karachi 643 (D.B.) Ref : AIR 1942 P.C. 55, AIR 1923 P.C. 50; 5 Bom. 232.

Arbitration Award.

S. 17(1)(b). Award by arbitrator—No interest in immovable property created by the award—Provision not applicable.

When the award has no operative effect in creating any immovable property, S. 17 (1)(b) of the Act would have no application to the case Lahore *Central Co-op. Bank Ltd. Vs. Qudir Bakhsh* PLD 1947 P. C. 119 (D.B.).

Award creating charge on property of value of Rs. 100 or more—Compulsorily registerable. *Uttamchand Motilallji Vs. Wasudeq Deorao AIR* (33) 1946 Nag. 311 (D.B.) Dist. AIR 1937 All. 282.

Charge.

S. 17(1)(b). Charge—Registration of document creating a, when necessary—unregistered document creating a charge where the amount involved is over Taka 100/- is not admissible. (1960) 12 DLR 395.

Agreement by the reversioner to transfer a property when it vests in him does not require registration.

S.—17

An agreement by the reversioner of a holder of property to transfer a portion of it to the promisee after the vesting of the estate in the reversioner does not require registration. The executants' rights in the property were only to come into existence after that and the agreement was only to transfer a moisty of such rights when they came into existence, that is, after the death and the agreement was thus in the nature of an agreement to transfer and its registration as such was not compulsory. *S.M. Lutfullah Vs. Bibi*, (1968) 20 DLR 1019.

Charge on immovable property.

S. 17(1)(b). Charge on immovable property of value more than Rs. 100 or more—Compulsorily. *Uttamchand Motilalji V. Wasudo Deorao* AIR (33) 1946 Nag. 311 (D.B.).

Charge on future rents—Instrument creating charge is compulsorily registerable. *Abdur Razzak Vs. Mohd. Shafi* (1962) 14 DLR SC. 119. PLD 1962 SC. 134.

Family arrangement.

S. 17(1)(b). Family arrangement—When requires registration.

A family arrangement not involving a transfer may be a settlement in which each party takes a share of or interest in family property by virtue of an independent title which is to that extent admitted by the other parties. Such an arrangement may, however, involve a declaration of right under S. 17 (1) (b) Registration Act. Whether the family arrangement involves a declaration of right or not will depend on the facts of each particular case. If it involves a declaration of right it will require registration.

Where in mutation proceedings a bona-fide dispute between the parties is composed, each party recognising an antecedent title in the other, and the parties make a petition to the court informing the terms of the agreement there is no necessity to have such a petition registered as it does not purport to create, assign, etc., any right in immovable property within the meaning of S. 17(1) (b) Registration Act, it is merely a recital of fact by which the Court is informed that the parties have come to an arrangement. *Lal Mohan Vs. Onkar Mall* AIR (33) 1946 Pat. 55 (D.B.).

S. 17(1)(b) : Lease deed—Unregistered—Not admissible in evidence to prove charge created for more than Rs. 100/-. *Abdur Razzak Vs. Muhammad Shafi* 12 DLR 395, 13 DLR 821 (B.D,). PLD 1960 Dhaka 923.

Reconveyance—Right to granted by deed—Deed need not be registered—Endorsement surrendering the right of reconveyance needs no registration. *Subed Ali Sikdar Vs. Haji Rostam Ali* 9 DLR 464 (D.B.).

Partition-chittas—If require registration—Test.

The question whether partition chittas require registration under S. 17(1)(b) must be decided with reference to the contents and nature of the document and the surrounding circumstance in each particular case. Where the partition chittas did not amount to anything more than mere memoranda containing the list of the shares which each of the parties got at the time of partition and were signed by the parties in order to authenticate the lists and do not in themselves constitute a deed of partition they do not come within the purview of S. 17(1)(b) and do not require registration. *Abdul Haq Vs. Mohd. Hashim* AIR 1946 All. 200 (D.B.)

S.—17

Deed of exchange without registration passed no title. 19 DLR 192. 2 DLR 265. 12 DLR 395. : 9 DLR 464.

Reconveyance—Agreement to execute deed of is a mere contractual right and does not require registration under section 17(1)(b).

Endorsement giving up the right to get a reconveyance does not require registration. The contractual right is assignable. (1957) 9 DLR 464.

Ss. 17(1)(d) and 49 ; As amended by Registration (Amendment) ordinance (LXV of 1962) Document compulsorily registerable but not registered—Admissible in evidence due to elimination of Sub-clause (c) of Sec. 49, question of admissibility of a document in evidence is a matter of procedure and, therefore governed by Law current at that time. *Pakistan Employees Co-operative Housing Society Ltd.* Karachi, (1969) 21 DLR (W.P.) 345.

S. 17(1)(d)—of the Registration Act regarding compulsory registration of a lease has no application to the case of a government grant or transfer *Amber Ali Talukdar Vs. Ajman Ali* (1964) 16 DLR 221.

Mortgage.

S. 17(2). Mortgage—Receipt of money not stating that mortgage has been redeemed—Does not require registration.

A mere receipt by the mortgagee of the payment of mortgage money without references to the fact that the mortgage is being redeemed does not require registration *Vs. Salehon Muhammad* PLD 1958 (W.P) Lah. 1023.

S. 17(2)(ii). Instrument relating to shares in a Joint Stock Company though involving immovable property does not require registration Section 17(2)(ii) of the Registration Act dispenses with the requirement of registration of any instrument relating to shares in a joint stock company not withstanding that assets of such company consists in whole or in part of immovable property. But no such provision is made in respect of a partnership firm. *The Eastend Agencies* (1968) 20 DLR 1056.

S. 17(2) and 49 : Agreement for lease not liable to compulsory registration—Such document is admissible in evidence in support of transaction. *Pakistan Employees Co-operative Housing Society Ltd. Vs. Anwar Sultana* 1969, 21 DLR (W.P) 345.

S: 17(2)(v). Document reciting a fact which is already a fact accompli not compulsorily registerable and the executants are bound by the contents of the document *Shishu Bala Ghose Vs. Profulla Chandra* (1961) 13 DLR 307,

S. 17(3). Where a document would be invalid because of non-registration if one construction is placed on it, and if be valid of another construction is placed on it, then the principle that if a document is possible of two constructions the law favours the construction which would make it valid would be followed. *Mohd. Akram Vs. Mohd. Salim* PLD 1964 (W.P) Lahore 490.

DOCUMENTS OF WHICH REGISTRATION IS COMPULSORY

(1) Definitions, S.2.

1(A) Scope of Sec. 17

(2) Agreement

—S. 17

(3) Agreement to lease
(4) Agreement to sell
(5) Amalnama.
(6) Authority to adopt
(7) Award.
(8) Bainapatra'.
(9) Compromise, documents relating to.
(10) Decree or order of Court, transfer of.
(11) Deed of gift or grant.
(12) Deed of release or surrender.
(13) Document between mortgagor and mortgagee.
(14) Document varying the terms of documents.
(15) Family arrangements, deed of.
(16) Lease and documents varying the terms of lease
(17) Letter.
(18) Memorundum.
(19) Mortgage bedt and mortgage decree.
(20) Partition deed.
(21) Receipt of money.
(22) Sale deed
(23) Surety bond.
(24) Trusteenama.

Definition, s. 2

a mortgage debt is within the definition of immovable property in S-2(6) of the Registration Act. 34 C.W.N. 605 : 127 I.C. 760: 57 Cal. 328, 1930 Cal. 536.

The word representative in S. 2 (10) includes the de. facto guardian of a minor. 1930 Mad. 425 : 120 I.C. 77.

Though secured an immovable property, debt is still only a movable property 54 C.L.J. 117 : 61 M.L.J. 589.

an "agreement to lease" must be an actual demise and should operate as a lease 47 Cal. 485, 1931 All. 252.

1A. Scope of section 17 :

Registration Act strikes only at documents and not at transactions. 1938 Cal. 136 : 42 C.W.N. 97 : 176 I.C. 832.

the sec. 17 being disabling one must be strictly construed 4 Lah. L.J.1 : 65 I.C. 254. 62 I.C. 809

the term declare "in S. 17 (b) contemplates a declaration which itself creates title and does not include a recital of facts. 36 C.W.N. 250 : 1932 P.C. 55 : 62 M.L.J. 296 : 34 Bom. L.R. 363 : 136 I.C. 798.

where a document does not purport to declare or create any right in immovable property but states past or existing facts only it does not require registration 45 M.L.J. 100. 72 I.C, 456, 45 A. 140, 50 B. 334 : 1926 B. 375, 1938 Oudh 119: 174 I.C. 378.

the words of the sec. are wide. It is not only instruments which create any right, title etc., that must be registered but any instrument that purport to create any right, title or interest, 1936 Sind. 79 F.B.

If the document itself creates an interest in immovable property it requires registration though it contemplates execution of another document. 1952 S.C. 153. 1952 S.C.J. 150 : 1952 S.C.R. 491.

a document not intended to be operative does not require to be registered even though it refers to interest in immovable property. III I.C. 596 : 1928 Lah. 397 10 Lah L.J. 93.

the word "operate" refers to the immediate intention and not to ultimate consequences or collateral effects. 58 C. 136 53 C.L.J: 269 1931 Cal. 223.

document creating an interest in land amounting to an equitable charge requires registration 1926 Bom. 495.

when two documents read together constitute a present demise of the lands they are inadmissible unless registered. 1926 Bom. 384 : 96 I.C. 827 : 28 Bom. L.R. 743, so also when they purport to create charge on immovable property 1926 M.W.N, 804 : 1926 Mad. 1188,

registration obtained by the fictitious insertion of property makes the document invalid. 25 C.W.N. 985 : 33 C.L.J. 440 :40 M.L.J. 489 : 2 Pat. L.T. 397 : 23 Bom. L.R. 629 P.C. 48 C. 509 P.C.

Agreement.

an agreement creating a right of pre-emption is not compulsorily registerable. 47 B. 283.

an agreement by a reversioner not to challenge alienation by the limited owner does not require registration 1949 E.P. 207 : 4 D.L.R. Simla 18.

an agreement for financing a partition suit for half share of property is not compulsorily registerable. 1940 Bom. 143 : 188 I.C. 217.

agreement to divide the property in the event of their succeeding in purchasing the same does not require registration 1938 Lah. 721 : 182 I.C. 220.

Agreement to lease.

in India a perfectly valid agreement for a lease may be made by parol and a verbal arrangement though void as a lease it is enforceable as an agreement for a lease. 11 C.L.J. 543, 2 C.L.J. 343.

an agreement to lease intended to operate as a present demise is a lease and as such is inadmissible in evidence without registration. 49 C. 5, 26 C.W.N. 329 ; 1922 Cal. 436, 27 C.W.N. 897, 1949 Nag. 389. But when there is no present demise it is admissible. 14 C.W.N. 65 44 M. 399, 1930 Pat. 601 : 129 I.C. 81, present or future demise must depend upon the paramount intention of the parties. 15 C.W.N. 536, 16 B. 101.

where under an argeement to lease possession was delivered and the parties acted as if the tenancy was in force it requires registration although the tenancy was to commence at a later date. 1941 Bom. 346, 198 I.C. 188.

agreement to lease creating a right to obtain a subsequent lease is admissible without registration. 18 C.W.N. 38.

an agreement to lease must be registered, even if its terms are contained in more than one letter. If unregistered, the letters are inadmissible under S. 49, nor it is open to the parties to let in oral evidence by reason of S. 91 Evi. Act. 52 C. 695 ; 1925 Cal. 1087.

—S. 17

Agreement to sell.

an agreement to sell does not require registration. 1932 Lah. 95 : 135 I. C. 669, 1931 Cal. 171 : 34 C.W. N. 881 : 129 I. C. 839.

where the language employed in an agreement of sale clearly purports to transfer the vendor's interest in the immovable property the document must be registered 33. C.W.N. 1150 : 1928 M.W.N. 676 : 50 C.L.J. 487 : 1929 P C. 269 P.C.

where a deed of sale of immovable property worth Rs. 100 or over is registered and as part of the sale an unregistered agreement to reconvey the property is executed by the vendee, held (I) if the transaction is really a mortgage then the second deed is inadmissible. (2) if it is a sale with contract for repurchase then it need no be registered even if it forms part of the same transaction. 50 B. 566, 1926 Bom. 497 : 28 Bom. L.R. 954 F.B.

a separate agreement for reconveyance does not require registration. 1934 Mad. 703 : 152 I.C. 634.

Amalnama.

an amalnama or dastaknama need not be registered. 33C. 502, 13 C.W N. 267 : 8 C.L.J. 538 ; it is not a lease but is an order to go and take possession for consideration which would be shown later on. It does not create any tenancy. 84 Ind. C. 385, 1924 Pat 297. But when it authorises the grantee to take possession of property and intends to be followed by formal kabuliyat it is not admissible to affect the immovable property without registration, 39 C.L.J. 90. The real test is whether the document purports to be a lease or an agreement to lease or not. If it does not amount to a lease it does not require registration. 1925 Cal. 370 : 82 I.C. 949.

an amalnama incorprating the terms of lease requires registration 54 C.L J. 220.

an amalnama or ekrar containing a contract for the sale of straw growing on land is not a contract for sale of goods but one creating interest in land, so should be registered. 62 C.L J. 534 : 1936 Cal. 770.

Authority to adopt.

Sec. 17(3) is confined only to authorities conferred upon a widow by her husband 1953 Mad. 755.

authority to adopt not registered at the instance of any of the persons mentioned in sec. 40 (2) is invalid. 30 C.W.N. 193 : 42 C.L.J. 38 : 23 A.L.J. 799 : 27 Bom. L.R. 1082 : 1925 M.W.N. 522 : 89 I.C. 733 : 48M. 614 P.C.

authority to adopt confered by a will does not require to be registered 1920 M.W.N. 684 : 64 I.C. 146, but where the document is a will simply by name but is really an authority to adopt it must be registered 44 M. 733 : 26 C.W.N. 374 : 41 M.L.J. 648 P.C.

Award.

a private award affecting immovable property of the value of one hundred rupees is compulsorily registerable. 39 C.W.N. 54 ; 60 C.L.J. 259 ; 1934 Cal. 815,

1937 Pat. 214. 6 C.L.J. 159, 1936 Sind 70 F.B. 1945 Cal. 19 : 48 C.W.N. 721, 1946 Nag. 311 : 224 I.C. 224, 1949 Pat. 393 : 27 P. 86.

an award neen not ordinarily be registered but if the parties put then signatures to that by way of acceptance and it amounts to partition, then it is to be registered. 18 C.W.N. 475 12 C.L.J. 25 Fol. 13 C.L.J. 158 Ref. contra. 66 I.C. 118, 22 A. 224.

an "award" made by the panchas and signed and accepted by the parties must be registered. 29 Bom L.R. 297 : 101 I.C, 351.

a stranger cannot challenge the decree on the gronnd that it is founded on an unregistered award. 1942 Bom. 132 : 200 I.C. 456.

an award by arbitrators appointed by court need not be registered 1945 Oudh.1.

an award not purporting or operating to create declare or assign any right or interest in immovable property is not compulsorily registerable 1940 P.C. 222 : 45 C.W.N. 204 : 43 Bom. L.R. 381 : 191 I.C. 7, 1947 P.C. 117, 51 C.W.N. 897 : 1947 A.L.J. 490 (1947) 2 M.L.J. 304 P.C.

Bainapatra.

an unregistered bainapatra for grant of a putni lease is admissible in evidence. 25 C.W.N. 550, 24 C.W.N. 177 P.C. 37. 808.

Compromise, documents relating to.

compromise petition filed in criminal court providing for enhancement of rents is not admissible without registration 12 C.W.N. 854.

a compromise decree varying the rent in respect of a lease is in effect a lease and must be registered. 30 Punj. L.R. 112 : 1929 Lah. 291 : 11 Lah. L.J. 50, contra., 1944 Pat. 293 : 217 I.C. 14, 1940 Bom. 281, 190 I.C. 653, 50 C.W.N. 166.

a solenama which modifies the terms of a prior lease need not be registered 55 C. 701 : 32 C.W.N. 268 : 1928 Cal. 441 : 111 I.C. 340., 1933 Pat. 457 : 148. I.C. 353.

a solenama which operated to create a tenancy is not admissible without registration 31 C.W.N. 1099 : 104 I.C. 812, 1938 Pat. 140 : 174 I.C. 200, 1944 Cal. 89 : 212 I.C. 317, 1941 Pat. 536 : 194 I.C. 428, 5 DLR Bom. 25, 1949 Bom. 402.

a compromise creating new relationship of under-lessor and under lessee on condition of payment of a sum is exempted from registration 1951 S.C. 11 : 1951 S.C.J. 9 : 6 D.L.R. S.C. 62.

A compromise decree which operates as a lease requires registration 1944 Mad. 273, 214 I.C. 34.

a compromise decree in respect to property in dispute is exempt from registration 1942 All. 12 : 198 I.C. 13.

where a decree is passed in terms of the solenama it need not be registered. 30 C.W.N. 307 : 1926 Cal. 666 : 96 I.C. 753.

a consent decree incorporating matters outside the suit is not valid as part of a judicial proceeding unless registered. 48 C. 1053, 40 C.W.N. 974 : 164 I.C. 1009,

see also amendment of S. 17(2)(VI), and a compromise petition relating to properties other than in suit must be registered. 16 C.L.J. 71, 19 C.W.N. 347, 36 M. 46,2 C.L.J. 343, 11 C.L.J. 543, 5 C.L.J. 611 : 36 C. 193, 1 C.L.J. 388, 30 C. 783, 22 M. 508 ; 26 I.A. 101, 25 M. 553, 20 M. 365, 25 M. 7.

where a lease falls under cl. (b) as well as cl. (d) the exception in cl. (vi) of sub-section 2 applies, 1944 Cal. 89 : 212 I.C. 317.

a solenama operating as a permanent lease of immovable property which is incorporated in decree does not require registration in view of s. 17(2) (vi) before amendment of 1929. 40 C.W.N. 585, see also 59 C.L.J. 328 : 1934 Cal. 799.

where the compromise fell under s. 17(2) (vi) it was not compulsorily registerable 39 C.W.N. 485 : 1935 Cal. 478.

a composition deed need not be registered. 19 C.W.N. 91, 38B. 576, sec. 17(2)(1).

a composition deed requiring registration under sec. 5 Trust Act is not exempt 1945 P.C. 74 : 47 Bom. L.R. 612 : 49 C.W.N. 219 : 220 I.C. 49.

Decree or order of court, transfer of.

an assignment of decree creating a charge requires registration 1941 Bom. 71 : 193 I.C. 740.

assignment of mortgage decree requires registration. 1940 Mad. 140 ; 187 I.C. 243.

Deed of gift of grant.

under sec. 123 Tr. P. Act, a deed of gift must be registered 24 C.W.N. 346 but under the H.L. there may be the gift by conduct only 17 C.W.N. 62.

a deed of gift by a Mahomedan donor does not require to be registered. 44 C.L.J. 490 : 100 I.C. 296, 1927 Cal. 197.

an unregistered deed of gift is admissible for collateral purpose 34 C.L.J. 432 : 26 C.W.N. 165, 46 M. 349 see also S. 49 new proviso.

deed of Govt. grant need not be registered. 19 C.W.N. 203n.

Deed of release or surrender.

a deed of release and surrender of claim in immovable property the value of which exceeds Rs. 100 must be registered. 63 C.L.J. 52 , 1936 Cal. 774, 59 B. 180 39 C.W.N. 440 ; : 61 C.L.J. 42 : 37 Bom. L.R. 315 : 1935 P.C. 21 P.C. 33 C. 613: 10 C.W.N. 551 : 3 C.L.J. 576, 2 A. 554, 7A, 820, 2 B. 249, 16 W.R. 56, 10 C.L.J. 150, but surrender of an occupancy holding without a written document is valid 28 C. 256 : 5 C.W.N. 351, and a release of part of the mortgaged property on part payment of the mortgage debt by endorsement on bond need not be registered, 27A 305, 72 I. C. 454 (C) and a deed of relinquishment by a Mahomedan daughter of her right of inheritance in her father's property need not be registered, 30 B. 304.

the right of a reversioner to succeeds is only a spes succession is and as he has no present right in the property a deed of relinquishment of his rights is not compulsorily registerable. 6 Lah. 87 : 7 Lah. L.J. 133 : 26 Punj. L.R. 217 : 1925 Cal. 341, 1939 Lah. 414 : 187 I.C. 865.

a debt may be released orally, but when it is done by writing it should be registered. 42 C.L.J. 582 : 1926 Cal. 170.

a document waiving the right to pre-empt does not require registration. 1949 Nag. 387 : 4 D.L.R. Nag. 189.

a document by which one of the partners release his interest in the partnership in consideration of certain sum does not require registration even if the partnership owns immovable property. 49 M. 738 : 1926 Mad. 1040.

a receipt extinguishing a mortgage debt must be registered 64 C.L.J. 10.

an endorsement on the back of the mortgage deed releasing some of the mortgaged property does not extinguish mortgage and does not require registration 61 C. 894 : 59 C.L.J. 473 : 1934 Cal. 775, 37 C.W.N. 424 ; : 1933 Cal. 588.

Document between mortgagor and mortgagee.

an unregistered deed purporting to hypothecate both immovable and movable property is valid as to the latter. 1935 Cal. 388 : 156 I.C. 520.

a receipt of the whole of the mortgage debt does not require registration unless it expressly purports to extinguish the mortgage. 1939 Lah. 272 : 183 I.C. 168, 1945 Pesh. 14 : 220 I.C. 235.

a receipt which purports to be a mere settlement of account and does not modify or supersede the original mortgage need not be registered 64 C.L.J. 10, 48A. 705 : 1926 All. 693, 1929 Mad. 794, 1941 Lah. 246 : 195 I.C. 581 but a receipt evidencing prior discharge need not be registered. 1928 Mad. 1050.

a release of part of the mortgaged property on part payment of the mortgage debt by endorsement on the bond need not be registered. 27A 305, 72 I.C. 454 (C) 61 C. 894 : 59 C.L.J. 473 : 1934 Cal. 775, 37 C.W.N. 424, 1933 Cal. 588, 1935 Mad. 113 : 153 I.C. 668.

an endorsement on mortgage bond though inadmissible to prove extinguishment of mortgage may be admitted in evidence to prove payment 1942 Pat. 315 : 199 I.C. 30.

a receipt of money does not extinguish the mortage or limit the liability. 1952 S.C. 153 : 1952 S.C.J. 150 : 1952 S.C.R. 491.

an agreement to reduce the interest under the mortgage requires registration. 1948 Oudh 152.

an agreement to vary the interest payable by mortgagor requires registration 1952 S.C. 153 : 1952 S.C.J. 150 : 1952 S.C. R. 491.

agreement between mortgagor and mortgagee varying the term of the mortgage deed must be registered. 17 C.W.N. 233 P.C.

unregistered usufructuary mortgage deed may be proved to prove possession, 33 M.L.T. 146 : 45 M.L.J. 667.

an unregistered mortgage deed for more than Rs. 100, does not affect any immovable property 32 C.L.J. 479 P.C.

a document by which a mortgagor conveys properties in live of mortgage debt to the mortgagee requires registration. 46 C.L.J. 6, 573.

a document by which a usufructuary mortgagee admitted that his claim had been paid off and he released the property does not require registration. 56 C. 910.

deft. executed a mortgage to a Bank, the Bank went into liquidation and by an agreement between the Bank and its creditors the whole assets of the Bank were transferred to a purchasing company but the agreement was not registered. In a suit by the Bank against the deft. on the mortgage, held though the transfer of the mortgage debt was effective as between the transferor and the transferees. any proceeding to recover the debt must be in the name of the transferor Bank and the suit was maintainable. 57 A. 314 : 37 Bom. L.R. 625 : 39 C.W.N. 834 : 1935 P.C. 108 P.C.

Document varying the terms of registered document.

document varying the terms of the registered document must be registered. 39 C. 284 : 16 C.W N. 55 F.B. 37 C. 293 : 17 C.L J. 312, 8 Pat. 585, 40 C.W.N. 638 : 1936 Cal. 155.

when a deed of sale has once been executed and registered it can be avoided only by a subsequent registered document of transfer. 27 C.W.N. 8 P.C.

a document which extinguishes the rights created by a registered lease must be registered, 28 Bom. L R. 1152 : 1926 Bom. 573.

Family arrangement, deed of.

deed of family arrangement need not be registered, 35 A. 502, 95 I.C. 628, 33A. 356, 48 C.L.J. 279 : 1928 Cal. 705 : 112 I.C. 326.

family settlement of disputed claim need not be registered, 85 I.C. 633 : 1925 All. 176.

a family arrangement is not liable to compulsory registration if it is based on a recognition of pre-existing right. 1934 Oudh 462 : 151 I.C. 452.

a family arrangement which does not effect any transfer of immovable property does not require registration. 150 : 1941 Oudh 191 : I.C. 402.

a family arrangement falling within sec. 17 requires registration 1948 Oudh 88.

a family arrangement dealing with immovable property of the value of Rs. 100 or upwards can be made orally but when it is rendered to writing the document must be registered in order to use it as document of title. 1928 All. 64 F.B.

Lease and document varying the terms of lease.

a landlord cannot recover rent under an unregistered lease if the lease is one requiring registration 62 C. 394.

under S. 107 T.P. Act all leases of immovable property for more than a year must be in writing and registered. 63 C. 31, 37, C.W.N. 473 : 58 C.L.J. 325. But this sec. does not apply to kabuliyat in respect of agricultural land for creating a lease of which no registered deed is necessary and which can be made by oral agreement. But when instrument is executed it is required by s. 17 (I)(d) to be registered, 62 C.L.J. 534 : 1936 Cal. 770 Nag. 89, 1944 N.L.J. 324.

a lease of fishery right for a term exceding one year requires registration. 1942 Oudh 93 : 196 I.C. 237.

a solenama prior to the T.P. Act, which created a lease would not be admissible unless registered. 39 C.W.N. 98 : 60 C.L.J. 384 : 1935 Cal. 261.

where the document was not a present demise of land it was not compulsorily registerable 49 C.L.J. 12 : 1929 Cal. 186.

Giving the leasee option to continue in possession after one year does not create a lease for a term exceeding one year, 37 C.L.J. 475, 1940 Lah. 409 : 190 I.C. 493, 1940 Mad. 379 : 188 I.C. 136.

an agreement permanently varying the terms of a tenancy is a new lease and requires registration. 1931 Mad. 751 : 135 I.C. 345.

document varying the rent of a registered lease must be registered. 40 C.W.N. 638 : 1963 Cal. 155, 27 C.L.J. 107, 39 C. 284 : 14 C.L.J. 411, F.B. 35 C. 1010: 8 C. L.J. 90 : 12 C.W.N. 654, 1939 Cal. 416 : 183 I.C. 62.

a Jamabandi prepared on the basis of survey made subsequent to an oral settlement of an agricultural Jama showing an increase of rent according to increase in area need not be registered. 40 C. W. N. 1330.

Note.—Leases which are required to be registered either under the Registration Act or under the T.P. Act but are not registered, may be admissible in evidence for the purposes stated in the proviso to the amended sec. 49 of the R. Act and the divergent rulings are obsolete.

Letter :

a letter containing an admission of a previous mortgage as having been already made dose not require registration. 33 C. 410 : 10 C.W.N. 276 : 4 C.L.J 102, 20 W.R. 150, 62 C. 998, as surety bond or agreement of loan is admissible. 16 C.L.J. 53 P.C 20 C.W.N. 1054: 24 C.L.J. 279 P.C. but as a lease is not admissible 16 C.W.N. 240 n. 37C. 293, 39 C. 284 F.B 35 C. 1010.

where the letters embody the terms of lease they must be registered. 45 A. 220 but where the letter contemplates the execution of a formal lease it is admissible in evidence even if it was drafted by the attorney and lesses was placed in possession of the property in pursuance of it. 45 C.L.J. 32 : 1927 Cal. 275 : 100 I.C. 404.

where the terms of a lease are incorporated in a letter by reference to the earlier lease deed, the old one even though unregistered may be referred to for collateral purpose. 1933 Cal. 440.

a letter admitting an agreement need not be registered. 26 C.W.N. 201 : 35 C.L.J. 409 : 20 A.L.J 305 : 30 M.L.T. 249 P.C. 42 C. 801, 39 M. 509, 19 C.L.J. 213.

letter which records a previously completed transaction of mortgagee by deposit of title deeds does not require registration. 29 C.W.N. 784 : 1925 Cal. 973, 1923 P.C. 50 fol. 31. C.W.N. 703 : 102 I.C. 871 : 1927 Cal. 538.

a letter by which the vendee admits that the sale was a nominal transaction and not intended to take effect is admissible in evidence. 1926 Mad. 362, 1927 Lah. 626.

a letter of instruction by the deft. to the plff's solicitor asking him to draw up a lease containing certain terms is not inadmissible for want of registration 1926 Cal 546 : 43 C.L.J. 94.

Memorandum.

a memorandum to be treated as an instrument of equitable mortgage must be registered. 50 C. 338 : 28 C.W.N. 1 : 38 C.L.J. 41 : 44 M.L.J. 602 : 25 Bom L.R. 582, P.C.

a memorandum constituting a bargain between the parties must be registered. 50 C. 338 : 38 C.L.J. 41 : 28 C.W.N. 1 : 44 M.L.J. 602 : 25 Bom. L.R. 582 P.C. 1940 Mad. 671 : 193 I.C. 152, 1939 P.C. 167 : 43 C.W.N 806 : 181 I.C. 935.

a memorandum evidencing the prior mortgage by deposit of title deed need not be registered. 61 C.L.J. 473 31, C.W.N. 703 ; 102 I.C. 871 : 1927 Cal. 538, 43 C. 895 P.C. 1941 Lah. 224 : 195 I.C. 343, 1948 Pat. 251.

Mortgage debt and mortgage decree, transfer of

transfer of mortgagee's interest requires registration even if the mortgage is by deposit of title deeds. 1936 Rang, 152 : 163 I.C. 645.

assignment of preliminary mortgage decree requires registration. 56 C.W.N. 517.

Partition deed.

an agreement for partition need not be registered 37 C.L.J. 435 : 27 C.W.N. 561 : 46 M. 373 : P.C, 46 M. 349, 25 C. 210, 48 C.L.J. 279 : 1928 Cal. 705 : 112 I.C. 326. But an unregistered agreement arranging partition is not admissible in evidence as regards the transaction. 49 C.L.J. 98 : 52 M. 83 : 33 C.W.N. 233 : 1929 M.W.N. 43 : 1929 P.C. 13 : 114 I.C. 5 : 31 Bom.L.R. 264 P. C. but a list and other document declaring parties desire to execute a partition deed as per list is admissible though unregistered. 1929 Mad. 291. 1922 P.C. 266 P. C.

a partition need not be in writing. 10 C.L.J. 503, 2 C.W.N. 91 : 25, C. 210, but a partition deed of property of Rs. 100 or upwards must be registered. 15 C.W.N. 375. 375, 12 C.L.J. 25, 1948 Nag. 110, 1952 Cal. 579. And when the partition is effected by exchange there must be a deed and registered. 5 C.W.N. 724.

a document recording or acknowledging a completed partition need not be registered 1946 Bom. 126 : 47 Bom. L.R. 970, 29 P. 980.

a list of bonds allotted to each of the parties and signed by them does not require registration. 1933 Cal. 474 : 37 C.W.N. 112 : 144 I.C. 868.

a partition list prepared with a view to fix the parties to the division so far made does not require registration. 1938 Mad. 568 : 179 I.C. 265.

a writing setting forth the details of property allotted to the share of the parties on partition must be registered. 118 I.C. 59. 1935 Lah. 448.

but a Butwara chitta is a mere list of the shares signed by the parties; it is not a deed of partition and is admissible without registration. 62 C.L.J. 513: 1936 Cal. 700, 1946 All. 200, 1953 All. 350.

Receipt of money. See cases under "(13) documents between mortgagor and mortgagee".

a memorandum of a sum advanced for purchase of property is not a receipt ; 1939 Lah. 562: 185 I. C. 613.

—S. 17

Sale deed.

a sale of tangible immovable property can be effected only by registered deed. 36 C. 989, or when the value of the property is less than Rs. 100 by delivery of possession, and the unregistered document may be referred to as evidence of intention 29 C. 623, 21.C.413, but when the value of the property is less than Rs, 100 and it is already in the possession of the vendee the deed of sale must be registered as there cannot be delivery of possession 34 C. 207 : 5 C.L.J. 390. 22 C. 179.

Surety bond.

a security bond filed in court for the purpose of staying execution of a decree is a step in judicial procedure and is not compulsorily registerable· 52 B. 72 : 1928 Bom. 42, 1934 Lah. 138, 149 I.C. 300 F.B.

Trusteenama.

a trusteenama divesting the owner of his connection with the ownership of the dedicated property and placing it into the proprietory possession of God must be registered. But when the trusteenama does not purport to transfer the ownershi of property it need not be registered. 32 C.L.J. 471 : 39 M.L.J. 263,42A. 609 P.C.

SEC. 17 (1), FIRST PARA.

Operation of the Act : Registration under the earlier Acts.—The provisions of this Act apply to all documents tendered in evidence on or after January 1, 1909, if they have been executed on or after the date on which the Registration Act 16 of 1864, or 20 of 1866, or 8 of 1871, or 3 of 1877, or this Act came into force (See Raju v. Krishnarav (1878) 2 Bom. 273, 281 [the document in this case was compulsorily registrable). The document, however, must be one which was compulsorily registrable under the Act in force at the time when it was executed. Thus a kabuliyat or counterpart of a lease did not require registration under the Act of 1864. It was made compulsorily registrable for the first time by the Act of 1866, Hence an unregistered kabuliyat executed while the Act of 1864 was in force is not inadmissible in evidence under this Act; neither was it inadmissible under the Act, 1877 (Ram Coomar v. Kishari (1883) 9 Cal. 68; Desai Motilal v. Parashotam (1894) 18 Bom, 92; Intizam Fatima v. Ali Baksh (1910) 8 All. L.J. 609, 10 I. C. 314). The question whether registration was comPulory is governed by the registration law in force at the time when the document was executed ; but the question of admissibility, being a matter of procedure, would be governed by the present law (Khuda Bakhsh v. Sheo Din (1886) 8 All 405, 408-409; Fakirji v. Bhagvatlal (1929) 31 Bom. L. R, 493, 119 I. C. 793, (29) A. B. 290 , Datto v. Babasaeb (1934) 58 Bom. 419,36 Bom. L. R. 359, 150 I. C. 555, ('34) A. B. 194). At the same time it is to be remembered that the object of the Registration Act of 1877 was to admit to the benifit of the mitigations of the rigour of the law documents which were executed before 1877 when the registration law was more stringent. Thus an agreement for sale equired registration under the Act of 1871, but was exempted from registration under cl. (k) of sec. 17 of the Act of 1877 [now sec. 17 (2) (b)] ; it is therefore admissible in evidence though not registered (Fakirji v. Bhagvatlal (1929) 31 Bom. L R. 493, 119 I.C. 793, ('29) A. B. 290).

—S. 17

Interpretation of the Act.—The strictste construction should be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualifications for non-observance of registration (Amjed Ali v. Ala Buksh (1868) 9 W. R. 537 ; Jiwan v. Basa (1887) 9 All. 108, 114 ; Meenakshisundara v. Rathnasami (1918) 41 Mad. 959, 976, 49 I. C. 291). Sec 17 of the Act, being a disabling section, must be construed strictly (Attra v. Mangal Singh (1921) 2 Lah. 300, 301, 65 I. C. 254, ('22) A. L. 43. Unless a document is clearly brought within the purview of sec. 17, its non-Registration is no bar to its being admitted in evidence (Sansar Singh v. Tiloka (1898) Punj. Rec. No. 51. If there is any doubt on the subject, the benefit of the doubt must be given to the person who wants the Court to receive the document in evidence (Attra v. Mangal Singh (1921) 2 Lah. 300, 301, 65 I. C. 254, ('22) A. L. 43). and so in spite of the rule of strict construction there is a point at which it is unnecessary to multiply technicalities (Nilabarani v. Nandarani (1931) 58 Cal. 133, 133 I. C. 110, ('31) A. C. 478). The criterion for purposes of registration is what is expressed on the face of the document, not what incidents may be annexed by custom to a grant of the kind (Ramaswamy v. Thirapathi (1904) 27 Mad. 43, 45).

Scope of the Act.—If the transaction has been validly effected without a document there is no foundation for applying the provisions of the Act (Pandurang v. Narmadabai (1932) 56 Bom. 395, 140 I. C. 200, ('32) A. P. 571). The Act refers to documents and the present section establishes the necessity for registration with regard to certain classes of documents defined in the section. The section is made effective by sec. 49, which provides that any document required to be registered under this section shall not unless it has been registered, affect any immoveable property comprised therein or be received as evidence of any transaction affecting such property ; while sec. 50 secures that registered documents shall, as regards the property they comprise, take effect against every unregistered document relating to the same property. It will be observed from these provisions how wide and general is the scope of the Act. In India non-registration in certain cases has the effect of rendering the document ineffectual even as between the grantor and grantee and excludes it from evidence. In England it is different (Tilakdhari Lal v. Khedan Lal (1920) 47 I. A. 239, 48 Cal. 1, 10. 57 I. C. 465, ('21) A. PC. 112).

Object of registration.—The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration. In England such notice would merely prevent the registered document having priority over that which was unregistered. The law in India goes further and in some cases the unregistered document is inoperative and inadmissible as evidence of the transaction. See secs. 54 and 59 of the Transfer of Property Act, 1882, and sec. 49 of this Act. In either case the object of registration is to protect against prior transactions (See Tilakdhari Lal v. Khedan Lal (1920) 47 I. A. 239, 48 Cal. I, 18, 57 I, C. 465, ('21) A. PC. 112 ; Mitchell v. Mathura Das (1885) 8 All. 6, 12 [P. C.]). See note to sec. 50, "Registration as notice."

Question of registration not affected by subsequent events.—The necessity for registration must be determined at the date of the instrument and not by subsequent events (Lakhmidas & Co. v Sir D. J Tata (1927) 51 Bom. 247. 101 I. C. 229, ('27) A. B. 195).

Part performance. –It has been held by the Privy Council in Mahomed Musa v. Aghore Kumar Ganguli (1915) 42 I. A. 1, 42 Cal. 801. 28 I. C. 930 ; Nilkanth v. Hanmant (1920) 44 Bom. 881, 884, 58 I. C. 415). That when a document requires registration, but is not registered, the defect of want of registration may be cured by the conduct of the parties in continuously acting upon it for a long period. In that case the document was executed in 1873, and the parties to it and their successors in title had deait upon the footing of the rights created by the document for a period of between thirty and forty years. Upon these facts the Privy Council held that though the document was not registered, effect should be given to it as if it was registered, This rests on the doctrine of part performance now enunciated in sec. 53A of the Transfer of Property Act, 1882. See notes to sec. 49, "Part performance" and Mulla's Transfer of Property Act, 1882, sec. 53A.

Registration as notice—See notes to sec. 50 under the same heading.

Unregistered instrument confirmed by a subsequent registered instrument.—A executes a deed of conveyance to B. The deed requires registration under the Registration Act, but is not registered. Subsequently A executes a document to B confirming the first deed. The first deed is set out in a schedule as part of the scond document, and the second document is registered. The second document is admissible in evidence as proof of B's ownership of the property (Mitchell v. Mathura Das (1885) 8 All. 6. 11-12, 12 I.A. 150 ; Jamnabai v. Dharsey (1902) 4 Bom. L. R. 893). But the ownership, it is submitted, will comence only from the date of the second document,

Illegal transaction.—Registration cannot confer validity upon an instrument which is ultra vires, or illegal, or fraudulent. The law of registration is intended to prevent and not to aid fraud (Waman v. Dhondiba (1879) 4 Bom. 126, 148).

Foreign Law.—The validity of a contract made in a Foreign State is governed by the law of that State. Hence if a contract made in a Foreign State requires to be registered by the law of that State, no action can be entertained on it in British India if it is not registered, although registration may not be necessary according to the law in force in British India. (Palaniappa v. Periakaruppan (1894) 17 Mad. 262).

Documents.—The words "document" and "instrument" are used interchangeably in the Act, An instrument within the meaning of this and other sections of the Act may be constituted by two or more letters. Two or more letters constituting a legal transaction are as much "instruments" or "documents" as formal deeds. (Joharmal v. Tejram (1893) 17 Bom 235. 257 [assignment]; Morgan v. Fernandez (1916) 30 Mad. L. J. 519, 33 I. C. 439 [lease]; Boyd v. Kreig (1890) 17 Cal. 548 554 [lease]; Jagannadhan v. Official Assignee (1931) 60 Mad. L. J. 309. 129 I.C. 814. ('31) A.M. 124 (letter and memorandum embodying an agreement of mortgage by deposit of title deeds).

The point was considered doubtful in an earlier case. (Waman v. Dhondiba (1879) 4 Bom. 126, 139.).

The Privy Council case of Port Canning Land Investment Reclamation and Dock Co. v. Smith. (1875) 1 I.A 124. 143). Which is sometimes cited in this connection. (See Swaminatha v. Ramaswami (1921) 44 Mad. 399 at p. 406, 62 I.C. 354. ('21) A.M. 72.)

Is not an authority for the proposition that correspondence between parties does not constitute an "instrument" within the meaning of sec. 17 of the Act. All that was held by their Lordships of the Privy Council in that case was that the correspondence did not amount to a lease or an agreement for a lease, but that it was evidence of a contract of a special character not coming within any of the definitions found in the Registration Act.

Dekkhan Agriculturist's Relief Act, 17 of 1879 —In a recent Bombay case (Dada v. Bahiru (1927) 29 Bom. L.R 1419, 105 I.C. 754, ('27) A.B. 627.) it was left an open question whether sec. 10A of the Dekkhan Agriculturist's Relief Act which is in the nature of adjective law was intended to override the substantive provisions of the Indian Registration Act and the Transfer of Property Act.

SEC. 17 (1) (a) - GIFTS.

"Instruments."- A "document" or "instrument" does not cover an unsigned entry in an account book; but an entry of a formal deed of gift in an account book is a document and is invalid if not registered (Totaram v. Mssl. Isri Bai (1933) 146 I.C. 363 ('33) A. Pesh. 67. A document is not executed until it is signed and unless a document is executed, it is not liable to stamp duty and a fortiori is not registrable (Tirkha v. Sohlu (1923) 5 Lah. L.J. 75. 71 I.C. 739. ('23) A.L. 242. See note, "Document" above.)

Immoveable property—See notes to sec. 2 (6).

Instruments of gift—Before the Transfer of Property Act, 1882, no writing was necessary to effect a gift of immoveable property. But if a gift was effected by a writing, the writing required registration under the Registration Act. An instrument of gift of immoveable property requires registration under this Act. whatever be the value of the property (Protona v. Mottea (1869) 11 W. R. 334; Chanan v. Sucha (1922) 4 Lah. L.J. 7, ('22) A.L. 112.). If an agreement in writing between members of a joint Hindu family to allot a share of the joint family properties to an outsider is in the nature of a gift. it requires registration (Made Gonda v. Chenne Gonda (1925) 49 Mad L.J. 150, 90, I.C. 331, (25) A M. 1174) . See next paragraph.

Registration of instrument of gift after donor's death.—Sec. 123 of the Transfer of Property Act provides that for the purpose of making a gift of immoveable property, the transfer must be effected by a "registered" instrument. The word "registered" in that section does not mean that the instrument should be registered in the lifetime of the donor. If the donor dies before registration, the document may be presented for registration after

his death, and, if registered, it will have the same effect as registration in his lifetime. On registration the deed of gift opereates as from the date of execution (Nand Kishore v. Suraj Prasad (1898) 20 All. 392: Meiyyalu v. Anjalay (1902) 25 Mad. 672; Venkati Rama v. Pillati Ramo (1917), 40 Mad. 204, 38 I.C. 707 [F. B.]; Khashaba v. Chandrabhagabai (1908) 32 Bom. 441; Kalyanasundaram v. Karuppa (1927) 54 I.A. 89. 95. 50 Mad. 193. 100 I.C. 105, ('27) A.PC. 42. See the next paragraph. "Registration of instrument of gift against donor's wish," see. 47 below.

Registration of instrument of gift against donor's death.—It was at one time held by the High Court of Madras that donor could no more be compelled to register a deed of gift than to execute it in the first instance, and that if he retracted his consent before registration, the registering officer had no power to order compulsory registration either in his lifetime (Ramamirtha v. Gopala Ayyan (1896) 19 Mad. 433. or after his death. (Dasi Svarnam v. Deivanayagam (1915) 28 Mad. L.J.378, 28 I.C. 271; Amirdam v. Muthukumara (1903) 13 Mad. L.J. 303. and that if it was compulsorily registered, the registrations was void and the deed of gift ineffectual. But those cases have been overruled by a Full Bench of the same Court which held that once a deed of gift is executed, the Registration Act allows it to be rigistered even though the donor may not agree to its registration. (Venkati Rama v. Pillati Rama (1917) 40 Mad. 204, 38 I.C. 707 [F. B.] Parbati v. Baij Nath (1913) 35 All. 3. 16 I.C. 406. The principle of the Madras Full Bench case was followed by a Full Bench of the High Court of Bombay (Atmaramv. Vaman (1925) 49 Bom. 388, 87 I.C. 490, ('25) A. B. 210, overruling Subba Rama v. Venkatsubha (1924) 48 Bom. 435, 80 I.C. 477, ('24) A.B. 434.) In that case it was held that where the donor of immoveable property has handed over to the donee an instrument of gift duly executed and attested and the gift has been accepted by the donee, the donor has no power to revoke the gift before the registration of the instrument. Both the Madras and Bombay decisions were confirmed on appeal by the Privy Council in *Kalyandsundaram v. Karuppa* ((1927) 54 I.A. 89, 50 Mad. 193, 100 I. C. 105, ('27) A. PC. 42 ; 2 Venkatasubba v. Subba Rama (1928) 52 Bom 313, 108 I. C. 367, ('28) A. PC. 86.) In that case their Lordships observed: "They are unable to see how the provision of sec. 123 of the Transfer of Property Act can be reconciled with sec. 47 of the Registration Act, except upon the view that, while registration is a neceasrry solemnity in order to the enforcement of a gift of immoveable property, it does not suspend the gift until registration actually takes place. When the instrument of gift has been handed by him, the former has done everything in his power to complete the donation and to make it effective. Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor & is attested by at least two witnesses, must register it, if it is presented by a person having the necessary interest within the prescribed period. Neither death, nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with. Their Lordships accordingly find themselves in complete agreement with the judgment of the Full Bench of the Bombay High Court in the case cited. As this decision, and the similar decision of the Full Bench of the Madras

Court, has settled the law for these Presidencies, it is unnecessary to refer to the various conflicting decisions of inferior tribunals which were overruled."

Revocation of gift.—A gift may be subject to a condition making it revocable, but a gift revocable at the will of the donor is void. In a Bombay case (Ramchandra v. Anandibai (1932) 34 Bom. L.R. 218, 127 I. C. 580, ('32) A.B. 188) the donor executed a registered deed of gift to his daughters of immoveable property. On the same day the daughters executed a separate document stating that the property had been given to them and agreeing that if the donor required the property for any reason "we shall hand it over to you without any compensation and without any objection." The Court held that the agreement limited the right, title and interest of the donees but did not require registration because, though the property was worth Rs. 2,000, yet the value of the interest so limited was less than Rs. 100. This decision is open to criticism If the agreement limited the interest by rendering the gift revocable it must have had the effect of rendering the gift revocable at the will of the donor and void. If so it extinguished an interest worth Rs. 2,000 and required registration. But it is submitted that the agreement was a personal covenant not limiting the estate transferred by the gift, but binding only on the donees personally, and therefore did not require registration (Cf. Ma Yin Hu v. Ma Chet May (1929) 7 Rang. 306, 119 I.C. 737, ('29) A.R. 226 and Jafri Begam v. Syed Ali Raza (1901) 28 I.A. 111, 23 All. 383 (restraint of partition construed as a personal covenant binding only on the immediate parties).

If a gift is of total value less than Rs. 100, a deed revoking the gift does not require registration (Mahomed Hasan Khan v. Jang Bahadur Singh (1931) 12 L. R.105 (Rev.).

Hiba-bil-iwaz.—A *hiba-bil-iwaz*, as distinguished from *hiba* or simple gift, is a gift for a consideration. It has been held by the High Court of Calcutta that a *hiba-bil-iwaz* is a sale within the meaning of sec. 54 of the Transfer of Property Act, so that if the property is of the value of Rs. 100 and upwards, the transaction must be effected by a registered document, and if it is of a value less than Rs. 100, it must be effected by a registered document or by delivery of the property (Abbas Ali v. Karim Baksh (1908) 13 Cal. W.N. 160. See also Golam Mostofa v. Goburdhone (1881) 8 Cal. L. R. 441, and Solah v. Keerun (1871) 16 W.R. 175, 176.

Gift in lieu of dower—A gift of property by a Mahomedan husband to his wife in lieu of dower is not a gift proper, but a sale (Sahiba Begum v. Atchamma (1868) 4. Mad H.C. 115, 116; Abbas Ali v. Karim Baksh (1908) 13 Cal. W.N. 160 See also Bunyadi v. Muhammad (1884) 5 All. W N, 19 [mortgage to secure dower] A deed conferring on a Hindu wife, in consideration of marriage, a right of residence and maintenance out of the rents of a house falls under sec. 17 (1) (b) and requires registration (Bai Parsan v. Lallubhai (1932) 34 Bom. L. R. 457. 138 . I. C. 274, ('32) A.B. 217).

Unregistered deed of gift confirmed by donor's will.—Where a deed of gift is not registered, and is therefore inadmissible under sec 49, it does not become admissible because it is recited in and confirmed by the donor's will. "I am unable

to see." said Green, J., in *Raju Balu v. Krishnarav* ((1878) 2 Bom. 273, 283, 284. "how by his will a man can confirm a conveyance as a (conveyance). He may, no doubt, so refer in his will to an ineffectual or inoperative conveyance as to constitute *a devise of itself;* but then, the property passes by devise ; the conveyance so referred to does not acquire any greater force or effect *as a conveyance.*"

Gift of immoveable and moveable property.—Where there is a gift of immoveable and moveable property, but the former fails owing to want of registration, the latter may nevertheless be good unless it is conditional on the validity of the former (Perumal Ammal v. Perumal (1921) 44 Mad. 196, 203-204, 61 I.C. 461, ('21) A.M. 137.

Gift of mortgage-debt.—A gift of a debt secured by a mortgage of immoveable property, in cases to which the Transfer of Property Act, 1882, applies, can only be made by a registered instrument as provided by sec. 123 of the Act. It is in effect a gift of immoveable property (*Perumal Ammal v. Perumal* (1921) 44 Mad 196, 201. 61 I.C. 461, ('21) A.M. 137.). But the Privy Council have held that there may be a transfer of the debt disassociated from the security (*Imperial Bank of India v. Bengal National Bank* (1931) 58 I.A. 323, 35 Cal. W.N. 1034, 134 I.C. 651, (31) A. PC. 245.

Memorandum of past gift.—A document which on the face of it professes to be merely a memorandum of a gift made in the past does not require registration (*Jaman v. Chandiya Ram* (1913) Punj. Rec. No. 83, p. 297, at p. 299. 18 I.C. 918. See notes under sec. 17 (1) (b), "Recitals."

Mahomedan gift.—Sections 122 and 123 of the Transfer of Property Act 1882 do not affect any rule of Mahomedan law. The essentials of a gift under the Mahomedan law are (1) declaration of gift by the donor, (2) acceptance by the donee, and (3) delivery of possession of the property to the donee. A gift under that law is complete, if the above formalities are complied with, and no writing is required. When a Mahomedan makes a gift of immoveable property which is valid according to the Mahomedan law, the gift is none the less valid because the donor has executed a deed of gift purporting to convey the property to the donee, which owing to want of registration is not admissible in evidence under sec. 49 of the Act (*Nasib Ali v. Munshi* (1926) 44 Cal. L. J. 490, 100 I.C. 296, ('27) A.C. 197. See also *Karam Ilahi v. Sharf-ud-din* (1916) 38 All. 212, 35 I.C. 14),

A mosque is recognised by the Mahomedan law as a juristic person and a valid gift can be made in favour of a mosque. A deed of gift of immoveable property in fovour of a mosque requires compulsory registration under cl. (a) of this section and it cannot be received in evidence without registration nor can the terms of the instrument be proved by oral evidence (*Moula Bux v. Hafiz-ud-din* (1926) 8 Lah. L.J. 156, 94 I.C. 7, ('26) A.L. 372.

SEC. 17 (1) (b)—TRANSFERS, DECLARATIONS AND RELEASES.

"Immoveable property."—See notes under sec. 2 (6).

Non-testamentary.—A document which is plainly intended to be operative immediately is non-testamentary (Umrao Singh v. Lachhman (1911) 33 All. 344,

355, 38 I.A. 104, 10 I. C. 285: Rajammal v. Authiammal (1910) 33 Mad. 304, 7 I. C. 357; Tirugnanapal v. Pannammnai (1920) 25 C. W. N. 511, 58 I.C. 228, ('21) A. PC. 89 ; Moti Singh v. Mussammat (1916) Punj. Rec. No. 8, p. 21, at p. 23, 32 I. C. 522 ; Jat Mal v. Beli Ram (1916) Punj. Rec, No. 35, p. 100, at p. 101, 33 I.C. 948.

Instruments.—See notes, "Documents" on p. 31 above.

"Declare."—In Sakharam v. Madan (1881) 5 Bom. 232, 236, allowed in Ranganayaki v. Virupakshee (1923) 45 Mad. L.J. 100. 72 I.C. 456, ('23) A.M 621 and in Baldeo Singh v. Udal Singh (1921) 43 All. 1, 58 I.C. 732 and approved in Bhageshwari Charan v. Jagarnath Kuari (1932) 59 I.A. 130, 11 Pat. 272, 136 I.C. 798, ('32) A. PC. 55; Jiwan Ali v. Basa Mal (1886) 9 All. 108; Herambdev v. Kashinath (1890) 14 Bom. 472; Chamanabu v. Mulanchand (1896) 20 Bom. 562; Komalgowda v. Bhimaji (1899) 23 Bom. 602; Karam Singh v. Msst. Wanti (1932) 140 I.C. 387, ('32) A.L. 592; Radha Kishan v. Hukamchand (1932) 136 I.C 14, ('32) A.L. 154.West, J., said :

"There (in sec. 17) 'declare' is placed along with 'create', 'limit' or 'extinguish' a 'right, title or interest' and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. I think this is equally the case with the word 'declare'. It implies a declaration of will, not a mere statement of a fact, and thus a deed of partition, which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not declare a right within the meaning of the section." This statement of the law was approved by the Privy Council in Bageshwari Charan v. Jagaranath Kuari (1932) 59 I.A. 130, 137, 11 Pat. 272, 136 I.C. 798, ('32) A. PC. 55. where their Lordships said : Though the word 'declare' might be given a wider meaning they are satisfied that the view originally taken by West, J., is right. The distinction is between a mere recital of a fact and something which in itself creates a title". The word "declare" is therefore ejusdem generis with the words "create", "assign" or "limit" with which it is in contiguity. (S. P. K. R. R. M. Chettyar Firm v. Administrator General of Bengal (1933) 11 Rang. 481, ('33) A.R. 307; Saraswati v. Srinivasa ('34) A.M. 735. Clause (b) does not comprise an acknowledgment; if it did, cl. (c) would be superfluous. Neither does an acknowledgment of partition require registration under cl. (c), for that clause is confined exclusively to acknowledgments in the form of a receipt. (Sakharam v. Madan (1881) 5 Bom. 232, 237).

"In future."—The words "in present or in future" were first inserted in Act 20 of 1866. The words "in future" have reference to estates in remainder or in reversion, or to estates otherwise deferred in enjoyment. An agreement by A to pay to B half the produce of certain land and in default to pay a sum of money annually, does not create any rights in the future produce of the land in favour of B and does not require registration (Wali v. Khuda Bakhsh (1923) 5 Lah. L. J. 366, 72 I. C. 480, (24) A. L. 149. It has been held by the Chief Court of the Punjab that if two persons agree to divide between them certain property in certain shares if they succeed in purchasing it, the agreement does not create any interest

"in future."

within the meaning of cl. (b), and does not require registration (Bhan Singh v. Thakar Das (1908) Punj. Rec. No. 89, p. 419). Similarly, it has been held by the same Court that a writing which confers upon a person a right which comes into existence if certain conditions are fulfilled by him, does not require registration (Sansar Singh v. Tiloka (1898) Punj. Rec. No. 51, p. 170, at p. 175; Imam Bakhsh v. Karim (1895) Punj. Rec. No. 16). The first of these two cases was followed by the High Court of Lahore in a case where the document recited that a contract had been entered into between the parties thereto and that in the event of certain happenings certain rights would accrue in favour of certain persons: it was held that the document did not require registration (Ram Das v. Nadir Shah (1919) 1 Lah. L.J.79, 69 I.C.608). It is difficult to reconcile these decisions with the Privy Council ruling in Hemanta Kumari v. Midnapur Zamindari Company (1919) 46 I. A. 240, 249, 47 Cal. 485, 498, 53 I. C. 534. One of the questions in that case was whether a writing by which one of the parties agreed that if he succeeded in another suit which he had brought to recover certain land, he would grant to the other a lease of that land upon specified terms, required registration. Their Lordships of the Privy Council held that the document did not require registration under cl. (d) of this section, as it was neither a lease nor an agreement to lease, but that it purported to create a contingent right or interest in immoveable property and required registration under cl. (b). In a case in which one of two mortgagees purchased the property mortgaged at an execution sale in realization of the mortgage, and it was alleged that the other mortgagee had released his right to a share of the property purchased, the Allahabad High Court observed that if the relinquishment had been by a written instrument, the instrument would have been compulsorily registrable. Lal Singh v. Chotey Beti (1934) 34 All. L. J. 107, ('33) A. A. 854. It will be observed that the release was an interest contingent on payment of his share of the expenses incurred by the mortgagee purchaser.

Limit.—The right to hold a market is an incident of the ownership of land An agreement limiting this right to particular days requires registration (Ganesh Singh v. Sitla Baksh (1930) 5 luck. 504, 131 I.C. 65, ('31) A.O. 110).

"Vested."—See definition of "vested interest" in sec, 19 of the Transfer of Property Act, 1882.

"Contingent."—See definition of "contingent interest" in sec. 21 of the. Transfer of Property Act, 1882. See also note "In future," on p. 36 above.

Test of value for registration.—When it is necessary to determine whether an instrument, other than a deed of gift, purports or operate to create an interest of the value of Rs. 100 or upwards in immoveable property within the meaning of cl. (b), the test of value is the consideration stated in the instrument (Nana v. Anant (1878) 2 Bom 353, 354). Thus in the case of a sale, the price mentioned in the deed must be regarded as showing the value of the land conveyed, and not the actual value thereof (Rohinee v. Shib Chunder (1871) 15 W. R. 558; Vasudev v. Rama Babaji (1872) 11 Bom. H. C. 149; Satra v. Visram (1878) 2 Bom. 97: Nana v. Anant (1878) 2 Bom. 353, 355. Similarly in

the case of a mortgage, it is the principal money secured by the mortgage that determines the value for registration, and not the principal money plus the interest that may accrue due (Nana v. Anant (1878) 2 Bom. 353; Ram Doolary v. Thacoor (1878) 4 Cal. 61; Panchi Dasi v. Ahmedulla (1883) 12 Cal. L. R. 444; Habib-ullah v. Nakched Rai (1883) 5 all, 447 [F. B.]; Jodh Ram v. Lajja Ram (1913) 11 All. L. J. 729, 21 I. C. 78, Kunhi Amma v. Ahmed (1900) 23 Mad. 105; Sadagopa v. Dorasami (1882) 5 Mad. 214; Jhanda v. Jowaya (1880) Punj. Rec. No. 29, p. 67; Jagappa v. Latchappa (1882) 5 Mad. 119 and Tiyadgaraja v. Ramanujam (1883) 6 Mad. 422 do not seem to be good law.) In cases to which the Transfer of Property Act, 1882, applies, there is no room for doubt on this point, for the test of value for the registration of a mortgage deed is "the principal money secured," which excludes all interest : see sec. 59 of that Act. But when property is mortgaged to secure loans to be hereafter made not exceeding Rs. 100, and the sums actually advanced exceed Rs. 100, the document is compulsorily registrable. (Perrin v. Ledlie (1870) 15 W. R. 364).

A deed conferring on a Hindu wife, in consideration of marriage, a life interest in a house producing a rent of Rs. 99 a year creates an interest of value exceeding Rs. 100 and requires registration. (Bai Parsan v. Lallubhai (1932) 34 Bom. L. R. 459, 138 I. C. 274, ('32) A. B. 217). In a Bombay case. (Ramchandra v. Anandibai (1932) 34 Bom. L. R. 218, 137 I. C 580, ('32) A. B 188) an agreement rendering a gift of immoveable property worth Rs. 2,000 revocable was held to make the property worth less than Rs. 100 and not to require registration. But the reasoning in this case is open to criticism. See "Revocation of gift" at p. 33.

There is a coinflict of opinion as the test of value for registration in the case of an assignment of a mortgage. It has been held by the High Courts of Bombay and Madras that when a mortgagee transfers his interest in the mortgage to another, it is the consideration paid by the transferee that determines the value for registration, and not the actual amount due from the mortgagor to the mortgagee under the mortgage at the date of assignment. Thus according to these Courts a deed of transfer for a consideration of less than Rs. 100 of a mortgage for upwards of Rs. 100 does not require registration under this Act. (Satra v. Visram (1878) 2 Bom. 97 ; Subramaniam v. Perumal (1895) 18 Mad. 454). A different view has been taken by the Chief Court of the Punjab. According to that Court, it is the amount of the debt transferred that determines the value of the interest transferred, and not the consideration for which the debt is transferred, with the result that an assignment of a mortgage for Rs. 250 for a consideration of Rs. 90, must be registered under this clause (Ram Sarup v. Mubarak (1906) Punj. Rec. No. 1, p. 1). This view, it is submitted, is not correct.

In a Bombay case where a mortgagee assigned his mortgage to another in consideration of Rs. 5 paid to him by the latter and in consideration of the assignee withdrawing a suit he had instituted against the assignor, the Court held upon the contents of the document that the money value of the latter part of the consideration was the amount covered by the stamp on the document, and that as it exceeded Rs. 100, the document required registration (Nago Kanaturia v. Babaji (1884) 8 Bom. 610).

Mortgage.

Mortgage.—A mortgage did not require to be in writing until the passing of the Transfer of Property Act, 1882. Sec. 58 of that Act provides that where the principal sum secured is Rs. 100 or upwards, a mortgage (other than a mortgage by deposit of title-deeds) can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal sum secured is less than Rs. 100, a mortgage can be effected either by a registered instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property. Sec. 4 of that Act provides that sec. 59 is to be read as supplemental to the Indian Registration Act; see as to this the note under sec. 49 "By any provision of the Transfer of property Act" at p. 172.

Test of value for registration.—See notes under the same head on p. 37 above.

Whether a transaction amounts to a mortgage by conditional sale or to a sale with a right of re-purchase.—The question whether two documents executed between the same parties amount to a mortgage by conditional sale or to a sale with a right of re-purchase is one of great importance in connection with the question of registration. These documents are of frequent occurrence in India. The question raised by them has usually been defined to be whether the two documents evidence a single transaction of mortgage by conditional sale or whether the second document evidences an agreement to reconvey, separable from the first sale or sale deed. And the answer depends upon the intention of the parties. as expressed in the language of the documents themselves in the light of the surrounding circumstances (Balkishen Das v. Legge (1900) 27 I. A. 58; Narsingerji v. Panuganti (1924) 51 I. A. 305, 47 Mad. 729, 82 I. C. 993, ('24) A.PC 226).

In Harkisondas v. Bai Dhanu ((1926) 50 Bom. 566, 98 I.C. 634, ('26) A. B. 497; Fakirji v. Bhagvatlal (1929) 31 Bom. L. R. 493, 119 I. C. 793, ('29) A. B. 290) the following questions were referred to a Full Bench :—

Whether when a registered deed of sale (A) of immoveable property worth Rs. 100 or over is passed, and as a part of the same transaction, and not as an independent transaction, the vendee executes an unregistered agreement (B) to reconvey the property on payment of a certain sum of money, the document (B) is inadmissible in evidence for want of registration under sec. 17 (I) (b) and sec. 49 of the Indian Registration Act, either

(a) where the transaction constitutes a mortgage, or

(b) where it is a bona fide sale with a contract for re-purchase.

It was held by the Full Bench answering question (a) that where the transaction constituted a mortgage, the agreement to reconvey was inadmissible in evidence for want of registration. As to question (b) it was held by Shah and Coyajee, JJ., that where the transaction was a bona fide sale, the agreement for re-purchase came within sec. 17 (2) (v) and did not require registration, Macleod, C.J, however, refused to answer the question stating that it was not capable of being answered by a direct affirmative or negative. In the course of his judgment the learned Chief Justice said : "The difficulty, I find in answering

the second question, lies in the fact that it is not what I consider a fair question capable of being answered by a direct affirmative or negative. It involves the fallacy that where two parties agree upon a particular course of conduct between themselves with regard to a dealing in immoveable property, their resultant action necessarily forms one transaction whereas there may be several transactions all dependent on each other and arising out of one previous arrangement between the parties. If two parties agree beforehand that one party shall sell immoveable property to the other and that the purchaser shall agree to resell the property at a price to be tendered by the vendor within a certain time, the latter agreement to be contained in a separate document, when the relative documents are executed, they evidence not one transaction but two transactions. The sale passes the title absolutely to the purchaser, the agreement to resell in no way limits his right as owner.....When the parties intend to create a mortgage the situation is different. The ostensible vendor does not lose all interest in the property, he retains for himself a transferable and hereditable right, so that the sale deed and the agreement to reconvey do evidence a single and inseparable transaction. Consequently, I do not find it possible to answer the several questions by a direct affirmative or negative. The intention of the Parties must be proved by the Court according to the facts of each case, and ordinarily speaking, I should say that when the agreement to sell is evidenced by a separate document that would be proof that, although the parties had come to a previous arrangement with regard to a particular course of conduct between themselves, there was an intention to give effect to that arrangement by entering into two transactions."

The High Court of Madras has also held that where the transaction constitutes a mortgage the agreement to reconvey must be registered (Mutha v. Pyanda (1904) 27 Mad. 348; Achutaramaraju v. Subraraju (1902) 25 Mad. 7; Pydah v. Mutha (1914) 26 Mad. L. J. 151, 23 I.C. 409.) Both in Bengal (Sheikh Parabdi v. Sheikh Mohamed (1868) 1 Beng. L. R. A. C. 37, 41.) and Allahabad (Suraj Pershad v. Phul Singh (1906) 26 All. W. N. 180.) it has been held that where A sells property to B by a registered sale deed and B agrees on the same day by an unregistered deed to retransfer the property to A, the latter document requires registration. In a recent Allahabad case the Court held that where the first transaction is an absolute sale, the agreement for repurchase falls within sec. 17 (2) (v) and does not require registration (Gobardhan v. Raghabir Singh (1930) 28 All. L. J. 799, 124 I. C. 425, ('30) A. A. 101. The High Court of Madras has taken a similar view (Chinnakkal v. Chinnathambi (1934) 67 Mad. L. J. 635. The opinion expressed by Macleod, C. J., in *Harkisondas* v. *Bai Dhanu* ((1926) 50 Bom. 566. 98 I. C. 634, ('26) A.B. 497.) that separate documents ordinarily indicate separate transactions is confirmed by the proviso added to the definition of a mortgage by conditional sale in sec. 58 (c) of the Transfer of Property Act by the amending Act 20 of 1929. Under that proviso no condition of reconveyance shall be deemed to be a mortgage unless embodied in the document which effects or purports to effect the sale. If it is embodied in the document which purports to be a deed of sale it would of course be registered along with the sale deed.

Charge.—Documents creating a charge (Rangampudi v. Venkateswarlu ('34) A. M. 713. or an equitable charge on immoveable property of the value of Rs.

100 or upwards, require registration under this section (The Bengal Banking Corporation v. Mackertich (1884) 10 Cal. 315, 322; Bai Narmada v. Bhagvantrai (1888) 12 Bom. 505 ; Khoo Sain Bah v. Tan Guat Tean (1929) 7 Rang. 234, 117 I. C. 489, ('29) A.PC. 141 ; Maung Po Kyi v. Noor Mahomed (1933) 147 I.C. 562, ('33) A. R. 259 ; Kesho Prasad v. Upper India Bank Ltd. (1933) 141 I. C. 474. ('33) A. O. 76; Ghanshyam Das v. Jainarain (1934) 148 I. C. 417, ('34) A.A. 444; Jainarain Singh v. Parmeshwar Murao (1931) 132 I. C. 798, ('31) A. O. 310.) This is because sec. 17 (1) (b) applies to rights, not only *in*, but *to*, immoveable property (Imperial Bank of India v. Bengal National Bank (1931) 58 Cal. 136, 131 I. C. 689, ('31) A. C. 223 reversed on another point in 58 I. A. 323, 134 I. C. 651, ('31) A. PC. 245.)

Assignment of statutory-lien under sec. 55 of Transfer of Property Act.—In a Madras case (Rajagopala v. Ranganatha ('34) A.M. 615 affirming Ranganatha v. Rajagopala (1933) 142 I.C. 730, ('33) A.M. 181 ; [Sambasiva v. Venkatarama (1926) 51 Mad. L.J. 95, 95 I. C. 447, ('26) A.M. 903 not followed] a document was executed mentioning facts which gave the vendor a statutory charge under sec. 55 (4) (b) of the Transfer of Property Act, 1882. The vendor assigned his rights under that document by another document, which was not registered. It was held in a suit to enforce the charge that the latter document required registration. The Court applied the principle underlying Dayal Singh's case (Dayal Singh v. Inder Singh (1926)) 53 I. A. 214, 981 I.C. 508, ('26) A.PC. 94) namely, that a document which creates a statutory charge requires registration. It should be noted that Dayal Singh's case has been superseded by legislation only to the extent mentioned in the explanation to sec. 17 (2).

Mortgage by deposit of title-deeds.—Secs. 58 (Gokul Dass v. Eastern Mortgage and Agency Co. (1906) 33 Cal. 410, 421, 422) and 59 of the Transfer of Property Act, 1882, provide that a mortgage may be made in Calcutta, Madras, Bomby, and the other places mentioned therein, by mere delivery by the debtor to the creditor of title-deeds of the debtor's immoveable property with intent to create a security. Such a mortgage does not. require to be effected by a registered instrument (1) The same rule applies to a sub-mortgage by deposit of title-deeds. Thus if A mortgages his property to B by a registered instrument, and B then deposits the title-deeds of A's property with C to secure a loan from C to B, the sub-mortgage need not be effected by a registered instrument. Outside those places a mortgage by deposit of title-deeds can only be made, if the property is of the value of Rs. 100 or upwards, by a registered instrument. If the instrument is not registered, it is ineffectual to create a morgage (Konchadi v. Shina Rao (1905) 28 Mad. 54.) See note, "Assignment of mortgage," on p. 46 below.

A mortgage by deposit of title-deeds does not require any writing, but it is usual for the mortgage to be accompanied by a memorandum in writing. In such cases the question often arises whether the writing requires registration. If the writing itself constitutes the bargain or contract between the parties and creates a mortgage on the property, it must be registered under the Registration Act (Pranjivandas Mehta v. Chan Ma Phee (1916) 43 I. A. 122, 43 Cal. Subramonian v. Lutchman (1923) 50 I. A. 77. A. PC. 50 : But if the mortgage was completed

by the deposit of title-deeds and the advance of money on such deposit, and the writing is merely a record of an already completed transaction, the writing does not require registration (Kedarnath Dutt v. Shamloll Khettry (1873) 11 Beng. L.R. 405; Jaitha v. Haji Abdul (1886) 10 Bom. 634, 647-648 ; Oo Noung v. Moung (1886) 13 Cal. 322 ; Gokul Dass v. Eastern Mortgage and Agency Co. (1906) 33 Cal. 410 ; Bhairav v Anath Nath (1920) 24 Cal. W. N. 599, 57 I. C. 686; Umrao Singh v. Punjab National Bank (1921) 3 Lah. L. J. 44. 59 I. C. 578. ('21) A. L. 274; Motiram v. Bharat National Bank (1921) 3 Lah. L. J. 373 ; 67 I. C. 421, ('21) A. L. 253; Kshetra Nath v. Harasukdas (1927) 45 Cal. L. J. 233. 102 I. C. 871, ('27) A. C. 538; Ramakrishna v. Balakrishna (1927) 53 Mad. L. J. 179 102 I. C. 34, ('27) A. M. 1145; Obla Sundachariar v. Narayana Ayyar (1931) 58 I. A. 68, 54 Mad. 257, 131 I.C. 328, ('31) A. PC. 36; S. P. K. R. R. M. Chettyar Firm v. The Administrator-General of Bengal (1933) 11 Rang. 481, ('33) A. R. 307; Villa v. petley (1934) 148 I. C. 721, ('34) A. R. 51; Tyeballi v. Parpatibai (1932) 139 I. C. 95, ('32) A.S. 73.) The question in each case is, did the document constitute a bargain between the parties or was it merely the record of an already compeleted transaction The leading Privy Council case on the subject is *Pranjivandas Mehta v. Chan Ma Phee* ((1916) 43 I. A. 122, 43 Cal. 895, 35 I. C. 190.) In that case the law on the subject was laid down as follows :—

(1) Where title-deeds of property are handed over with nothing said except that they are to be security, the law supposes that the scope of the security is the scope of the title.

(2) Where, however, title-deeds are handed over accompanied by a bargain, that bargain must rule.

(3) Lastly, when the bargain is a written bargain, it, and it alone must determine what is the scope and the extent of the security. In the words of Lord Cairns in the leading case of Shaw v. Foster (1872) L. R. 5 H. L. 321, 340, "Although it is a well-established rule of equity that a deposit of a document of title, without more, without writing or without word of mouth, will create in equity a charge upon the property referred to, I apprehend that that general rule will not apply where you have a deposit accompanied by an actual written charge. In that case you must refer to the terms of the written document, and any implication that might be raised, supposing there were no document, is put out of the case and reduced to silence by the document by which alone you must be governed."

In *Pranjivandas Mehta*'s case it was held that when documents of title to immoveable property have been deposited as security for a debt, and a memorandum is subsequently signed by the parties that a part only of the property is security for the debt, the memorandum is conclusive evidence that the charge in favour of the creditor extends only to that part of the property.

The above decision was followed by their Lordships in *Subramonian v. Lutchman* ((1923) 50 I. A. 77, 1 Rang. 66, 71 I. C. 650, ('23) A. PC. 50.), where it was held that when upon a mortgage by deposit of title-deeds a document is drawn up *constituting the bargain* between the parties, the document is not

admissible in evidence to prove the mortgage, unless it is registered under the Registration Act, and oral proof of the mortgage is inadmissible.

Oral evidence to explain deposit.—The question whether oral evidence is admissible to explain a deposit of title-deeds depends on whether the writing itself constituted the contract between the parties or whether it was merely a record of a deposit already made pursuant to a previous agreement between the parties. In the former case no oral evidence is admissible ; in the latter case it is admissible. The law on the subject was thus stated by Couch, C.J., in *Kedarnath Dutt v. Shamloll Khettry* ((1873) 11 Beng. L. R. 405, approved in Subramonian v. Lutchman (1923) 50 I. A. 77, 82, I Rang 66, 71 I. C. 650, ('23) A. PC. 50.) "The rule with regard to writings is that oral proof cannot be substituted for the written evidence of any contract which the parties have put into writing. And the reason is that the writing is tacitly considered by the parties themselves as the only repository and the appropriate evidence of their agreement. If this memorandum was of such a nature that it could be treated as a contract for the mortgage and what the parties considered to be the only repository and appropriate evidence of their agreement, it would be the instrument by which the equitable mortgage was created, and would come within sec. 17 of the Registration Act."

Illustrations

(a) A sends the title-deeds of his property to B with a letter stating that the deeds are to be held as security for an antecedent debt. The letter must be registered : *Dwarkanath* v. *S. M. Sarat* (1870) 7 Beng. L. R. 55; *Bhairaw* v. *Anath Nath* (1920) 24 Cal. W. N. 599, 57 I. C. 686.

(b) A borrows Rs. 2,000 from B, and passes a promissory note to B for that sum. At the same time A deposits with B the title-deeds of his property as security for the loan. After the deposit is made A sends a letter to B in these terms : "As collateral security for payment of Rs. 2,000 secured by a promissory note, I herewith hand you the title-deeds of my property." The letter does not require registration. The mortgage was created by the deposit of the deeds, and not by the letter : Oo Noung v. Moung (1886) 13 Cal. 322.

In a Bombay case (Jagjivandas Jethalal v. King Hamilton & Co. (1931) 55 Bom. 677, 134 I.C. 545, ('31) A.B. 337.) D as surety for S agreed to deposit title-deeds with P in order to secure advances to be made by P to S. In pursuance of this agreement D wrote to P as follows : "We have instructed our solicitors .....to make over the title-deeds of our property at Dadar-Matunga Estate, Bombay, plot No. 21, value Rs. 10,000.....to be held by you as security against advances you may make to Sardar & Sons, Calcutta". At the time this letter was written D had no interest in the property described, but had only a contractual right to obtain a lease of it from the Improvement Trust. The lease was granted to D a year later and was then deposited with P. On these facts Mirza, J., held, it is submitted correctly, that the letter embodied the contract of mortgage and required registration. The Chief Justice however held that the letter did not require registration as the lease was not then in existence and that the letter operated only as an agreement to create a mortgage when the

property should be required. It is submitted that this is incorrect, for under sec. 17 (1) (b) the letter purported to create a mortgage over property of the value of Rs. 10,000. No doubt if the property was not in existence no mortgage was created at the time of the letter, but registration is not of the transaction but of the document. The criterion for registration is what appears on the face of the document (Ramaswamy v. Thirupathi (1904) 27 Mad. 43, 45). The Chief Justice further held that apart from the letter there was evidence to connect the deposit with the advances. But if the letter embodied the contract oral evidence could not be led under sec. 91, Indian Evidence Act, and the law as explained in Kedarnath Dutt v. Shamloll Khettry (1873) 11 Beng. L. R. 405).

Variation of mortgage by subsequent writing.—An agreement by which a mortgagor agrees to pay interest at a rate higher than that fixed by the mortgage-deed, which itself is registered, requires registration. If it is not registered, it cannot fetter the equity redemption the property and the mortgagor is entitled to redeem on payment of principle and interest at the rate stipulated in the mortgage deed (Tika Ram v. The Deputy Commissioner of Bara Banki (1898) 26 Cal. 707, 26 I.A. 97). Similarly an agreement by which the period of redemption fixed by the mortgage-deed is reduced requires registration. If it is not registered, the mortgagor is not entitled to redeem earlier than the date fixed for redemption in the mortgage deed (Sadar-ud-din v. Chajju (1909) 31 All. 13, 16, 1 I.C. 558; Deo Narain v. Bhola Singh (1930) 28 All. L. J. 1163, 126 I.C. 8, (30) A.A. 506.) An agreement to accept a smaller amount than what is due under a registered mortgage-deed also requires registration Yegnanarayana v. Suppah (1927) 52 Mad. L. J. 224, 100 I.C. 54, ('27) A.M. 1111. Similarly an agreement which reduces the rate of interest on a mortgage (Afsar Jahan Begam v. Beche Lal (1932) 7 Luck. 16, 132 I.C. 66, ('31) A.O. 286). or which sets out the mode in which the rents and profits of land are to be dealt with at variance with the stipulations contained in a deed of usufructuary mortgage requires registration (Abdullah Khan v. Bisharat Husain (1913) 40 I.A. 31, 35 All. 48, 55, 17 I.C. 737.)

If plaintiffs sue for contribution as persons who, owning one property subject with the property of other persons to a common mortgage, have paid off the mortgage, it is necessary for them to prove the mortgage. But if they admit that the deed of mortgage has been modified by a subsequent verbal arrangement, they can neither prove the verbal arrangement nor can they succeed on the footing that the transaction is governed by the mortgage-deed alone (Kamta Singh v. Chaturbhuj Singh (1934) 59 Cal. L.J. 577, 148 I.C. 486, ('34) A. P.C. 98).

Assignment of mortgage.—Under the Transfer of Property Act, as originally passed, mortgage debts were assignable as "actionable claims," and the assignment of the debt passed the security with it under sec. 8 of the Act (Subramaniam v. Perumal (1895) 18 Mad. 454; Perumal Ammal v. Perumal (1921) 44 Mad. 196, 200, 61 I.C. 461, ('21) A.M. 137; Sakhiuddin v. Sonaullah (1917) 22 Cal. W. N. 641, 644-645, 45 I.C. 986. The Act, however, was amended in 1900 by substituting a new Chapter (Chapter VIII) on "Actionable Claims," and inserting in sec. 3 a definition of "actionable claim," which excludes debts secured by mortgage of immoveable property or by hypothecation or pledge of moveable property.

The effect of this amendment is that mortgage debts can no longer be transferred as actionable claims under Chapter VIII of that Act. They can only be transferred by way of sale under sec. 54, or by way of exchange under sec. 118, or by way of gift under sec. 123, but in all cases as immoveable property, and consequently only by a registered instrument (Perumal Ammal v. Perumal (1921) 44 Mad. 196, 200-201. 61 I.C. 461, ('21) A.M. 137; Official Receiver v. Lakohman (1921) 41 Mad. L. J. 4531, 68 I.C. 752, ('21) A.M. 681; Bank of Upper India Limited v. Fanny Skinner (1929) 51 All. 494, 119 I.C. 241. ('29) A.A. 161). This is so even if the mortgage be one made by deposit of title-deeds. A borrows Rs. 1,000 from B and deposits with him the title-deeds of his property with intent to create a security on the property without executing any writing (Transfer of Property Act, 1882, secs. 58 (f) and 59]. If B wants to transfer the mortgage to C, it can only be done, in cases to which the Transfer of Property Act applies, by a registered writing [see sec. 54 of the Act] Elumalai v. Balakrishna (1921) 44 Mad. 965, 969, 66 I.C. 168, ('22) A.M. 344. A registered writing is necessary to effectuate the transfer, even if B has taken a Promissory note for Rs. 1,000 from A and the note is endorsed by him to C. The transfer of the debt by endorsement of the note does not carry with it a transfer of the security. The reason is that what is transferred is a mortgage-debt, and the provisons of sec. 8 of the Transfer of Property Act do not apply to a mortgage-debt (Elumalai v. Balakrishna (1921) 44 Mad. 965, 66 I. C. 168, ('22) A.M. 344, dissenting from Perumal Ammal v. perumal (1921) 44 Mad. 196, 61 I. C. 461, ('21) A. M. 137, where it was held that s. 8 of the Transfer of Property Act applied. But Perumal v. Perumal was followed in Villa v. Petley (1934) 148 I. C. 721, ('34) A. R. 51.) But in the case of Imperial Bank of India v. Bengal National ((1931) 58 I.A. 323, 35 Cal. W. N, 1034, 134 I.C. 65, ('31) A. PC. 245.) the Privy Council held that the debt might be disassociated from the security so that an unregistered transfer of a mortgage-debt may be treated as a transfer of the debt divorced from the security. This decision was followed in a Madras case (Lakshmana Naicker v. Jayaram Naicker (1934) 66 Mad. L. J. 380, 150 I.C. 18, ('34) A.M. 178). on the following facts. A and B were joint mortgages but B surrendered his share to A. The surrender being unregistered was inadmissible in evidence as an assignment of the mortgage, and therefore a decree for the recovery of the mortgage-debt was passed in favour of both A and B. But after the debt was realized by sale, the unregistered surrender was treated as evidence of the release of B's share of the debt and the whole of the sale proceeds were paid to A alone.

Sale of equity of redemption to mortgagee.—A mortgages his property to B to secure payment of Rs. 400. A then sells his equity of redemption to B for Rs. 99-8-0. A Full Bench of the Chief Court of the Punjab has held that the document does not require registration (Pir Bakhsh v. Mangal (1892) Punj. Rec. No. 16, p. 77). The Calcutta High Court has held it does (Barsik Nandi v. Gurudas Pal (1927) 46 Cal. L. J. 473, 107 I.C. 474, (28) A.C. 107.

Assignment of mortgage decree.—It has been held by the High Court of Bombay that an assignment of a mortgage decree for Rs. 100 or upwards requires registration under this clause, the reason given being that the assignment gives

the assignee the right to sell the immoveable property covered by the decree, and the right to sell an immoveable property is a right to or interest in such property (Gopal v. Trimbak (1876) 1 Bom. 267.) That Court has also held that the assignee, if the assignment is not registered, cannot execute even that part of the decree which reserves liberty to the mortgagee to proceed against the person or other property of the mortgagor in the event of the net sale proceeds of the mortgaged property being insufficient to pay the mortgagee's claim in full (Heptulla v. Mohomed (1909) 11 Bom. I. R. 356, 2 I. C. 511). On the other hand, it has been held by the High Courts of Calcutta (Gous v. Khawas (1896) 23 Cal. 450; Baij Nath v. Binoyendra (1901) 6 Cal. W N. 5; Ram Ratan v. Jogesh Chandra (1907) 12. Cal. W. N. 695.) and Allahabad (Abdul Majid v. Muhammad (1890) 13 All. 89. 91; Mumtaz v. Sri Ram (1913) 35 All. 524. 21 I. C 462). that such an assignment does not require registration, the reason given being that the assignment is not of any interest in the immoveable property, but of the decree itself, and the decree, though it be a decree upon a mortgage bond, can in no sense be regarded as immoveable property ; and further that the assignment does not of itself create an interest in immoveable property. The correct view, it is submitted, is the one taken by the High Courts of Calcutta and Allahabad. The Madras High Court has followed the Allahabad decision, but the case was one in which it did not appear on the face of the assignment that the decree was a mortage decree (Bangarayya v. Nallapparaju (1931) 131 I. C. 151, ('31) A. M. 302.)

Splitting of mortgage to avoid registration.— A lends Rs. 198 to B, and, to avoid registration, takes two mortgage bonds from B each for Rs 99 instead of one bond for Rs. 198. Neither bond requires registration. There is nothing in the Registration Act which forbids the splitting up of a transaction in this manner (Ramji v. Chhote Lal (1907) 29 All. 50.)

Re-transfer by mortgagee.—A reconveyance of land by a mortgagee to the morfgagor requires registration, it the consideration is Rs. 100 or upwards (Bhyrub v. Kalee (1871) 16 W.R. 56.)

Merger—A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage by taking a subsequent mortgage of the same property for the same debt. Where, therefore, the later mortgage deed is inadmissible in evidence for wadt of registration, but the facts show that the mortgagee did not intend to surrender the security given by the earlier mortgage deed, there is no merger, and the mortgagee can fall back upon the latter document, if admissible in evidence (Khushal Mal v. Mul. Chand (1882) Punj. Rec. No. 173 ; Goluknath v. Lalla Prem Lal (1877) 3 Cal. 307.)

Rajinamas and kabuliyats governed by the Bombay Land Revenue Act 5 of 1879.—Rajinamas and kabuliyats executed between (to use somewhat loose language) a mortgagor and his mortgagee in cases governed by the Bombay Land Revenue Code do not require registration. They are not in themselves documents of transfer, though they are fairly conclusive evidence that a transfer has in

fact been made. (Narso v. Nagava (1918) 42 Bom. 359. 45 I. C. 492; Motibhai v. Desaibhai (1917) 41 Bom. 170, 38 I. C. 838. But see Chandanmal v. Bnaskar (1920) 22 Bom, L.R. 140. 55 I. C. 619, and Rachappa v. Ningappa (1925) 49 Bom. 847. 91 I. C. 349. ('26) A. B. 40.) Notices of relinquishment are exempt under sec. 90 (e).

Agreement between first and second mortgagees of the same property to share equally money realised from their mortgages.—
Such an agreement does not create or declare or limit any interest in the mortgaged property itself, and does not require registration (Vyravan v. Subramanian (1920) 43 Mad. 660, 47 I. A. 188. 56 I. C. 642.)

Acknowledgment of a mortgage.—In the Punjab where the Transfer of Property Act is not in force a mortgage by conditional sale becomes on breach of the condition of repayment an absolute sale. In one such case the mortgagee instead of sueing for possession by foreclosure sued to recover the mortgage debt and relied on an acknowledgment of the mortgage after breach of the condition. It was held, however, that though the acknowledgment might save the bar of limitation for the recovery of the debth, yet being unregistered it could not operate as a novation of the mortgage. (Baori Das v. Besu (1933) 145 I. C. 159. ('33) A. L. 174.

Partition.

Instrument of partition.—Instruments of immoveable property of the value of Rs. 100 or upwards require registration (Shankar v. Vishnu (1876) I Bom. 67; Lakshma amma v. Kameswara (1890) 13 Mad. 281 [between mother and son], Anandrao v. Joti (1900) 24 Bom. 615; Upendra Nath v. Umesh Chandra (1910) 15 Cal. W N. 375. 377, 378. 9 L. C. 346' Jogi Reddi v. Chinnabhi Reddi (1929) 52 Mad. 83, 86-87. 56 I. A. 6. 114 I. C. 5. ('29) A. PC. 13; Kishan Chand v. Dina Nath (1933) 141 I. C. 487. ('33) A. L. 574; Sahib Singh v. Dalip Singh (1933) 145 I. C. 691, ('33) A. L. 422.) This is so even though the partition is the result of a family arrangement if the arrangement is reduced to the form of a document for the purpose of format record. (Ram Lal v. Sita Bai (1933) 14 Lab. 635. 144 I. C. 396, ('33) A. L 648; Ram Gopal v. Tulshi Ram (1929) 51 Ali, 79. 116 I. C. 861. ('28) A. A. 641). Such an instrument may be in the form of a receipt or it may be a regular deed or it may in any other form. But whatever the form it requires registration as it "declares" an interest in immoveable property provided the value of the interest so declared is Rs. 100 or upwards. Thus receipts signed by brothers at a partition between themselves in which they acknowledge having accepted certain portions of family property detailed in the respective receipts, constitute a partition, and are compulsorily registrable (Nilkanth v. Hanmant (1920) 44 Bom. 881. 58 I.C. 415.) Similarly when two coparceners executed an agreement appointing a third person to effect a partition by taking their bids for each of the properties and the partion was

made in this way and endorsed on the back of the agreement, it was held that the document required registration (Azimat v. Kalwant (1906) Punj. Rec. No, 71.) see note to cl. (vi) of sub-sec. (2), "Award."

Change of status.—An instrument of partition among members of a joint Hindu family dividing the family properties by metes and bounds requires registration. If it is not registered, it is inadmissible in evidence, having regard to sec 49 to prove the title of any of the instrument to any particular property, or to prove that any particular property has ceased to be joint (Kishan Chand v. Dina Nath (1933) 141 I.C. 487. ('33) A.L. 574.) But is it admissible to prove an intention to become divided in status, in other words, to prove that the parties ceased to be joint from the date of the instrument. On this point there is a conflict of opinion, it being held in some cases that it is (Subrahmania v Saritri (1909) 19 Mad. L. J. 228, 3 I. C. 321; Saraswatamma v Paddayya (1923) 46 Mad. 349, 71 I. C. 274. ('23) A.M 297; Chhotalal v. Bai Mahakore (1917) 41 Bom. 466, 40 I.C. 83; Lachmi Narain v. Ram Narain (1928) 10 Lah. L. J. 75. 109 I.C. 533; Subba Rao v. Mahalakshmamma (1931) 54 Mad. 27, 128 I.C 561, ('30) A.M. 883.) and in others that it is not (Pothi v. Naganna (1916) 30 Mad L. J. 62, 32 I.C.416; Ayyakutti v. Periaswami (1916) 30 Mad L.J. 404. 31 I.C. 615.) The former view seems consistent with the decision of the Privy Council in the undernoted base (Ranjangam Ayyar v Ranjangam Ayyar (1923) 50 I.A. 134. 46 Mad. 373, 69 I.C. 123. ('22) A. PC. 266.)

Acknowledgment of partition as distinguished from instrument of partition.—This clause refers to documents containing declarations of will and not mere statements of facts. Thus a deed of partition which itself operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under this section. But a writing which merely states that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration (Sakharam v. Madan (1881) 5 Bom. 232; Anandrao v. Joti (1900) 24 Bom. 615; Kachubbaibai v. Krishnabai (1887) 2 Bom. 635; Ranganyaki v. Rukmani (1923) 45 Mad. L J. 100, 72 I.C. 456.) The essence of the matter is, whether the deed is a part of the partition or contains merely an incidental recital of a previouslo completed transaction. Where the intention of the parties is that the document should be the sole evidence of the partition, the deed, if not registered, is not admissible in evidence under sec. 49 of the Act to establish the fact that the property was so partitioned nor is oral evidence admissible to prove the verbal agreement that preceded the deed, having regard to the provisions of sec. 91 of the Evidence Act (Upendra Nath v. Umesh Chandra (1910) 15 Cal. W. N. 375, 378-379, 6 I.C. 346).

Illustrations.

(a) A and B in 1870 divided certain joint property between themselves. In 1877 B passes a writing to A in these terms : "You have built houses and are building new houses on property appertaining to your share. In the

same I have no interest of any kind whatever." The writing does not require registration. It is not itself an instrument of partition declaring a right in the property. It is a mere statement of fact admitting that there had formerly been a partition between the parties : Sakharam v. Madan (1881) 5 Bom. 232.

(b) A document recites a division of lands and ends with the words, "both of us are to act as stated above," The document is an instrument of partition and is compulsorily registrable under this section. The concluding words do not make the document a mere record of a past transaction : Ramchandra v. Dinkar (1900) 2 Bom L. R. 800. See Jaman v. Chandia Ram (1913) Punj. Rec. No. 83, 18 I.C. 918.

(c) Entries in the book of a third party consisting of details of a partition carried out by the parties to the partition independently of the third party, and made after the properties were divided from time to time, do not require registration, they being only recitals of a past transaction already completed ; Kanhaya Lal v. Fatta (1900) Punj. Rec. No 48.

(d) Three Hindu brothers forming a joint family own several immoveable properties. In 1867 a deed of partition is executed by them whereby after reciting that some years previously to its date a division of the properties except certain houses had been effected, the parties divide the houses among themselves. The deed requires registration as to the houses, but not as to the properties already divided among the parties : Kachubhai v. Krishnabai (1878) 2 Bom. 635.

Partition List.—A mere list of properties allotted at a partition is not an instrument of partition and does not require registration (Kshetra Mohan Pal v. Tufani Talukdar (1933) 37 Cal. W. N. 112, 144 I.C. 868. ('33) A.C. 474).

Partition of moveable and immoveable property.—Where an instrument of partition comprises both moveable and immoveable property, and is not registered though it requires registration, it cannot be relied upon in support of a claim even in respect of the moveable property, if the transaction is one and indivisible and the partition of the moveable property cannot be separated from the rest (Lakshmamma v. Kameswara (1890) 13 Mad. 281, 286 ; Pothi v. Naganna (1916) 30 Mad. L. J. 62, 32 I.C. 486 [F. B.]. Compare Perumal Ammal v. Perumal (1921) 44 Mad. 196, 203, 61 I.C. 461, (21) A.M. 137 (gift of moveable and immoveable property). Cf. Samuvier v. Ramasubdier (1932) 55 Mad. 72, 132 I.C. 305, ('31) A.M. 580 (dissolution of partnership comprising moveable and immoveable property). But it is otherwise if the partition of the moveables is separate from the remaining properties (Thandaran v. Valliamma (1892) 15 Mad. 326 ; Subrahmania v. Savitri (1909) 19 Mad. L. J. 228, 234. 3 I.C. 321 ; Karamchand v. Uma Catt (1932) 138 I.C. 369. ('32) A.L. 545).

Partnership agreement : clause as to redemption of existing mortgage.—A mortgages a piece of land with a saw-mill thereon to B. A being unable to repay the loan enters into a partnership with C and D upon the terms that the land should be transferred to the joint names of A, C and D, that A, C and D should raise a loan from X on a mortgage of the said premises to pay off B's claim, that A, C and D should work the mill as partners for three years, that A should

be at liberty to redeem the said premises within three years for his sole benefit, but if he failed to do so, C and D alone should be entilled to redeem them. The premises are conveved in the names of A, C and D and a lone is raised from X upon a mortgage of the premises, and B's claim is paid off. A then claims to redeem the mortgage. C and D deny A's right to redeem. A sues C and D for a declaration of his right to redeem. The agreement requires registration under cl. (b). The reason is that what but for the agreement would have been the right of the three partners to redeem is under the agreement made the sole right of A exereisable by him for his own sole benefit (Maung v. Mahomed (1903) 30 I.A. 230, 30 Cal. 1016).

Transfer of a partner's share.- The Madras High Court in one case (Venkataratnam v. Subba Rao (1926) 49 Mad. 738, 96 I.C. 881, ('26) A.M. 1040). held that a deed of release of his share in the partnership business by one partner does not require registration even though the partnership owns immoveable property. This was based on the reason that, though a partner may be a co-owner of the partnersghip property, he has no right to ask for a share in that property but only that the partnership business should be wound up including therein the sale of the immoveable property and to ask for his share in the resulting assets. In the subsequent case of Samuvier v. Ramasubdier ((1932) 55 Mad. 72, 132 I.C. 305, ('31) A. M. 580.) the Madras High Court dissented from that judgment and heid that an instrument of dissolution of a partenrship affecting or involving a modification of title to immoveable property requires registration Telang, J., in a Bombay case Joharmal v. Tejram (1893) 17 Bom. 235, 256.) has also held that registration is necessary.

Releases and Receipts.

Release—A release when in writing in order to be operative in law, must be registered, when the amount of the claim to or interest in immoveable property, which is extinguished by the release, is of the value of Rs. 100 or upwards. A release may be in the form of a deed or a letter or a receipt. It is the substance of the document that should be looked to, and not the form (Imam Ali v. Baij Nath (2906) 33 Cal. 613, 621-622; Safdar v. Lachman (1879) 2 All. 554; Basawa v. Kalkapa (1878) 2 Bom. 489; Rangayya v. Kameswara (1897) 20 Mad. 367.) It has been held that as an attachment before judgment does not create title, a document releasing an attachment before judgment does not require registration (Gauri Dutt v. Dowring (1934) 151 I.C. 683, ('34) A. P. 413.)

An agreement not to execute a decree, though it may relate to immoveable property, does not operate as an extinguishment of an interest in immoveable property, and is not compulsorily registrable (Krishnamuchariar v. Rukmani (1905) 15 Mad. L.J. 370; Abdul Samad Khan v. Bibijan (1925) 49 Mad. L.J. 675, 91 I.C. 618, ('25) A.M. 1149.)

Agreement to abide by decree.—An agreement to abide by the decree to be passed by a competent court does not require registration even though the

suit relates to immoveable Property (Bhirgunath v. Mt. Annapurna Dai ('34) A. P. 644.)

Disclaimer of title.—A document containing a declaration that neither executing party has any title to an immoveable property of the value of upwards of Rs. 100 and that it should be treated as wakf property, requires registration (Kishen Chand v. Municipal Committee of Amritsar (1919) Punj. Rec. No. 39, p. 100, 51 I.C. 391.)

Instrument extinguishing lease on certain condition. In an Oudh case (Anant v. Ganga Bakhsh ('24) A.O. 447.) a duly registered lease was executed for a period of fifteen years and on the same day an agreement was executed between the same parties whereby the lessee agreed that if he failed to in stitute a suit on behalf of the lessee against a party, then the lease was to be invalid. This document was not registered. The lessee failed to institute the suit as agreed, but nevertheless filed a suit against the lessee for possession. It was conceded that the two documents constituted one transaction, but it was held that as the latter document required registration, and was not registered it was inadmissible in evidence and the lessee was entitled to possession under the registered deed.

Receipts falling within sub-sec. (1)(b).—A receipt may be framed and worded so as to purport expressly to create, declare, assign, limit or extinguish a right or interest in immoveable property, in which case it falls within cl. (b), and requires registration (Abdul Rahman v. Gurdit Singh (1934) 149 I.C. 154, ('34) A.L. 604.) But unless, on the face of it, it purports or operates to create, declare, assign, limit or extinguish such right or interst, it does not fall within that clause (Jiwan v. Basa Mal (1886) 9 All. 108. 110-111, 114.)

Illustrations.

(a) A sues B for lands and B pleads adverse possession. A seeks to avoid the bar of limitation by proving an acknowledgment made by B in a petition to the Collector that the deed of gift under which she holds is invalid. The perition does not require registration and is admissible in evidence for it does not itself declare title but is a mere recital of a fact (Bageshwari Charan v. Jagarnath Kuari (1932) 59 I.A. 130 11 Pat 272, 136 I.C. 798, ('32) A. PC. 55 overruling Faki v. Khotu (1880) 4 Bom. 590.)

(b) A receipt passed by a mortgagee to the mortgagor purporting to be an acknowledgment that the mortgage-money has been paid and that the mortgage has been redeemed requires registration under cl. (b) of this sub-section (Basawa v. Kalkapa (1878) 2 Bom. 489 ; Nand Lal v. Gurditta (1902) Punj. Rec. No. 99, p. 445.)

Recitals.

Recitals.— A document which itself creates or declares a title or an interest in immoveable property must be distinguished from one which is a mere narration of a transaction which took place in time past. The Privy Council

have said that "the distinction is between a mere recital of a fact and something which in itself creates a title," (Bageshwari Charan v. Jagarnath Kuari (1932) 59 I.A. 130, 137, 11 Pat. 272, 136 I.C. 798, ('32) A. PC. 55.) The Calcutta High Court have said that the essence of the matter is whether the document is the transaction itself or contains merely an incidental recital of previously completed transaction (Upendra Nath v. Umesh Chandra (1910) 15 Cal. W.N. 375 378-579, 6 I. C. 346) [A mere recital does not require registration. Thus, though an instrument of partition requires registration a document containing a recital that a partition took place in time past does eot require registration.] (Sakharam v. Madan (1881) 5 Bm, 232; Kalo v. Lakshmibai (1878) 2 Bom. 637; Upendra Nath v. Umesh Chandra (1910) 15 Cal W. N. 375, 378-379, 6 I.C. 346.) Similarly a deed of exchange requires registration. but not a document which contains a recital that an exechange of land took place in time past (Amir-ud-din v. Jamal-ud-din (1891) Punj. Rec. No. 26, p. 148 ; Gurumukh v. Pohlo (1894) Punj. Rec. No. 120. See also Ramchandra v. Vellaya (1924) 26 Bom. L.R. 1293, 85 I.C. ('25) A.B. 194.)

In Baldeo v. Udal ((1921) 43 All. l, 5,58 I.C. 732, ('21) A.A. 248.) where a petition of compromise in mutation proceedings was held not to require registration the Court said :

"The object of filing a petition of compromise in a mutation proceeding is to intimate the Court in which that proceeding is pending that the matters in contention between the parties have been settled out of Court and do not any longer require determination and that the mutation may be effected in accordance with that settlement. Indirectly, the petition reciting the settlement might serve in a future proceeding as evidence of the terms of the settlement, but its object is directly to obtain mutation in a particular manner and not to declare any right."

In this case the recital could be used in evidence of the transaction recited in future proceedings, because the transaction had not been reduced to the form of a document and could be made orally. But if the transaction has been reduced to the form of a document or if it is one which the law requires to be written and registered, then sec. 91 of the Indian Evidence Act prevents the recital from being used as evidence of the transaction, An illustration of this is the case of Varath Pillay v. Jeevarathammal ((1919) 46 I. A. 285, 43 Mad. 244, 53 I.C, 901.) On the 10th October the owners of an estate presented a petitions to the Collector reciting the fact that on the 8th October they had made a gift of the estate to D and praying that the estate be entered in D's name. The Collector accordingly entered the estate in D's name. Subsequently an heir of the late owners sued to recover the estate from D on the ground that the gift was invalid. The Privy Council held that as sec. 123 of the Transfer of Property Act requires a gift to be made by registered deed, the oral gift was invalid and that sec. 91 of the Evidence Act was a bar to the recital in the petition being used as evidence of the gift. Their Lordships however, made use of the recitals in the petition not as evidence of the gift, but as explaining the nature and character of Dis possession.

Admissions.

Admissions.—Admissions for the purposes of the Registration Act may be divided into three classes, namely :—

(1) admissions of a past oral transaction ;

(2) admissions of a past transaction recorded in a registered document ; and

(3) admissions of contents of unregistered documents in pleadings.

(1) A document which amounts merely to an admission of a past oral transaction such as a partition (Sakharam v. Madan (1881) 5 Bom. 232.) lease (Narain v. Ramkrishna (1880) 5 Cal. 864.) or transfer of an equity of redemption (Imam Valad v. Bhan (1917) 41 Bam 510 I.C. 68 ; Narso v. Nagava (1918) 42 Bom. 359, 45 I.C. 492, both cases of Rajinamas and kabuliyats) does not require registration. See notes to see.

(2) A document which amounts merely to an admission of a past transaction recorded in a registered document does not require registration. This is illustrated by the following decision of the Privy Council (Panduray v. Markandaya (1921) 49 Cal. 334, 49 I.A. 16, 65 I.C. 954, ('22) A.PC. 20.) Disputes arose about the management of a village which resulted in a suit. A settlement was proposed by A and embodied in a document addressed to B and signed by A. This was that A was to manage the village taking a salary and paying the expenses, the profits were to be divided equally but if there was a loss, B was to pay his share of the loss or lose his share of the village. B presented the document for registration and the suit was compromised. These facts showed that B accepted the settlement. A acted upon the settlement and managed the village for four years and informed B that there had been a loss. B replied by an unregistered letter that he would not take his share of the village and that A should take whole profit and loss. Nevertheless B assigned a half share to C who sued A for possession. In shis suit object was raised that the letter was not admissible in evidence for want of registration. But it was held that the letter did not require registration. It was not itself the acceptance of the settlement but evidence that the settlement had been accepted and an admission that the condition on which the registered settlement was to operate had arisen.

Miscellaneous transactions.

Spes successionis.—A deed purporting to relinquish or assign the chance of of a Mahomedan heir (Abdool v. Goolam (1906) 30 Bom. 304.) or a Hindu reversioner (Mallik Saheb v. Malik Arjunappa (1914) 38 Bom. 224, 22 I. C. 292 ; Bhana v. Guman Singh (1918) 40 All. 384, 44 I. C. 629 ; Inder Singh v. Munshi (1922) 4 Lah. L. J. 301, 303 ; Gurbhaj v. Lachhman (1925) 6 Lah. 87, 88 I. C. 550, ('25) A. L. 341.) succeeding to an estate does require registration. The reason is that the heir or reversioner has only a spes successionis or chance of succession and has no right or interest in the property vested or contingent (In re Parsonst (1890) 45 Ch. D. 55 ; Amrit Narayan v. Gaya Singh (1918) 45 I. A. 35, 45 Cal. 590, 44 I. C. 108.)

In the Punjab where the Transfer of Property Act is not in force such a relinquishment gives rise to an enforceable right (Naranjan Singh v. Dharm Singh (1930) 129 I.C. 29, ('30) A. L. 928.) The Lahore High Court have said that such a relinquishment requires registration but that an undertaking by a Hindu reversioner not to contest an alienation need not be registered (Gulab v. Mehndi (1922) 3 Lah. 112, 67 I. C. 417, ('22) A. L. 95.)

Family arrangement.—A family arrangement does not involve a transfer but is a settlement in which each party takes a share of the family Property by virtue of an independent title which is to that extent admitted by the other parties : Hiran Bibi v. Sohan Bibi (1914) 18 Cal. W N. 929, 24 I. C. 309; Khunni Lal v. Govind Krishna (1911) 38 I A. 87, 33 All. 356, 10 I. C. 471. Such an arrangement does however involve a declaration of right under sec. 17 (1)(b). The law as to the registration of documents comprising family arrangements was considered by the Allahabad High Court in a recent Full Bench case : Ram Gopal v. Tulshi Ram (1929) 51 All 79, 116 I. C. 861, ('28) A. A. 641; Umrao Singh v. Lachhman Singh (1911) 33 All, 344, 38 I. A. 104, 10 I.C. 285; Sital Singh v. Gajendra (1929) 4 Luck. 57, and the following propositions were laid down :—

(1) In the usual type of family arrangment, unless any item of property which is admitted by all the Parties to belong to one of them is allotted to another, there is no "exchange" or other transfer of ownership. A binding family arrangement of this type can be made orally, and if made orally, no question of registration arises.

(2) If such arrangement is followed by a writing containing reference to it; then the question is whether thereby the terms of the arrangement have been "reduced to the form of a document" within the meaning of sec. 91 of the Evidence Act, 1872, i.e. formally recorded in a document with the Purpose that they should be evidenced by that doeument, and that is a question of fact in each case to be determined upnn a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written.

(3) If such arrangement was in fact "reduced to the form of a document" registration (when the value is Rs. 100 or upwards), is necessary by section 17 of the Registration Act, and the absence of registration makes the document inadmissible in evidence, under section 49 of the Registration Act, in Proof of the arrangement, and under section 91 of the Evidence Act no other proof thereof can be given.

(4) If the terms were not "reduced to the form of a document," registration was not necessary, even though the value is Rs. 100 or upwards; and while the writing cannot be used as a document of tittle it can be used as a piece of evidence for what it may be worth, e.g., as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.

Compromise.—A compromise affecting immoveable property is not a sale within the meaning of sec. 54 of the Transfer of Property Act. The nature of a compromise is that it is an acknowledgment of the existing rights of the parties (Krishina v. Aba (1910) 34 Bom. 139.)

Power of Attorney.—A power of attorney which authorizes the donee to recover the rents of an immoveable property belonging to the donor for the donee's own benefit is an assignment within the meaning of cl. (b), and requires registration (Ganpat v. Adarji (1879) 3 Bom. 312, 326) Similerly a attorney which creates a charge in favour of the donee on the immoveable property referrred to therein requires registration (Indra Bibi v. Jain Sirdar (1908) 35 Cal. 845, 848 849.)

Power of sale.—A document which gives a right to a creditor to have an immoveable property brought to sale and to recover out of the proceeds the money lent by him, requires registration (Kala Chand v. Gopal (1869) 12 W. R. 163.)

Deed of wakf.—Where by a wakfnamah the owner of an immoveable property dedicates the property to God and constitutes himself the first mutawali (superintendent), and reserves to himself the power of appointing mutawalis jointly with him, the wakfnamah requires registration as it extinguishes the ownership of the wakif though it does not purport to transfer the ownership to the mutawalis as in the case of an Engliyh indenture of trust (Muhammmad Rustam Ali v. Mushtaq Husain (1920) 47 I. A. 224, 227, 42 All. 609, 57 I. C. 329, ('21) A.PC. 105.

Appointment of new trustees.—A deed of appointment of new trustees which in itself does not purport or operate to create any interest in the trust property, does not require registraiion (Fatmabibi v. Shaik Hassan (1907) 9 Bom. L. R. 1071, 1079. See also Gincedhar v. Nitto Gopal (1872) 19 W R. 291 [shebaitnama] and Muhammad Rustam Ali v. Mushtaq Husain (1920) 47 *I.* A. 224, supra.

Guardianship of property.—A document appointing a person guardian of the property of a minor is not a transfer or assignment of the minor's property to the guardian, and does not require registration (Amirdam v. Muthukumara (1903) 13 Mad. L. J. 303.)

Landlord's revrsion.—Sec. 54 of the Transfer of Property Act. provides that a sale of reversion or other intangible thing can noly be effected by a registered instrument, whatever may be the value of such interest. A lets a piece of land to B. During the tenancy and while the land is in the occupation of B, A sells his interest in the land to B. Does the document require registration ? According to the High Court of Bombay, it does, the sale being one of landlords's reversion (Bhaskar v. Padman (1916) 40 Bom. 313, 33 I.C. 267. This view of the law does not seem to have been present to the minds of the learned judges who decided the undermentioned case (Sibendrapada v. Secretary of State for India in Council (1907) 34 Cal. 207.)

Covenant not to alienate.—A covenant by a debtor not to alienate his property without mentioning any specific property does not operate as a charge on any property (Najibulla v. Nusir (1881) 7 Cal. 196.

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Easement of light. –An easement of light is no doubt, immoveable property but it must be an easement, an acquired easement, not the chance of acquiring one. A writing by which the owner of a building promises to raise no objection to certain windows being shut up when his neighbour builds his house higher, does not limit a right to immoveable property ; its effect is to pervent such a right being acquired, but it does not of ifself limit or extinguish any such right. Such a writing, therefore, does not require registration (Sultan Nawaz v. Rustomji (1896) 20 Bom. 704, 714-715.) See also Bhagwan v. Narsingh (1909) 31 All. 612, 3 I.C. 615.

Right of way.—See note 'Right to ways' under sec. 2(6), at p. 2.

Maintenance Hindu widow.—The right or a Hindu widow to maintenance does constitute a charge upon the immoveable property of the joint family, and does not require registration. A release therefore by a widow of her right to maintenance does dot require registration (Kalpagathachi v. Ganapathi (1881) 3 Mad. 184.) A deed conferring a right of maintenance upon a Hindu wife in consideration of marriage requires registration (Bai Parsan v. Lallubhai (1932) 34 Bom. L. R. 459. 138 I. C. 274, ('32) A. B. 217.

Hindu widow's estate.—The estate which a Hindu widow takes in the immoveable property left by her husband in cases governed by the Customary Law of the Punjab is a "right, title, or interest" in the property within the meaning of this clause. A release, therefore, of such interest by the widow requires registration (Shahab Din v. Mussammat (1912) Punj. Rec. No. 92, p. 324, 14 I. C. 749.

Hiba-bil-iwaz.—See note under the same heading, on p. 29 ante.

Gift in lieu of dower.—See note under the same heading, on p. 29 ante.

Judicial proceeding.—See note to sub-sec. (2) (vi) below.

Petition of compromise.—See notes to sub-sec. (2) (vi) below.

Sulahnama.—See notes to sub-sec. (2) (vi) below.

Rajinama.—Notes to be sub-sec. (2) (vi) below,

Relinquishment by tenant land-holder.—See notes to sec. 17 (1) (d) below under the same heading.

Endorsement by lessor evidencing his assent to assignment of lease.—See notes sec. 17 (1) (d) below under the same heading.

Past transaction.—See following notes :—

(1) sec. 17 (1) (a), "Unregistered deed of gift confirmed by donor's will," on p. 29 above.

(2) sec. 17 (1) (b), "Acknowledgment of partition as distinguished from instrument of partition," on p. 43 above.

(3) sec. 17 (1) (b), "Recitals," on p. 46 above.

(4) sec. 17 (1) (b), "Admissions," on p. 48 above.

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SEC. 17 (1) (c)—RECEIPT OF CONSIDERATION.

"Instruments."—See note, "Documents," on p. 27 above.

Acknowledgment of receipt or payment.—This clause requires and acknowledgment in the form of a receipt to be registered, but not an acknowledgment of the fact that a trasaction has taken place as distinguished from the instrument of the transaction. It was so observed by West, J., in a case in which the document contained an admission of a partition that had taken place before. The learned Judge held that it was neither an instrument of partition nor was it an acknowledgment of the kind referred to in cl. (c) of sub-sec. (1). In the course of the inelgement the learned Judge said :"It is not itself the instrument of partition ; and that an acknowledement of parti ion is distinct from the instrument of partition, is to be gathered from section 17, clause (c) of the Act. Had the terms of clause (b) been satisfied by a mere acknowledgment, clause (c) would been superfluous ; its operation is to require an acknowledgment in from of a receipt to be registered, but not an acknowledgment in the form of a receipt to be registered, but not an acknowledgment in any other shape as distinguished from the instrument of the transaction (Sakharam v, Madan (1881) 5 Bom. 232, 237 ; Badhawa Mal v. Hira (1881) Punj. Rec. No. 30.

Receipts under this clause when compulsorily registrable.—A receipt to be compulsorily registrable under this clause, must satlisfy the following conditions:—

(a) it must be the receipt of a "consideration" (u) ; (Shidingapa v. Chenbaspa (1880) 4 Bom. 235), and

(b) it must on the face of it be an acknowledgment of payment of some consideration on account of the creation. declaration, assignment, limitation or extinction of an interest of the value of Rs, 100 or upwards in immoveable property (Jiwan Ali v. Basa Mal (1886) 9 All. 108, 114 [(F B.)]; Krishnan v. Raman (1897) 20 Mad. 484; Ghulam Mohammad v. Sarkhru ('34) A. L. 970.

Consideration.—The term "consideration" used in thts clause is a technical term. It implies that the person to whom the money is paid, himself declares, limits or extinguishes his interest in immoveable property in consideration of such payment, (Shidlingapa v. Chenbasapa (1880) 4 Bom. 235, 382, per Sargent, C.J.; Sheikh Gugunfur Ali v. Mahomed Yaseen (1873) 20 W. R. 334, 336.) A mere receipt does not acknowledege the receipt or payment of a "consideration" (Venkayyar v. Venkatasubbayyar (1881) 3 Mad. 53, 54.) Thus if A sells land to B for Rs. 200 and B gives A a receipt for the price, the receipt might simply be—'Received from B the sum of Rs. 200'—and then it would not require registration. But the receipt might equally well be—'Received from B the sum of Rs. 200 being the price of my land which I have sold to him and in which I have no further interest'r—and if so the recept would equire registration.

Receipt for payment of money due under a mortgage.—By far the largest number of cases reported under this clause relate to payment made by a mortgagor to the mortgagee under a mortgage. This subiect is dealt with in sub-sec. (2)(xi) of the present section,

—S. 17

Receipt for premium paid for a lease.—A receipt which purports to be for nazarana paid for a lease requres registration, but not if the sum is lease requires registration, but not if the sum is less than Rs. 100. (Daulat Rao v. Ratansingh (1933) 141 I.C. 652, ('33) A. N. 44.)

Receipt for part payment of consideration.—See notes to sec. 17 (2) (v), "Document merely creating a right to obtain another document."

Receipt for balance of purchase money.—A recept for the balance of purchase money on an oral sale of land said to have taken place previonusly requires registration under this clause, if it purports to create or transfer an interest in the land (Sher Khan v, Muzaffar Khan (1920) 1 Lah. 25,55 I.C. 944.

Other receipts.—A sells two houses to B. B then sues A for possession. A admits the sale, but alleges that he repurchased the houses from B and produces a receipt passed to him by B in these terms : "Thus you (that is, A) have paid us (that is B) in all Rs. 322-8-0 (which included Rs. 100, the consideration for the re-purchase) which we have received. Now up to date nothing is due to us by you. Should there be any khata or bond, the same is to be deemed as cancelled. We have no longer any interest remaining in any way in the aforesaid two houses. We shall execute to you a new sale-deed on a stamp." The receipt requries registration under cl. (c), for the payment of the consideration by which the title to the properties is completed is evidenced by the receipt and the payment extinguishes the plaintiff's title to the properties. The document is not an agreement falling within cl. (v) of sub-sec. (2), for it itself extinguishes B's right to the property. (Parashram v. Ganpat (1897) 21 Bom. 533.)

Receipt given by a pattidar to a lambardar.—Such a receipt does not require registration (Bhagwan Das v. Alladeyi (1883) All W.N. 49.)

Oral evidence.—A receipt which requires registration under this clause is not admissible in evidence, if not registered, to prove even payment of the money acknowledged by the receipt, though orat evidence is admissible under sec. 91 of the Evidence Act, 1872, to prove the payment notwith-standing the existence of the receipt. (Waman v. Dhondiba (1880) 4 Bom. 126, 137; Ramchandra v. Bapu (1899) Bom. L. R. 91; appamma v. Ramanna (1900) 23 Mad. 92; Lala v. Sardara (1934) 151 I.C. 884, ('34) A.L. 472.

SEC. 17 (1)(d)—LEASES.

Earlier Registration Acts.—Under Acts 16 of 1864 and 20 of 1866 the only leases that required registration were those for a period exceeding one year. A document dated the 17th February 1865 purporting to create a permanent tenancy required registration under sec. 13 of the Act of 1864 and being unregistered could not be received as evidence under sec. 49 of the present Act (Datto

v. Babasaheb (1934) 58 Bom. 419, 150 I.C. 555, ('34) A.B. 194.) Leases from year to year and those reserving a yearly rent were first made compulsorily registrable by act 8 of 1871.

Lease.—A lease may be constituted by two documents in which case each document must be registered. (Shri Satyabhyantirtha v. Raghunath (1926) 28 Bom. L.R. 743, 96 I.C. 827, ('26) A.B. 384.

Land which belonged to A was acquired by Government for a railway siding for the benefit of B's mill. B in consideration of an agreement by A not to oppose the acquisition of the land agreed to pay A 'rent' for the land. The agreement was not a lease and did not require registration for after the acquisition A had no interest in the land (Govindlal v. Manekchowk Spg. & Wg. Mills (1934) 36 Bom. L. R. 174, 151 1. C. 156, ('34) A. B. 140).

Leases under Transfer of Property Act.—Sec. 107 of the Transfer of Property Act, 1882, provides that a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent can be made only by a registered instrument. All other leases of immoveable property may be made either by a registered insturment or by oral agreement accompanied by delivery of possession except in cases where the Local Government has issued a notification under the proviso to that section.

Agricultural Leases.—Leases for agricultural purposes are exempted from the provisions of sec. 107 of the Transfer of Property Act and from the other provisions of Chapter V of that Act. Such leases may be made orally or in writing. and if in writing require registration under sec. 17 (1) (d) if they are from year to year or for any term exceeding one year or reserving a yearly rent (Sivasubramania v. Theerthapathi (1933) 64 mad. L. J. 676, 144 I.C. 27, ('33) A.M. 451.)

Punjab Leases—.Leases in the Punjab where the Transfer of Property Act is not in force may be made by oral agreemeent and the execution of a document is not necessary (Sunder Singh v. Ramsuran Das (1932) 14 Lah. 137, 142 I.C. 754, ('33) A. L. 61.

Subleases under the Bengal Tenancy Act.—Under clause (1) of sec. 85 of the Bengal Tenancy Act, 1885, a sublease by a raiyat without his landlord's consent shall not be valid unless made by registered instrument. Under Clause (2) of the same section a sublease by a raiyat shall not be admitted to registration if the term exceeds nine years. Therefore if a permanent sublease is registered, the registration is invalid and it is not admissible as evidence of the sublease (Arjun Chandra v. Trailnkya (1933) 37 Cal. W. N. 333, 146 I.C. 246. ('33) A.C. 610).

Lease.—See note under sec. 2 (7) under the same heading, on p. 2 above.

Leases from year to year.

A tenant from year to year is one who holds under a demise (express or implied) for a term which may be determined at the end of the first or any subsequent year of the tenancy, either by the landlord or the tenant, by a regular

notice to quit. If no such notice be given, the tenancy will continue from year to year for any number of years until surrendered, or extinguished by the statute of Limitations, or the lessor's title ceases (Woodfall's Law of Landlord and Tenant, 21st ed., p. 271. See Transfer of Property Act, 1882. sec. 106). No notice to quit is necessary in the case of a lease for a year (See Transfer of property Act, sec. 110). Leases from year to year, were not included in the list of documents and made compulsorily registrable by Acts I6 of 1864 and 20 of 1866. See notes, "Earlier Registration Acts," above.

Illustrations.

(l) A grants a lease to B in these terms : "We execute this patta, after obtaining a kabulyat from you, at an annual rent of Rs. 16. According to the instalments hereinafter mentioned, you shall pay the rent shan ba shan (year after year)." This is a Lease from year to year : Ramo Kumar v. Brajhari (1868) 2 Beng. L. R. A. C. 75.

A kabuliyat passed by a tenant to his landlord is in this terms : "We have taken three filds for cultivation from you dar salne mate (year by year) on codition that we are to pay the assessment. We shall go on paying the assessment to Government so long as you give us the fields for cultivation. If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we shall restore possession of the fields to you as soon as you ask us to do so." Held that the words dar salne mate taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year, and hence required registration. Held also that the words "so long as you give us the filds for cultiviation" did not give the landlord power to resume possession whenever he chose but was only a usual and polite way of saying "so long as I am in fact your tenant', : Dhurabhai v. Mohanlal (1917) 41 Bom. 458 39 I.C. 625.

(3) A kabuliyat executed by a tenant is in these terms : "We shall be paying year after year Rs. 38 as rent for the said lands for each year beginning from the past Adi month. If we vacate the said garden, we shall pay off the rent due up to 30th Masi of such year, and deliver, the land to you. Whatever may be the year in which we vacate it, we shall not deliver possession of it to you in any other month than Masi." This is a lease from year to year and requires registration : Murugesa v. Chinnathambi (1901) 24 mad. 421.

For other instances of leases from year to year see notes, "Lease for one year to remain in force until a fresh lease is granted" below.

For any term exceeding one year.

Term.—The "term" of a lease for purposes of registration must be understood to mean the period for which the lessee is protected against dispossession at the will and pleasure of his lessor, or in other words, the length of time for which the lessee is entitled to continue to possession, provided he himself fulfils all the stipulated conditions (Munshi Lal v. The Notified Area of Barant (1914) 36 All. 176, 179, 22 I. C. 933).

Lease for a year with option of renewal to tenant.—Before the amendment of sec. 107 of the Transfer of Property Act by Act 6 of 1904 registration of an instrument of lease not exceeding one year was not necessary under the Transfer of Property Act, nor under the Registration Act whatever the rent reserved by the lease (Seetharama v. Bayanna (1894) 17 Mad. 275, 277). But a lease for a term exceeding one year has always required registration, however small the rent may be (Shaikh Omar v. Abdool (1868) 9 W.R. 425; Baij Nath v. Kundan Lal (1929) 27 All. L. J. 1134, ('29) A. A. 831). A lease for one year containing an option to the tenant to renew for a further period of one year or any other term is not a term exceeding one year, and does not require registration under this clause (Boyd v. Kreig (1890) 17 Cal. 548, dissenting from Bhobani v. Shibnath (1886) 13 Cal 113; Faizuddin v. Asrab Ali (1923) 37 Cal. L. J. 275; Yousaf v. Poleologo (1906) 8 Bom. L.R. 580; Radhika Prasad v. Ramsundar (1968) 1 Beng. L. R. A. C. 7, 9; Devidas v. Aluwalla Bros. (1932) 140 I.C. 681, ('32) A.S. 217. The leading case on the subject is Hand v. Hall ((1877) L. R. 2 Ex. Div. 355, on app. from (1877) 2 Ex. Div. 318) decided by the Court of Appeal in England in 1877. According to the law then in force a lease for a period exceeding three years required to be under seal, and if it was not under seal it was invalid. The question in that case was whether the lease, which was not under seal was a lease for a term exceeding three years. The lease was in these terms: "Hand agrees to let, and Hall agrees to take, the large room, etc., from 14th February next until the following mid-summer twelve months, and with right at end of that term for the tennat, by a month's previous notice, to remain on for three years and a half more." It was held that the option to Hall, the tenant, to renew the lease for three years and a half, did not make it a lease for a term exceeding three years and that the lease did not require to be under seal. Lord Carins said: "By this latter part of the agreement an option is given to the defendant, and must be exercised by him before it can be said that any interest has passed to him. It is a stipulation that at his option, on a notice given to the plaintiff, he shall not be disturbed for three years and a half. Whereas there is not anything to be done by the tenant in the first part of the agreement to create a demise, in the second part something has to be done by him before that part takes effect, and until that is done it is impossible to tell whether a tenancy shall come into force or not. I think, therefore, the it is absolutely necessary to divide the contract into two parts. I think the agreement is an actual demise, with a stipulation superadded, that if at his option the tenant gives the landlord a notice of his intention to remain, he shall have accepted by all the High Courts of India as one applicable to the determination of questions as to the term of leases arising under this clause.

Option to tenant to continue so long as he pays the rent.—In Hand v. Hall, cited in the preceeding paragraph, there was in the first instance a present demise for twelve months, and there was something to be done by the tenant before the renewal clause could operate, namely to give one month's previous notice to the landlord. But where nothing remains to be done by the tenant, no fresh document being required nor any notice having to be given, and the tenant is entitled to hold on so long as he continues to pay the stipulated rent or render

the stipulated service, the tenancy is one for a period exceeding one year, and the lease must be registered (Pool v. The Secretary of State (1886) Punj. Rec. No. 68; Sheo Gholam v. Buddree Nath (1872) 4 N. W. P. 36 ; Mania v. Lallubhai (1900) 2 Bom. L. R. 488; Karim Bakhsh v. Natha Singh (1921) 3 Lah. L. J. 14, 66 I.C. 904) But the writing must clearly show that the tenant is entitled to continue in occupation so long as the rent is paid; if it does not, the Court will not treat it as one creating a for more than a year.

Illustrations.

(1) A grants a lease to T in the following terms: "To-day, 1st January, 1915, I have given the shops on rent to Tajuddin at a rental of Rs. 3-8-0 per month, rent to be paid monthly. So long as Tajuddin occupies the shop, the rent shall not be raised nor lowered, nor shall I eject him. But in case of his refusal to pay the rent I shall have the right to turn him out." This is a tenancy for a period exceeding one year : Karim Bakhsh v. Natha Singh (1921) 3 Lah. L. J. 14, 66 I. C. 904.

(2) In January, 1906, A lets a hut to B at a monthly rent of eight annas with a provision for ejectment, if the rent be not paid. The lease also contains a provision that though the rent fixed is eight annas per month, B should pay Rs. 6 (the amount of rent for twelve months) at nimani (which corresponds with June) every year, Held that there was nothing in the lease which entitled the tenant to occupy the hut as long as he liked, and that the lease was not for a period exceeding one year and did not require registration: Attra v. Mangal (1921) 2 Lah. 300, 65 I. C, 254, ('22) A. L. 43, on app. from (1921) 3 Lah. L. J. 222, 60 I. C. 226, ('2I) A. L. 96.

(3) A executes a kabuliyat to B at an annual rent of Rs. 3. The writing contains this stipulation : "I do declare that I shall continue to pay the annual rent every year, and that if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court." Held that the lease did not contain any provision that so long as the rent continued to be paid, the landlord should not eject the tenant and that the lease was for at a term of one year only : Khayali v. Husain (1886) 8 All. 198.

(4) A kabuliyat is in the following terms : "Whereas I having taken land from Khairat Husain am building a shop thereon at my own cost, I promise and give it in writing that I will pay to Khairat Husain every month a rent of 3 annas. a month. In any month in which I shall fail to pay the rent, Khairat Husain will be competent to have the shop vacated by me." This is not a lease for more than a year. The part of the lease expressly providing for re-entry on non-payment of rent does not raise the inference that the lease is a lease in perpetuity . Khairat Husain v. Mahesri (1897) All. W. N. 69 ; Kashi Nath v, Abdur Rehman (1922) 20 All. L. J. 211, 65 I. C. 836, ('22) A. A. 54.

(5) A dastak, which merely allows a tenant to take possession of the land and to cultivate it, is not a lease for a term exceeding one year, and does not require registration : Ahmud v. Tohi (1910) 13 Cal. W. N. 267, 4 I. C. 511.

Lease for one year and thereafter at lessor's option.—An agreement of tenancy for one year certain, coupled with an expression on the tenant's part of readiness to hold the land longer at the same rent if the landlord should allow it, does not create in the tenant any interest extending beyond one year. At the end of the year it would depend entirely on the landlord whether the tenancy should be renewed or not. Such an agreement does bind the landlord to continue the tenant in occupation for more than one year, and it does not therefore require registration. At the close of the term the tenancy would be merely a monthly tenancy (Apu v. Narhari (1878) 3 Bom. 21 ; Jagiivandas v. Narayan (1884) 8 Bom. 493 ; Mors v. Tukaram (1868) 5 Bom. H. C. A. C. 92, 94 ; Mohunto Southo Prasad v. Rughoo (1875) 26 W. R. 98.

Illustrations.

(1) A kabuliyat executed by a tenant is as follows : "We undertake to cultivate the said land for the year 1872 as a rental of Rs. 25 which we agree to pay punctually. If you permit us to cultivte the land for another year, we will pay the same rent as settled for this year. If you choose to withdraw the land, we are not to object." This does not create a tenancy for a term exceeding one year, and the writing does not require registration : Apu v. Narhari (1878) 3 Bom. 21.

(2) A kabuliyat executed by a tenant is in these terms : "I have taken from you the land as described above, for cultivation from the year 1868. I will pay you for it 7 khandis of rice annully according to the custom of the village, I will continue to pay you rice annually, as stated above, sa long as you will keep the land in my possession." This does not create a tenancy for a term exceeding one year and writing does not require registration : Jagjivandas v. Narayan (1884) 8 Bom. 493.

Lease for one year or more with power to lesson to eject tenant at any time.—Where a person grants a lease to another at a fixer annual rent with a stipulation that the latter shall vacate the property when asked to do so by the former, the lease is not one even for a year, and it does not require registration (Khuda Bakhsh v. Sheo Din (1889) 8 All. 495 (15 days' notice) Muhammad v. Bakhtawar (1895) Punj. Rec. No. 70. (to vacate when required) ; Hanso v. Harnarain (1886) All. W. N. 115 (15 days' notice); Ratnasabhapathi v. Venkatacham (1891) 14 Mad 271 (to vacate when required) ; Intizam v. Ali Baksh (1911) 8 All. L. J. 609, 10 I. C. 314; Jivarj v. Atmarqm (1890) 14 Bom. 319 Narayan v. Shivshankardas (1932) 34 Bom. L. R. 959, 139 I. C. 258, ('31) A. B. 493. The same principle applies to a lease for any in indefinite period which can be terminated by the either party at the end of an month Umber Baldeo Singh (1915) Punj. Rec. No. 97, p. 389, at p. 392, 32 I.C. 35.

Illustration.

A grants a lease to B for 6 years on a specified yearly rent. The lease contains this stipulation : "And if the said Shaikh (lessor) wishes to have the land vacated within the said term, he shall first give us 15 days' notice, and we vacate it without objection." This does not create even the usual lease from month to month and it does not require registration : Khuda Bakhsh v. Sheo Din (1886) 8 All. 405.

Lease for one year to remain in force until a fresh lease is granted.—A lease for one year at a specified annual rent containing a provision that it shall remain in force until another lease is granted is a lease from year to year (Venkatachellam v. Audian (1881) 3 Mad. 358 ; Virammad v. Rungayyangar (1882) 4 Mad. 381. In such a case if no new lease is granted at the expiration of one year, tenant is entitled to continue in possession on the same terms without any further act being done on either side. But when a lease for a year provides that at the close of the year fresh settlement will be made, it is a lease for one year onls and does not require registration (Jugdesh v. Abedollah (1870) 14 W.R. 68.)

Lease for more than a year giving right of re-entry to lesror on treach of conditions—A lease for 30 years reserving a yearly rent is a lease for a term exceeding one year, though it may contain a covenant giving that lessor a right of re-entry in the event of a breach of conditions on the part of the lessee. Such a lease is also a lease "reserving a yearly rent" within the meaning of this clause, and requires registration (Munshi Lal v. The Notified Area of Barant (1914) 36 All. 176, 179 22 I C. 933.) It cannot be said of such a lease that it is terminable at the option of the lessor.

Lease for more than a year with power to lessor to reduce the term on payment of a sum of money.—A lease for more than a year is none the less a lease for term exceeding one year. because the full term for which it is granted may be reduced to one for less than a year on payment of a sum of money by the lessor (Buksh Ali v. Sreemutty Nubotara (1870) 13 W.R. 468.) It cannot be said of such a lease that it is terminable at the option of the lessor. There is something to be done by the lessor before he can reduce the term, namely, payment of a sum of money.

Lease for more than a year obliging lessee to buy the property if conditions of lease not performed.—A lease of a house for three years containing a covenant by the lessee that if he fails to execute the necessary repairs during the term of the lease, he shall purchase the property for Rs. 60, is a lease for a term exceeding one year, and requries registration; for the lessee may perform the conditions of the lease and thus continue in possession under the lease for more than one year (Sambayya v. Gangayya (1890) 13 Mad. 308.)

Lease for life of the lessee.—A lease for the life of the lessee is a lease for a term exceeding one year, as it entitles the lessee to hold for more than one year if he lives so long. It is not a lease terminable at the end of a year or at the option of the lessor. It therefore requires registration (Purshotam v. Nana (1894) 18 Bom. 109.

Lease in perpetuity.—A lease in perpetuity, being a lease for more than a year, must be registered (Agin Bindh v. Mohan Bikram (1903) 30 Cal. 20, 25; Sheikh Elahi v. Shekh Hukum (1913) 18 C. W. N. 38, 20 I. C. 907.)

Lease reserving a yearly rent.

Lease reserving a yearly rent.—A lease by which a yearly rent is reserved, as contemplated by this clause, must be one which on the proper construction of it creates a tenancy from year to year (b). If the lease reserves (Jivraj v. Atmaram (1890) 14 Bom. 319.)

a yearly rent, it must be registered though it provider the rent shall be payable by monthly (Charu v. Satya (1919) 23 641, 51 I. C. 415. or six-monthly (Ata Muhammad v. Shankardas (1925) 6 Lah. 319, 88 I.C. 872 ('25) A. L. 491. instalments.

Illustration

A kabuliyat executed by a tenant is in these terms : "I have this day hired from you your two houses at a rent of Rs. 18 per annum. I am to live therein so long as you will allow me to do so and pay the rent as mentioned above. When you will ask me to vacate, I will do so without dispute." The writing creates a tenancy at-will, although an annual rent is reserved : Jivraj v. Atmaram (1890) 14 Bom. 319. [This case belongs to the class of cases dealt with above under the head "Lease for one year or more with power to lessor to eject tenant at any time."

Proviso to cl. (d).

"The terms granted by which do not exceed five years."—Two conditions must be fulfilled before a lease can be exempted under this clause, the first is that the term must not exceed five years, and the second that the annual rent reserved must not exceed Rs. 50. The expression "the terms granted by which do not exceed five years" means "the terms granted by which are not for a definite period exceeding five years." If the lease is one for a definite period exceeding five years it does not come within the exemption. But it is within the exemption if it is not for a definite period exceeding five years and the annual rent reserved does not exceed fifty rupees. Thus a lease for one year with a provision that it should remain in force until the execution of a fresh lease is not a lease for a definite period exceeding five years, but is only one from year to year which may be put an end to at the end of the year (Virammal Rungayyangar (1882) 4 Mad. 381; Venkatachellam v. Audion (1881) 3 Mad. 358; Murugesa v. Chinnathambi (1901) 24 Mad. 421; Ranaswami v. Thirupathi (1904) 27 Mad. 439.

Annual rent not exceeding Rs. 50.—To fulfill this condition it is not necessary that an annual rent should be reserved. What is necessary is that if an annual rent is reserved, it should not exceed Rs. 50. Thus a lease for a term of 3 years which reservs no annual rent, but only provides for the paymet of a lump sum of Rs. 56-4 0 as rent for the whole period of 3 years, is within the exemption Venkatasami v. Suppa (1911) 34 Mad. 90, 6 I. C. 382, reversing (1910) 33 Mad 216, 4 I.C. 303.)

Cases governed by the Transfer of Property Act.—It was at one time held that leases falling under sec. 107 of the Transfer of Property Act were compulsorily registrable notwithstanding a Government notification issued under the proviso to sec. 17 (1) (d) of the Registration Act (Vairananda v. Miyakan (1898) 21 Mad. 109). but this decision has been superseded by sec. 5 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904), whereby a proviso was added to sec. 107 of the Transfer of Property Act. See para. "Leases under the Transfer of Property Act" on p. 63 above.

Notification issued before Registration Act of 1908.—A notification issued under the proviso in 1885 will be deemed to be in force even after the passing

of the Registration Act of 1908, by virtue of the provisions of sec. 24 of the General Clauses Act 10 of 1897, unless it is modified or cancelled by the Registration Act of 1908 (Hayari v. Tirbani (1914) 12 All. L. J. 792. 28 I.C. 577.

Miscellaneous cases relating to leases.

Tenancy at will.—A tenancy at will is where lands or tenements are let by one man to another, to hold at the will of the lessor ; in this case the lessee is called a tenant at will, because he has no certain or sure estate, for the lessor may put him out at any time he pleases. Either party may at any time determine a strict tenancy at will, although expressed to be held at the will of the lessor only, and the landlord may determine it by a demand of possession or otherwise without a previous formal notice (Woodfall, 21st ed., pp. 280-281).

Illustration.

A takes a lease of B's lands upon the following terms:—"I have taken the land for cultivation for the current year from you. I shall go on paying the assessment from year to year so long as I cultivate the lands, I shall deliver the said lands without any objection at any time you may ask me to vacate and deliver the same to you." The writing creates a tenancy at will: Pandu v. Shivshankardas (1929) 31 Bom. L. R. 335, 118 I.C. 702; Narayan v. Shivshankardas (1932) 34 Bom. L. R. 959, 139 I.C. 258, ('32) A.B. 493. See also Illustration under the heading "Lease reserving a yearly rent" on p. 69 above.

Relinquishment by tenant to land-holder.—An instrument by which a tenant in a zamindari, in consideration of the zamindar waiving his right to arrears of rent accrued due, relinquishes the land to him. requires registration under sec. 17 (1) (b), as it purports to extinguish the tenant's interest in the land (Rangaya v. Kameswara (1897) 20 Mad. 367).

Endorsement by landlord evidencing his assent to assignment of lease.—An endorsement by a landlord on the lease evidencing his assent to the assignment by the lessee of his interest in the lease does not create an interest in immoveable property within the meaning of sec. 17 (1) (b), and does not require registration (Chengiah v. Kalahasti (1910) 20 Mad. L. J. 555, 564, 6 I.C. 766).

Auction of right to a lease.—The acceptance of a bid at an auction of a farm of the rents of a village does not operate as an agreement of lease until a muchalka is executed. In the absence of a muchalka there is no agreement which requires registration (Dombru Panda v. Sri Ramchandra (1933) M.W.N. 818.)

Landlord's reversion.—See notes to sec. 17 (1) (b) under the same head, on p. 50 above.

Unregistered lease and compensation for use and occupation.—Though a landlord cannot recover rent under an unregistered lease which requires registration, he is entitled to sue for compensation for use and occupation of the land purported to be demised (Puroma v. Prollad (1869) 12 W. R. 289).

Variation of lease.—A lease may be varied in respect of its essential terms or it may be varied in respect of rent only. A document which varies the

essential terms of an existing lease, such as the amount of rent, the time of payment thereof, and the consequences of default, amounts to a fresh lease, and it must be registered as a lease (Lalit Mohan v. Gopali (1912) 39 Cal. 284, 297; 12 I.C. 723 [F. B.]; Biraj v. Kedar Nath (1908) 35 Cal. 1010, 1012: Mahomed Din v. Sardara (1934) 148 I.C. 558, ('34) A.L. 743). This is settled by the decision of the Privy Council in Durga Prasad Singh v. Rajendra Narain Singh ((1914) 40 I.A. 223, 41 Cal. 493, 91 I.C. 750) confirming a decision of the Calcutta High Court (Durga Prasad v. Rajendra Narain (1910) 37 Cal. 293, 302, 4 I.C. 713. See also Biraj v. Kedar Nath (1908) 35 Cal. 1010), that an agreement to reduce rent is inadmissible in evidence to vary the terms of the lease. The Calcutta High Court distinguished its previous decision in Satyesh Chunder v. Dhunpul Singh (1897) 24 Cal. 20 followed in Harda Prasad v. Ram Narain (1909) 11 Cal. L. J. 22, 2 I.C. 89) which appeared to take the opposite view on the ground that the agreement had been admitted by the lessor in previous suit. Doss, J., further observed; "If it were open to the parties to alter any of the terms or incidents of a lease by an unregistered instrument. it seems to me that the result would be capable of altering everyone of the terms of the lease by separate unregistered documents, so that all the incidents of the original lease would vanish, and the rights of the parties and the incidents of the lease would regulated entirely by unregistered documents. This inevitable consequence has been very forcibly emphasized by Bramwell. B., with reference to the analogous provisions in the Statute of Frauds in Sanderson v. Graves, (1875) L. R. 10 Ex. 234). where he said: "Unless a note in writing is necessary in every case of of alteration, it is required in none, so that in the name of alteralion, something wholly different might be established."

The Madras High Court held following Satyesh Chunder's case that an agreement varying the amount of rent did not require registration (Oboi v. Ramalinga (1899) 22 Mad, 217, 220.

But this was before the Privy Council decision in Durga Prashad's case and all the High Courts have held that registration is necessary of an agreement which reduces the rent of an existing registered lease. (Lalit Mohan v. Gopali Chuck (1912) 39 Cal. 284, 12 I.C. 723; Bogha v. Ram Lakhan (1917) 27 Cal, L.J. 107 41 I,C, 804; Dat v. Gopal (1916) 14 All L. J. 57, 34 I.C. 234; Rampadarath v, Sohrai (1919)4 Pat. L.J. 667, 672, 52 I.C. 20; Attar Chand Kapur & Sons v. (1929) 10 Lah. 685, 117 I.C. 240, ('29) A.L. 298.) So also in the case of an agreement which provides for the payment of an enhanced rent. (Bogha v. Ram Lakhan (1917) 27 Cal, L. J. 107, 41 I.C. 804; Attar Chand Kapur & Sons v. Chandu Lal (1929) 10 Lah. 685, 117, I.C. 240, ('29) A L. 291; Kedernath v, Surendro (1884) 9 Cal. 865, 868 does not seem to be good law.)

It May here be observed that if, whilst a tenant from year to year is in possession of lands under an agreement reserving a certain rent, he agrees with his landlord to pay an increased or reduced rent, this will not necessarily have the effect of creating a new tenency. (Doe d. Monck v. Geckie (1844) 5 Q.B. 841; Crowley v. Vitty (1852) 7 Ex. 319; Inchiquin (Lord) v. Lyons (1887) 20 L.R. Ir. 474.) But this does not affect the question of registration considered above; and the Calcutta High Court has held that a compromise varying the terms of a lease, though not itself a lease, would have required registration

but for the fact that it was embodied in a decree for rent. (Joynal v. Hyderali (1928) 55 Cal. 701, 111 I.C. 340. ('28) A.C. 441 followed in Shaila Bala v. Ganganarayan ('33) A.P. 457.

Specific performance of agrement to sale unregistered sale deed.—See note under sec. 49 under the same heading.

SEC. 17 (1)(e)—TRANSFER OF DECREE OR ORDER OR AWARD.

Sec. 17 (1) (e).—Transfer of decree or order or award.—Clause (e) is new. It was added by sec. 10 of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929). This clause provides that a transfer of a decree or order of a Court or of any award when such decree or order or award operates to create, declare, etc. any interest of the value of Rs. 100 and upwards in immoveable property, requires registration. Before the amendment there was a a conflict of opinion whether an assignment of a mortgage decree for Rs. 100 or upwards required registration under sec. 17 (1)(b). It was held by the High Court of Bombay that it did. the reason given being that the assignment gave the assignee the right to sell the immoveable property covered by the decree and the right to sell immoveable property was a right to or interest in such property. (Gopal v. Trimbak (1876) 1 Bom. 267.) It was also held by the same High Court that if the assignment was not registered, the assignee could not execute even that part of the decree which reserved liberty to the mortgagee to proceed against the person or other property of the mortgagor in the event of the net sale proceeds of the mortgaged property being insufficient to pay the mortagagee's claim in full. (Heptulla v. Mahomed (1909) II Bom. L R. 356, 2 I.C. 511.) On the other hand it was held by the High Courts of Calcutta. (Gous v. Khuwas (1896) 23 Cal. 450; Baij Nath v. Binoyendra (1901) 6 Cal. W. N. 5; Ram Ratan v. Jogesh Chandra (1907) 12 Cal. W, N. 625.) and Allahabad (Abdul Majid v, Muhammad (1890) 13 All. 89, 91; Mumtaz v. Shri Ram (1913) 35 All. 524. 21 I. C. 462), that such an assignment was not of any immoveable property, but of the decree itself, and the decree could in no sense be regarded as immoveable property, and further, that the assigment did not of itself create an interest in the property. The new clause (e) gives effect to the Bombay view.

SEC. 17 (2).

"Nothing in clauses (b) and (c) of sub-section (1) applies to."—By sec. 17 it is provided that the non-testamentary documents mentioned in cls, (b) and (c) must be registered. This is subject to the exceptions provided in sub-sec. (2) of sec. 17. Note that the documents mentioned in sub-sec. (2) are excepted from the operation of cls. (b) and (c) only, and not cl. (a) which relates to gifts or cl. (d) which relates to leases. The reason is that the documents enumerated in the various clauses of sub-sec. (2) come within the description of documets in cls. (b) and (c) only, and not within the description of documents in cls. (a) and (d) (Hemanta Kumari Debi v. Midnapur Zamindari Company (1914) 19 Cal. W. N. 347, 354, 28 I.C. 879; s.c. on appeal to P.C. (1921) 47 Cal.

485, 495, 46 I.A. 240, 245 246, 53 I.C. 534, ('19) A. PC. 79; Raju Balu v. Krishnarav (1878) 2 Bom. 273. 287; Malukchand v. Manilal (1904) 28 Bom, 365, 368.

SEC. 17 (2) (i)—COMPOSITION-DEEDS.

Earlier Registration Acts.—Composition-deeds were first exempted from registration by Act 20 of 1866.

Act 3 of 3 1877, sec. 17 (e).—This clause corresponds with cl. (e) of sec. 17 of Act 3 of 1877.)

Composition-deed.—A composition-deed, as defined in art. 22 of Sch. I to the Indian Stamp Act 2 of 1899. includes "any instrument executed by a debtor whereby he conveys his property for the benifit of his creditors, of whereby payment of a composition or dividend on their debts is secured to the creditors." It is not necessary that the creditors should have agreed to aecept less than the amount due them. It is sufficient if by the deed the debtor conveys his property for the benefit of his creditors. This definition has been held by the High Court of Bombay to apply to composition-deeds under this clause (Chandrashankar v. Bai Magan (1914) 38 Bom, 576, 24 I C. 730, dissenting from Shekh adam v. Chandrashankar (1912) 14 Bom. L. R. 506, 15 I.C. 850; Subbaraya v. Vythilinga (1892) 16 Mad 85,89.) Where trustees are appointed under a composition-deed, and the property si conveyed to them for the benefit of the creditors, the deed still retains its character ot a composition-deed, and does not require registration as a deed of trust under sec. 5 of the Indian Trusts Act 2 of 1882. (Malukchand v. Manilal (1904) 28 Bom. 364.) In a recent Madras case (Official Assignee of Madras v. Subba Rao ('31) A.M. 697.) a debtor entered into an agreement with his creditors in which every possible kind of arrangement was made, including a final residuary right of suit, in order to ensure payment in full to the creditors. It was held that such an agreement, which expressly contemplated payment in full to the creditors, was not a composition deed.

SEC. 17 (2) (ii) SHARES.

This clause corresponds with sec. 17 (e) of the Registration Act 3 of 1877. In first appeared in the Registration Act 20 of 1866.

SEC. 17 (2) (iii) DEBENTURES.

This clause correspoods with sec. 17 (ff) of the Registration Act 3 of 1877. It was first inserted by the Amending Act 7 of 1886, sec. 2.

Debentures creating an interest in immoveable property must be registered (Imperial Bank of India Ltd. v. Bengal National Bank (1930) 57 Cal. 328, 127 I.C. 760, ('30) A. C. 536).

SEC. 17 (2) (iv) TRANSFER OF DEBENTURES.

This clause corresponds with eec, 17 (g) of the Registration Act 3 of 1877. It first appeared in the Registration Act 20 of 1866.

S. 17 (2)(i-v)

Sec. 17 (2) (v)—DOCUMENT MERELY CREATING A RIGHT TO OBTAIN ANOTHER DOCUMENT.

Act 3 of 1877, sec. 17 (h).—This clause corresponds with sec. I7 (h) of the Registration Act 3 of 1877. The documents described in this clause were first exempted from registration by the Act of 1877 (Raju v. Krishnarav (1878) 2 Bom. 273. 282. The exemption did not appear in any of the earlier Registration Acts, namely Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871.)

Document merely creating a right to obtain another document,— This clause provides that a document not itself creating a right in immoveabl property of the value of Rs. 100 and upwards, but merely creating, a right to obtain another document which will, when executed, create any such right, need not be registered. An agreement for sale in the usual form acknowledging receipt of earnest, and providing for the execution of a regular sale-deed on payment of the balance of the purchase money, is a document of this kind : see the Explanation at the end of sub-sec. (2). The present clause, as stated above, did not appear in the Registration Acts of 1864, 1866 and 1871. It was introduced for the first time by sec. 17 of the Registration Act 3 of 1877 as cl. (h). To understand the history of this clause let us take an illustration based udon the facts of the Privy Council case of Fati Chand Sahu v. Lilambar Sing Das ((1871) 9 Beng. I. R. 433, 438, 14 M.I.A, 129. 16 W.R.P.C. 26.)

A executes a writing whereby he agrees to sell certain land to B for Rs. 22,500. B pays Rs. 7,500 as earnest. A acknowledges receipt of Rs. 7,500 in the writing itself, and agrees to execute a deed of sale of the land to B on payment of the balance. A fails to execute the sale-deed. B sues A for specific performance. The writing is not registered. Is it admissible in evidence, not being registered ?

Upon these facts it was held by the Judicial Committee that the document required registration under cls. (2) and (3) of the Registration Act 20 of 1866. corresponding with cls. (b) and (c) of the present section, and, not being registered, it was not admissible in evidence. Their Lordships said : "The Registration Act recently passed in India is extremely stringent. Their Lordships have, in the first place, no doubt whatever that the instrument in question is one which, by the 17th section of the Act, is required to be registered; that it is an instrument acknwledging the payment of the consideration-money for what was to be ulimately an absolute sale of the property in question, for what in equity did presently operate as a sale of the property. They latter observation refers to the principle of English law according to which a contract for sale of land operates in equity as a transfer of ownership from the vendor to the purchaser. It appears from the said observation as well as the observations of their Lordships in another case (Lala Chunilal v. Savaichand (1835) 5 W.R.P.C. 111.) that this principle of English law applied in their Lordships' opinion also in India with the result that the agreement for sale was regarded as an instrument itself creating an interest in immoveable property and also as an instrument acknowledging the receipt of consideration on account of the creation of such interest

within the meaning of cls. (2) and (3) of the Registration Act of 1866, corresponding with cls. (b) and (c) of the present section. As a result of this decision of the Privy Council the Courts of British India held that every argeement for sale of immoveable property of the value of Rs. 100 and upwards which acknowledged the receipt of earnest or of part-payment of the purchase money (Valaji v. Themas (1876) 1 Bom. 190, 194-195; Joy Ram v. Kalee (1873) 20 W.R. 291; Sreeath v. Nilkanto (1874) 22 W R. 309.) and every receipt, though not contained in an agreement, of earnest or of part-payment or full payment of the purchase-money (Waman v. Dhonda (1880) 4 Bom. 126, 137-138,-140-141.) required registration under sec. 13 of the Registration Act of 1864 and sec, 17 of the Registration Acts of 1866 and 1871.

But the law has altered since the enactment of sec. 17 (h) of the Registration Act 3 of 1877, which corresponds with the cl. (v). In discussing the reasons for the change Birdwood, J., said in Chuuilal v. Bomanji ((1884) 7 Bom. 310, 315.) as follows :—"The reasons for clause (h) were explained in the Legislative Council when the changes in the former law were under consideration. I refer to the debates in Council, not for the purpose of interpreting the present Act, which must be construed on a consideration of the languge actually used in it, but only to ascertain what, as a matter of fact, was the object which the Legislature had in view. In introducing the Bill, which was subsequently passed as Act III of 1877, Sir C. Hobhouse explained that, under the proposed addition to section 17, it would not be necessary to register an agreement to execute a conveyance of land. 'The agreement,' he remarked, would give the owner of it no absolute right to the land: and if, before he got his conveyance, another person took a conveyance and registered it, acting honestly, the agreement would be displaced.' And when certain amendments were moved, Mr. Coockrell said that the direct object of this provision was to save a person from having to register two deeds in relation to the same subject-matter, executed for the purpose of giving effect to a single transaction regarding it.' It appears, therefore, that the framers of the present Act intended that the registration of such a document as the bargain paper in the present case should not be compulsory. I think that effect has been given to that intention sufficiently, if not very clearly, by the language used in clause (h) of section 17 of Act III of 1877. A document is apparently within the exception if it does not 'itself,' by its express terms, create a certain interest in immoveable property, but expressiy contemplates the creation of that interest by a subsequent document. The exception seems to apply to a contract of sale and purchase, of which a Court of Equity would only under certain circumstances decree a specific performance. And the decision of the Privy Council in Fattechand's case cannot apparently now be held to govern such a case as the present."

It is clear from the proceedings of the Legislative Council referred to above that the framers of the Act did not adopt the view that an agreement for sale comprising a receipt of earnest or part-payment operated as a present transfer of the property. The Legislature in 1882 discarded the English doctrine of equitable ownership in the Transfer of Property Act, 1882, and the Indian Trusts Act, 1882. This clause is in accordance with the provisions of

sec. 54 of the Transfer of Property Act 4 of 1882 which declares that "a contract for the sale of immoveable property does not of itself create any interest in or charge on such property" (Sec. 13 of the Specific Relief Act I of 1877, passed in the same year as the Registration Act 3 of 1877 seems to follow the rule of English law. The result is that in cases governed by the Registration Act 3 of 1877 or by the present Act, an agreement for sale of immoveable property is exempted from registration, though it may contain an acknowledgment of the receipt of earnest or of part-payment of the purchase-money (Chunilal v. Bomanji (1883) 7 Bom. 310; Hormusji v. Keshav (1894) 18 Bom. 13; Shridhar v. Chintaman (1894) 18 Bom. 396; Patel Ranchod v. Bhikhabhai (1897) 21 Bom. 704; Sayad Mir v. Miya Ali (1914) 38 Bom. 707, 708, 28 I.C. 132; Sreegopal v. Ram Churn (1882) 8 Cal. 856, 858; Pertab Chunder v. Mohendranath (1890) 17 Cal. 291, 297, 16 I.A. 233; Hurnudan Singh v. Jawad Ali (1900) 27 Cal. 468; Partab Singh v. Karm Chand (1889) Punj. Rec. No. 184 [F. B]; Imam Bakhsh v. Karim Singh (1895) Punj. Rec. No 16; Sirja v. Nathu (1905) Punj. Rec. No. 174; Sharaf Ali v. Jagandar (1916) Punj. Rec. No. 98, p. 296, 37 I.C. 132; Chuttan Lal v. Mul Chand (1917) Punj. Rec. No. 18, p. 66, 44 I.C. 732; Indar Singh v. Munshi (1920) 1 Lah. 124, 126, 56 I.C, 272; Lachhman Das v. Bhoja Ram (1924) 6 Lah. L. J. 554. 84 I.C. 865, ('25) A. L 284; Inder Singh v. Dyee Singh (1926) 6 Lah. 447. 89 I.C. 602, ('25) A.L. 619).

There are, however, two decisions, both under the Registration Act of 1877, one of West J., in Burjorji v. Mancherji ((1881) 5 Bom 143) and the other of the Madras High Court in Ramasami v. Ramasami. ((1882) 5 Mad. 115. See also Adakalam v. Theethan (1889) 12 Mad. 505, 507) in which the Court took the same view of an agreement for sale as was done by the Privy Council in Fati Chand' s case. Both these decisions were prior to the judgment of Birdwood, J., in Chunilal's case. The principle of the decision in Chunilal's case was followed in India in a series of cases. In an appeal case, however from India (Dayal Singh v. Indar Singh (1926) 28 Bom. L.R. 1372, 53 I.A. 214, 98 I.C. 508, ('26) A PC 94). the Privy Council held that the effect of sub-sec. (6) (b) of sec. 55 of the Transfer of Property Act, 1882, was that a purchaser of land who had paid earnest money could not sue for specific performance of the contract, unless the contract was registered. The reason given was that in such a case the contract in itself created an interest in land, and consequently was not within the exception in sec. 17 (2)(v) of the Registration Act. This ruling was manifestly inconsistent with the practiee prevailing in India and it threatened to nullify the exemption contained in sec. 17 (2) (v). To remove doubts which were created by the Privy Council, the Explanation at the end of sub-sec. (2) was added by sec. 2 of the Indian Registration (Amendment) Act, 1927. The Explanation is retrospective (Nagarbashi Banik v. Meghnath Maishan (1931) 58 Cal. 449, 129 I.C. 839, ('3I) A.C. 171. so that a contract of sale of immoveable property does not require registration by reason only of the fact that it contains a recital of the payment of any earnest money or of the whole or any part of the purchase money. Such a contract falls within sec. 17 (2) (v), and suit will lie for speeific performance of the contract as it did before the Privy Council decision whether the contract was made

before or after the enactment of the Explanation. See note at p, 103, sec. 17 (2) Explanation—'Recital of payment of earnest money.

Illustrations.

(1) An agreement for sale is in these terms : "There is a house situated in—— Street. B has agreed to sell the house to C on condition of receiving Rs. 15,225 as the value thereof. And C has agreed to purchase the said house. The conditions thereof are as follows : The said C did at the time of executing this bargain-paper pay to the said B Rs. 1,000 as earnest money, the receipt of which sum the said B admits by this writing, On a deed of sale being made out, and on the said house being made over to C, the balance of Rs. 14, 225 is duly to be paid." The document does not itself create any interest in immoveable property, but creates merely a right to obtain another documents namely, a deed of sale. It falls within sec. 17 (2) (v), and does not require registration : Chunilal v. Bomby (1883) 7 Bom. 310.

(2) A document containing a promise to transfer a portion of property under litigation, if decreed in favour of the executant, comes within sec. 17 (2) (v), and does not require registration : Inder Singh v. Munshi (1920) 1 Lah. 124, 57 I. C. 272.

(3) An ikrar (agreement) to the effect that the tenants will sign and have registered kabuliyats at rents expressed in the ikrar fall within sec. 17 (2) (v) : Pertab Chunder v. Mohendranath (1890) 17 Cal. 291, 297, 16 I.A. 233, 238.

(4) By an agreement in writing A agrees to finance B to the extent of Rs. 15 lacs. The agreement provides that all stock in trade belonging to B shall be under hypothecation to A, and that B shall as soon as possible execute in favour of A a regular deed of mortgage of certain lands belonging to B to secure the loan. The agreement falls with sec. 17 (2) (v) and does not require registration : Sir Hukumchand v. Radha Kishen (1930) 32 Bom. L.R. 533, 123 I.C, 157, ('30) A. PC. 76.

Agreement of sale.—See notes, "Document merely creating a right to obtain another document," on p. 75 above.

Agreement of mortgage.—An agreement bya debtor to execute a mortgage of his immoveable property to his creditor does not itself create an interest in immoveable property, but merely creates a right to obtain a deed of mortgage from the debtor. Such an agreement falls within sec. 17 (2) (v), and does not require registration (Konchadi v. Shiva Rao (1905) 28 Mad. 54, 55 ; Meenakshisundara v. Rathnasami (1918) 41 Mad. 959, 976-977, 49 I.C. 291.) If, however, the agreement is intended to operate as a charge, it falls within sec. 17 (1) (b) and requires registration. Tirds v. Sadasingh (1923) 25 Bom. L.R. 313. 73 I.C. 296. ('23) A.B. 287.

Agreement to execute a release.—Such an agreement also comes within sec. 17 (2) (v), and does not require registration (Sree Raja Danta Looru v, Kurlapathi (1961) 30 Mad. L.J. 302, 306, 32 I.C. 941,)

S. 17 (2) (v)

Agreement for partition.—Such an agreement falls within sec. 17 (2) (v), and does not require registration (Rajangam Ayyar v. Rajangam Ayyar (1923) 46 Mad. 373, 50 I.C. 134, 69 I.C. 123, ('22) A. PC. 266 : Ramachandracharyulu v. Rangacharyulu (1926) 51 Mad. L.J. 418, 98 I.C. 39, ('26) A.M. 1117.)

Agreement recording a past transaction and providing for the making of a formal document.—Sub an agreement falls within sec. 17 (2) (v), and does not require registration (Narasimha Swami v. Venkatalingum (1927) 50 Mad. 687, 103 I.C. 302, ('27) A.M. 636)

Agreement to make a gift.—Sub-sec. (2) begins with "words, "nothing in clauses (b) and (c) shall apply to." It does not include cl. (a) which relates to gift. Therefore, an agreement to make a gift does not come under cl. (v) The reason why it is excluded seems to be that under sec. 25 (1) of the Indian Contract Act, 1872, a promise to make a gift is void for want of consideration unless it is in writing and registered, and is made on account of natural love and affection between parties standing in a near relation to each other.

Agreement to lease.—An agreement for lease may create a present demise or it may not. It has been held by the Privy Council in Hemanta Kumari Debi v. Midnapur Zamindari Company. (1919) 47 Cal. 485, 46 I.A. (240, 53 I.C. 534 on app, from s. c. in (1914) 19 Cal. W.N. 347, 28 I.C. 879.) that an agreement to lease is a "lease" within the meaning of sec. 2 (7), and requires registration as such only if it creates a present demise. It has also been held by Jenkins, C.J., in Panchanam v. Chandi Charan ((1910) 37 Cal. 808, 811, 6 I.C. 443.) that if an agreement to lease does not create a present demise, it is a document coming under cl. (v) of sub-sec, (2), In Pertab Chunder's case, cited as ill. (3) in the notes, "Document merely creating a right to obtain another document," on p. 75 above, the agreement was really one for a lease and it was held to come under cl. (v). In Hemanta Kumari Debi's case the Judicial Committee. though they approved of the decision Jenkins, C.J., did not refer to or rely on cl. (v) anywhere in their judgment. Sub-sec. (2) begins with the words "nothing in clauses (b) and (c) of sub-section (1) applies to" It excludes cl. (a) which relates to gifts and cl. (d) which relates to leases.

Hence it has been said that an agreement to grant a lease whether it creates a present demise or not does not come under cl. (v), and that this was overlooked by Jenkins, C.J., in his judgment in the above case (See Hemanta Kumari Debi v. Midnapur Zamindari Company (1914) 19 Cal. W.N. 347, at pp. 350-351, 28 I.C. 879. See also Rampadarath v. Sohrai (1919) 4 Pat. L.J. 667, 672, 52 1.C. 20, a lease under sec. 17 (2) (vi)). However that may be, it is clear that an agreement to lease which does not create a present demise is not a lease and is not subject to compulsory registration under clause (d) ; and as it does not declare or create an interest in the property it does not fall under clause (b).

Document itself creating a right in immoveable property.—Cl. (v) applies only to a document which does not itself create a right in immoveable property. It does not apply to a document which itself creates such a right. Documents of the latter class must be registered, if the right is of the value of Rs. 100 or upwards (Ramasami v. Ramasami (1882) 5 Mad. 115; Vani v. Bnai (1896) 20 Bom. 553 ; Parashram v. Ganpat (1897) 21 Bom. 533 ;

Lakshmamma v. Kameswara (1908) 13 Mad. 281 ; Perhmeshri v. Autar Singh (1921) 3 Lah. L. J. 173, 67 I. C. 144, ('21) A.L. 113). Whether a document belongs to the former class or the latter class depends upon the intention of the parties as expressed in the instrument (Mangamma v. Ramamma (1914) 37 Mad. 480, 482, 16 I.C. 587 ; Sheikh Elahi v. Sheikh Hukum (1913) 18 C.W.N. 38, 20 I.C. 907). If the document itself creates an interest in immoveable property, the fact that it contemplates the execution of another document will not exempt it from registration under this clause.

Illustrations.

(1) By a kararnama (agreement) made in June 1885 A delivers possession of a house to B in consideration of B undertaking to pay off the debts due by A's father amounting to Rs. 450. It is futher provided that if A failed to repay the amount by 1888, A should pass a deed of sale of the house to B. The document requires registration. It does not merely create a right to obtain another document. It creates as between the parties to it a charge in the nature of a mortgage, transfer of the house being contemporaneous with the execution of the document. The mention of an intention to execute a deed of sale can make no difference, as the document does not meerely create a right to demand another document. The document not being registered, B cannot claim the house under it : Vani v. Bani (1896) 20 Bom. 553.

(2) A passes a receipt to B in these terms : "Rs. 322-8-0 in all was due to us including Rs, 100 being the price of your two houses which are with us by reason of purchase ; you have paid us the said sum of Rs. 322-8-0. Now up-to-date nothing is due to us by you. Should there be any khata or bond, the same is to be deemed as cancelled. We have no longer ony interest remaining in any way in the aforesaid two houses. We shall execute to you a new sale-deed on a stamp (paper)." The document requires registration. It does not merely create a right to obtain another document. Farran, C J., said : "To us it appears to create or declare or extinguish at once a right to the property with a superadded covenant to execute a stamped document to the same effect—another sale-deed stamped—on a future occasion. Manifestly it require registraion." The document not being registered, cannot operate as a re-sale of the property from A to B : Parashram v. Genpat (1897) 21 Bom. 533, 535.

(3) A writing passed by A to his adoptive mother is in these terms : "As my father died, what we intend in regard to division of moveable and immoveable property which was acquired by him and which we hold up to the present day is as follows :—I have given you without any share to me the inam lands which were previously purchased in Vijaiswaram, the silver, and gold jewels of which you hold possession, as also the jewels which my father had... I have arranged that I shall hold without giving you any share in the silver and gold articles which are in my possession as also the seri lands which stand in my name and in that of Suraparazu ... It is aranged that after we divide the property above referred to and take possession of our respective shares, a document shall be drawn up and registered." The mother sues A upon this document to compel A to execute in her fa-

vour deeds of transfer of the moveable and immoveable properties. The document requires registration under sec. (17)(1)(b). It is not a document merely creating a right to obtain another document. The Court said : "The language of the document expressly declares existent rights in the plaintiff in immoveable property, and, though the last clause contemplates the execution of another deed, it is clear that that future deed was only necessary because there was a certain amount of property as to which immediate division was not possible :" Lakshmamma v. Kameswara (1890) 13 Mad. 281, 285.

Pre-emption.—There is a conflict of opinion whether an agreement providing that if one of the parties thereto wished to sell his property or his share of the property the other party should have a right to pre-empt, is a document which creates of itself any interest in immoveable property, or a document merely creating a right to obtain another document. It has been held in Madras (Ramasmi v. Chinnan (1901) 24 Mad. 449 461.) and Bombay (Tribhuvan v. Bai Khushal (1923) 47 Bom. 283 73 I.C. 666, ('23) A.B. 226.) that such an agreement does not stand on a higher footing than an agreement to sell immoveable property, and does not of itself create any interest in such property. On the other hand, it has been held by the High Court of Allahabad that is does of itself create an interest in immoveable property, and therefore, requires registration. (Kashi Kunbi v. Sumer Kunbi (1910) 32 All. 206, 5 I. C. 234). The Allahabad decision, it is submitted, is not correct.

Specific performance.—Sec. 17 (2) (v) provides that a document not itself creating a right in immoveable property of the value of Rs. 100 and upwards, but merely creating a right to obtain another document which will, when executed, create any such right, need not be registered. It has been seen in the preceding paragraph that when a document itself creates such a right in immoveable property, it is not excepted from registration by virtue of cl. (v) because it also contemplates the execution of another document. It was, however, held in the Bomby case of Burjorji v. Muncherji ((1881) 5 Bom. 143). and in earlier cases in Madras) Adakkalam v. Theethan (1889) 12 Mad. 505, 507; Nagappa v. Devu (1891) 14 Mad, 55; Mangamma v. Ramamma (1914) 37 Mad. 480, 16 I.C. 587). and Calcutta (The Bengal Banking Corporation v. Mackertick (1884) 10 Cal. 315), that although as creating a right in land such a document was not admissible in evidence. it might nevertheless be used for the purpose of obtaining specific performance. In later cases (Sanjib Chandra v. Santosh (1922) 49 Cal. 507, 69 I.C. 877, ('22) A.C. 436 (agreement to lease); Ramling v. Bhagwant (1926) 50 Bom. 334, 96 I.C. 334, ('26) A.B. 375 (sale); Satyanarayana v. Chinna Venkata Rao (1926) 49 Mad. 302, ('26) A.M. 530 (sale); Parmeshri v. Autar Singh (1921) 3 Lah. L.J. 173, 178, 67 I.C. 144, ('21) A.L. 113 ; Diwan Singh v. Garbachan Singh (1932) 137 I.C. 41, ('32) A.L. 276). however, it was held that a document which itself creates an interest in immoveable property of the value of Rs. 100 and upwards and is inadmissible for want of registration under sec. 49 cannot be admitted in evidence to prove the agreement to transfer said to be

contained therein. These decisions were approved by the Privy Council in Skinner v. Skinner (1929) 56 I.A. 363. 33 C.W.N. 1150 119 I.C. 633, ('29) A. PC. 269, explained in Sohan Lal v. Atal Nath (1933) 31 All. L.J. 1584, ('33) A.A. 846 and in Jagannadha v. Lakshminarayana (1930) 58 Mad. L.J. 688, 125 I.C. 549, ('30) A,M· 683). The Privy Council said that to allow a document which does itself create an interest in immoveable property to be used as a foundation for a suit for specific performance appears to their Loadships to be tittle more than an evasion of the Act. In this case the vendor sued for specific performance and for possession. But if possession has been given, this statement of the law must be read subject to the doetrine of part performance.

Section 27A inserted in the Specific Relief Act, 1877, by the amending Act, 21 of 1929, expressly allows a lease which is inadmissible for want of registration to be used as evidence of the contract to lease in a suit for specific performance. This section also supersedes Sanjib Chandra v, Santosh Kumar (1922) 49 Cal. 507, 69 I.C. 877, ('22) A,C. 436). where Rankin, C.J. held that an agreement of lease inadmissible as evidence of a lease for want of registration ɔould not be put in evidence in a suit for specific performance although the lessee had taken possession under the agreement. But the proviso added to sec. 49 by the same amending Act seems to go further and enacts (apparently irresgective of part performance) that an unregistered document affecting immoveable property though required to be registerd may be admitred as evidence of a contract in a suit for specific performance. This provision seems to supersede Shinner v. Skinner (Shinner v. Skiener (1929) 56 I.A. 363, 119 I.C. 633, ('29) A. PC. 269). which was decided three months earlier.

Unregistered agreement for sale followeg by attachment of the property.—A agrees to sell certain immoveable property to B. The agreement is not registered. Before the conveyance is executed, C, a creditor of A, attaches the property, and the property is sold in execution to D. Held. that the unregistered agreement did not create any interest in the property so as to entitle B to priority over D. The agreement merely entitled B to call for a conveyance of thc property (Hormasji v. Keshav (1894) 18 Bom. 13. See also Chunilal v. Sauaichand (1835) 5 W. R. P. C. III). See notes to this clause, "Document merely creating a right to obtain another document," on p. 75 above.

Mortgage by conditional sale.—See note under sec. 17 (1) (b) "Whether a transaction amounts to a mortgage by conditional sale or to a sale with a right of re-purchase,"

SEC. 17 (2) (vi)—DECREES AND AWARDS.

Registration of decrees and awards under the earlier Registration Act.—The Registration Act 16 of 1864 and Act 20 of 1866 contained specific provision for the registration of decrees and orders of Court. By sec. 43 of the 1864 and sec, 41 of the Act of 1866 it was provided that when any Civil Court should by a decree or order declare any document relating to immoveable property, which should have been registered, to be invalid, or when any Civil Court

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should pass a decree or order affecting any such document, and such last mentioned decree or order should create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immoveable property to which it relates, such Court should cause a memorandum of the decree or order to be sent to the Registrar within whose district the document was originally registered. These sections were not re-enacted in the Registration Act 8 of 1871. But when the Specific Relief Act was passed in 1877, it was provided by sec. 39 of that Act that where an instrument is adjudged void or voidable under that section and ordered to be delivered up and cancelled, the Court should send a copy of its decree, if the instrument has been registered under the Registration Act, to the officer in whose office the instrument has been so registered, and such officer should note on the copy of the instrument contained in his books the fact of its cancellation.

By sec. 45 of the Act of 1864 and sec. 42 of the Act of 1866 it was provided that when any Civil Court should, by a decree or order create, declare, transfer, limit or extinguish any right, title, or interest in or to any immoveable property situate in any part of British India in which the Act operated, such Court should cause a memorandum of the said decree or order to be sent to the Registrar within whose district the property is situate. These sections also were not re-enacted in the Registration Act 8 of 1871.

By sec. 16 of the Act of 1864 "any decree or order of Court or private award of arbitration," was optionally registrable. When we turn to sec. 18 of the Act of 1866 we find in the list given in that section of documents of which registration is optional only "awards relating to immoveable property." The list does not include "decrees and orders of Courts." In sec. 18, however, of the Act of 1871, we again find not only "awards relating to immoveable property," but "certified copies of decrees and orders of Courts," amongst documents which are optionally registrable.

When we come to the Registration Act 3 of 1877, we find that "decrees and orders of Courts and awards" are excepted from registration by sec. 17 (i). Further, they are not expressly mentioned in sec. 18 which relates to documents of which registration is optional. There is, however, no doubt that these documents may be optionally registered under sec. 18. They must be taken to be included in the expression "all other documents not required by sec. 17 to be registered," in cl. (f) of sec. 18. A person claiming under a decree or order has to present only a "copy" of the decree or order for registration as appears from the provisions of sec. 32 of that Act. The provisions of secs. 17, 18 and 32 of Act 3 of 1877 relating to decrees, orders and awards were re-enacted in the present Registration Act without any change. Important alterations, however, were made in sec. 17 (2) (vi) of the present Act by sec. 10 of the Transfer Property (Amendment) Supplementary Act. 1929, which are noted in the next note, "Amendment of cl. (v)."

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In a Bombay case (Purmanandas v. Vallabdas (1887) 11 Bom. 506, 512-513.) the question arose whether a decree affecting immoveable property of the value of upwards of Rs. 100 was compulsorily registrable under sec. 17 of the Registration Act 8 of 1871. It was held that it was not. In the course of his judgment Sargent, C.J., said : "The application [for execution] was refused on the ground that the decree was an instrument which created an interest in immoveable property, and could not be given in evidence for want of registration. Provision was made for the registration of such a decree by the Court, which passed it, by sec. 42 of Act XX of 1866, but that section was not re enacted in Act VIII of 1871. If, therefore, it required registration under the Act, it could only be as an 'executed instrument' under section 17, a description which is scarcely applicable to a decree. Moreover, it is to be remarked that section 32 deals only with the presentation of a 'copy' of a decree, the optional registration of which is expressly provided for by section 18 of the Act. Upon the true construction of the Act of 1871 read in connection with Act XX of 1866, such a decree, we are strongly inclined to think, did not fall within section 17. But in any view of that Act, Act III of 1877, which is now in force, expressly excludes such decrees, whether passed before or after the Act, from the operation of compulsory registration, and the decree is, therefore, now admissible in evidence."

Amendment of cl. (vi).—The clause as amended provides that nothing in clauses (b) and (c) of sub-sec. (1) applies to any decree or order except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding. The amendment was made by sec. 10 of the Transfer of Property (Amendment) Supplementary Act, 1929. The clause as it stood before the amendment provided that nothing in clauses (b) and (c) of sub-sec. (1) applied to any decree or order of a Court and any award. The effect of the amendment is that—

(i) An award is no longer excepted from registration (Pahlumal v. Naraindas (1933) 143 I.C. 863. ('33) A. S. 151 F. B.)

(ii) Consent decrees and orders comprising immoveable property other than that which is the subject-matter of the suit are no longer excepted from registration. They would have to be registered as "instruments" within sec. 17 (1) (b), though neither a decree nor an order of a Court can properly be called an "instrument". It would have been better if a clause had been added in sub-sec. (1) expressly mentioning consent-decrees and awards.

As to consent decrees it was held by the Privy Council in Hemanta Kumari Debi v. Midnapur Zamindari Co. ((1919) 46 I.A. 240. 47 Cal. 485, 53 I.C. 534.) that they did not require registration even if they comprised immoveable property other than that which was the subject-matter of the suit. The object of the amendment is to supersede the Privy Council decision to that extent.

As to awards, see note below, "Award."

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Hemanta Kumari's case superseded.—The facts of Hemanta Kumanri's case referred to in the last paragraph are as follows : A suit for the possession of land X was settled by a compromise. The terms of the compromise were that the defendant should retain possession land X on payment of rent, and that if the plaintiff succeeded in another suit she had filed against Government for land Y she should give a lease of land Y to the defendant. The compromise was recorded and all its terms were embodied in the decree which was passed. The plaintiff succeeded in the suit for land Y, but refused to give a lease of it to the defendant. The question was whether the consent decree which was not registered was admissible in evidence in a suit for specific performance of the agreement embodied in it. The Privy Council held :

(a) that as the agreement did not effect a present demise of the land it was not an agreement to lease within the meaning of sec 2(7) of the Act and did not require registation under sec. 17 (1)(d),

(b) that the agreement purported to create a contingent interest in the land and required registration under sec. 17 (1) (b), but being in corporated in a decree it was exempted from registration by sec. 17 (2) (vi),

(c) that sec. 17 (2) (vi) extends to the whole of a consent decree and not merely to the operative part of it which comprises the land in suit.

There was a dictum of the Privy Council in Pranal's case (Pranal Anni v. Lakshmi Anni (1899) 26 I.A. 101, 22 Mad. 508.) that suggested that a compromise embracing lands not in suit, if incorporated in a consent decree, would not require registration. There had been some uncertainty as to the effect of this dictum (See the observations of Tekchand, J., in Kasturi Lal v. Goverdhan Dass (1934) 15 Lah 282, 149 I.C. 300, ('34) A.L 138. Also Chelemanna v. Zama Rao (1913) 36 Mad. 46, 121 I.C. 317. and Raja Venkalappa v. Raja Thimma (1914) 27 Mad. L J. 656, 27 I.C. 379, overruled by Pooruanayi v. Kundron (1920) 43 Mad. 688, 58 I.C. 554 F.B.) but Hemanta Kumari's case made it clear that registration was not necessary even when the consent decree comprises lands outside the scope of the suit. The amendment made in clause (yi) supersedes Hemanta Kumari's case as from the 1st April 1930 The proposition in (c) above is no longer law and from and after that date if a consent decree comprises land which was not the subject of the suit, public notice of its contents must be given by registration.

Any decree.—The words of the clause are "any decree or order of a Court" and not "any final decree or order of a Court." The exemption is not restricted to decrees which have become final and conclusive, but includes within its purview decrees which have been set aside wholly or in part in appeal or review or have become otherwise inoperative (Walaiti Ram v. Shadi Ram (1934) A.L. 721; Rajah of Kalahasti v. Venkatappa (1928) 109 I.C. 872, ('28) A.M. 713 F.B.)

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Decree operating to create a gift.—Reading the opening words of sub-sec. (2), namely, "Nothing in clauses (b) and (c) of sub-sec. (1) applies to" with this clause, it is clear that all decrees and orders are not excluded from compulsory registration but only those which partake of the character of the documents mentioned in clauses (b) and (c) of sub-sec. (1). Thus a decree or order by which partition is effected of immoveable property of the value of Rs. 100 and upwards is not compulsorily registrable, the transaction being one to which clause (b) of the section applies; and this is so whether the is so whether the decree was passed before or after this Act (Purmanandas v. Valabhdas (1887) 11 Bom. 506, 513.) But a decree or order which purports to effect a gift of immoveable property is compulsorily registrable as gifts fall under clause (a) of sub sec. (1).

Decree operating to create a lease.—A lease is not within the exception contained in sec 17 (2) (vi). The opening words of sub-sec. (2) are confined only to documents falling within clauses (b) and (c) of sub-sec. (1) and they do not apply to leases which fall within clause (d) of that sub section. The result is that a consent decree purporting to create a lease requires registration under sec. 17 (1) (d), and is not excepted from registration by clause (vi). The saving clause has no application to the case of a lease. Thus where by the terms of solenama (compromise), on which a decree was founded, the plaintiff, ordinary raiyat, stipulated with the defendant who was his dar-raiyat that the latter would continue to hold the land in suit as his under-raiyat at an enhanced rent from generation to generation, it was held that the solenama created a new lease, and that it was not operative as a lease unless it was registered under sec. 17 (1) (d). The fact that the lease was embodied in a decree did not make it any the more operative as a lease, because sec. 17 (2) (vi) excepts documents falling within clause (d) of sub-sec. (1) of this section (Nazar Ali v. Indra Kumar (1929) 56 Cal. 427, 118 I.C. 895, ('29) A.C. 462; Hemanta Kumari Debi v. Midnapur Zamindari Co. (1920) 47 Cal. 485. 46 I.A. 240, 53 I.C. 534; Rajani Kanta v. Raj Kumari (1927) 31 C. W. N. 1099, 104 I.C. 812, ('27) A.C. 913; Janakinath v. Mahendra-narayan (1930) 57 Cal. 775 126 I.C. 550, ('30) A.C. 94; Attar Chand v. Chandu Lal (1929) 10 Lah. 685, 117 I. C. 240. ('29) A.L. 291; Sarat Chandra Das v. Sarojini (1922) 27 Cal. W.N. 897, 79 I.C. 257, ('24) A.C. 135: Char, Chandra v. Sambhu Nath (1918) 3 Pat. L.J. 255, 46 I.C. 358; Rampadarath Singh v. Sohrai Koeri (1919) 4 Pat. L. J. 667, 52 I.C. 20; Sachindra Mohan v. Ramjash (1932) 11 Pat. 98, 136 I.C. 54, ('32) A P. 97.) It has been held that where a howla right of a tenant was the subject-matter of a litigation and a decree was passed in terms of solenamahs which recognised the howla right as a pre-existing right, the decree did not require registration (Jogesh Chandra v. Beharilal Mitra (1934) 59 Cal. L. J. 328, ('34) A. C. 799.)

Judicial proceedings.—The Privy Council has repeatedly laid it down as a broad general principle that documents which form part of judicial proceedings do not require registration.

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In Bindesri Naik v. Gangasaran ((1898) 25 I. A. 9, 15, 20 All. 171: Raghubans Singh v. Mahabir Singh (1905) 28 All. 78; Robert Skinner v. Mrs. James Shinner (1915) P.R. 91, 31 I.C. 537; Charu Chandra Mitra v. Sambhu Nath Pandey (1918) 3 Pat. L. J. 255, 46 I.C. 358; Kasturi Lal v. Goverdhan Dass (1934) 15 Lah. 282, 149 I.C. 300, ('34) A.L. 128; Harichand v. Maghimal (1917) P.R. 78, 40 I.C. 675) the suit was for possession on the ground that previous proceedings had completed a foreclosure. The mortgagors pleaded that the decree had been satisfied by the payments they had made. The question was whether these payments had satisfied the decree and this depended upon whether the mortgagors were liable to pay post diem interest. In the course of the foreclosure proceedings the mortgagors had presented incidental petitions praying for further time. These petitions were with the consent of the mortgagors applying for fereclosure granted and filed with the foreclosure record. In each of these petitions the mortgagors had included post diem interest in calculating the amount due under the mortgage. The mortgagees relied on these admissions and the mortgagors contended that the petitions were not admissible in evidence for want of registration. The Privy Council held that the mortgagees were entitled to post diem interest by the terms of the mortgage and that it was not necessary to rely upon the admissions made in the course of the forclosure proceedings. But their Lordships added that having heard counsel fully upon the point of registration they thought it right to add that "they are satisfied that the provisions of section 17 of the (Registration) Act do not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or of orders made by the Court".

In Pranal Annee v. Lakshmi Annee ((1899) 26 I. A. 101, 22 Mad. 508) a suit had been filed by reversionary heirs for lands which were in the possession of the daughter's daughter of the deceased. Some lands in which the plaintiffs had sold their interest in order to finance the litigation were not included in the suit. The suit was settled by a razinama to which was annexed a schedule descriptive of the lands. The lands in suit were in schedules A to C and the lands excluded from the suit were in schedule D. By the razinama each party to a half share in the schedule A to C lands. On the same date as the razinama the parties executed another document called an agreement of union by which the schedule D lands were also divided in equal shares. The parties each took possession of a half share of all the lands. Subsequently the reversionary heirs sued the daughter's daughter for a half share of the schedule D lands. The daughter's daughter claimed under the razinama and agreement of union, neither of which were registered. As to the razinama their Lordships said : "The razinamah in so far as it was submitted to and was acted upon judicially by the learned judge, was in itself a step of judicial procedure not requiring registration; and any order pronounced in terms of it constituted res judicata, binding upon both the parties to this appeal, who gaveetheir consent to it". The razinama only referred to the schedule D land by way of remark and did not declare title to it and the Judges order made no reference to these lands. The title to the schedule D lands was declared in the agreement of union which was not submitted to the Judge. The Pirvy

Council therefore held that as it had not been registered its stipulations were ineffectual to create any right title or interest in the schedule D lands. But their Lordships further observed : "If the parties, after agreeing to settle the suit of 1885 on on the footing that they were each to take a half-share of the lands involved in that suit, and also a half-share of the lands now in dispute. had informed the learned judge that these were the terms of the compromise, and had invited him, by reason of such compromise, to dispose of the conclusions of the suit of 1885, their Lordships see no reason to doubt that the order of the learned judge, if it had referred to or narrated these terms of compromise would have been judicial evidence, available to the appellant, that the respondents had agreed to transfer to her the moiety of land now in dispute".

Lastly in Hemanta Kumari Debi v. Midnapur Zamindari Co. ((1919) 46 I.A. 240, 47 Cal. 485, 53 I.C. 534) where a decree was passed in terms of a compromise, the Privy Council held that as the decree incorporated the terms of the agreement of compromise, registration of the agreement was unnecessary.

Even before Bindeshri's case the Madras High Court had held that a compromise which recited an oral agreement of charge on immoveable property was in the nature of preliminary contract intended to be perfected by another document, as its intention was, not to itself create a charge, but to obtain a a decree (Appasami v. Manikam (1885) 9 Mad. 103). Again in a Punjab case (Sardar Amar Singh v. Baswa Mal (1885) P. R. 51) execution proceedings on an instalment decree on a bond were compromised, the arrangement being that the decree holder should give time and that the judgment debtor should secure payment by a hypothecation of his jagheer income. The Court held that the compromise did not require registration as the arrangement only become complete on the Court's approval.

Judicial proceedings and the amendment of clause (vi).– How far the amendment of clause (vi) impinges upon the principle that judicial proceedings are exempt from registration is a question that has not yet been fully discussed in the decided cases. As to decrees other than consent decrees the law remains as it was. But as to consent decrees the principle yields to the express enactment requiring registration of consent decrees if they comprise immoveable property other than that which is the subject-matter of the suit. The application of the principle generally arises in the case of compromises and will be considered in the succeeding paragraphs.

Petition of compromise may only be a recital.—A petition of compromise may only be a statement for the information of the Court that certain terms have been agreed upon accompanied with a request to dismiss the suit or to pass a decree in terms of the settlement. In such cases it is merely a recital of a fact and no question of registration arises. The petition in Varatha Pillai v. Jeevarathammal ((1919) 46 I.A. 285, 43 Mad. 244, 53 I.C. 901) was a petition of this nature. A dispute in mutation proceeding was settled by an oral gift on the 8th October. A petition was presented on the 10th October informing the

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Collector of the gift having been made. There was no question of the petition requiring registration but the Privy Council held that under sec. 91 of the Indian Evidence Act the petition could not be used even as evidence of the gift having been made. Another instance is the Punjab case of Prabh Dayal v. Gurmukh ((1902) P. R. 98.) An execution proceeding was dismissed on a petition presented to the Court stating that the matter had been settled by a mortgage. The Court held that the petition did not require registration as it was 'merely a recital of a contract independently entered into'. In this case, as oral mortgages are valid in the Punjab, the Court held that sec. 91 of the Indian Evidence Act was no bar to the petition being admitted as evidence of the mortgage. Other instances of petitions which are more recitals occur in the undernoted cases (Ram Gopal v. Tulshi Ram (1929) 51 All. 79, ('28) A. A. 641; Baldeo Singh v. Udal Singh (1921) 43 All. 1, 58 I.C. 732; Pitambar v. Uddhub (1907) 12 Cal. W. N. 59; Wazir Ali v. Asa Ram (1894) P.R. 95; Khair-ul-nissa v. Bahadur Ali (1906) P.R. 27; Murli Dhar v. Gobind Ram (1914) P.R. 20.)

Petition of compromise may only be a document described in s. 17 (1).—A petition of compromise may, however, be the only writing embodying the terms of the agreement. It may be the agreement of compromise reduced to the form of a document as a formal record of the arrangement. In that case if it 'affects' land it may be hit by sec. 17(1). An instance of such a petition is that in Hemanta Kumari v. Midnapur Zamindari Co. ((1919) 46 I.A. 240. 47 Cal. 485, 53 I.C. 534.) where terms of the agreement which declared a right to retain possession of the lands in suit and a contingent right to a lease of other lands were embodied in the petition of compromise.

As to petitions of compromise of this class the question arises how far is it exempt from registration as being part of a judicial proceeding. It will be convenient to consider the law as it was before the amendment of cl. (vi), and as it is since the amendment.

Petition of Compromise.—How far exempt before the amendment.—Before Hemanta Kumari's case it was supposed that if the compromise incorporated in a decree related to lands outside the scope of the suit as well as to lands within the suit it required registration and could not affect the title to lands within the suit it required registraion and could not affect the title to lands outside the suit (Chelamanna v. Rama Rao (1913) 36 Mad. 46. 12 I.C. 317; Rajah Venkalappa v. Rajah Thimma (1914) 27 Mad. L.J. 656, 27 I.C. 379.) But after Hemanta Kumari's case these decisions were overruled by a Full Bench decision of the Madras High Court (Poorvanayi v. Kundron (1920) 43 Mad. 688. 58 I.C. 554 F.B.) The propositions deducible from the decided cases were :—

(a) if the compromise is incorporated in the decree the petition does not require registration even though it comprises land outside the scope of the suit (Hemanta Kumari v. Midnapur Zamindari Co. (1919) 46 I.A. 240, 47 Cal. 485, 53 I.C. 534; Sashi Bhusan v. Hari Narain (1921) 48 Cal. 1059, 66 I.C. 705, ('21) A.C. 202; Raghubans v. Mahabir (1905)

28 All. 78; Gobinda v. Dwarka Nath (1908) 35 Cal. 837; Natesa v. Vengu (1910) 33 Mad. 102, 3 I,C. 701; Sankarvelu v. Muthuswamy (1915) 29 Mad. L.J. 779. 31 I.C. 260; Bisseswar v. Mahadeo (1916) 1 Pat. L.J. 208, 36 I.C. 290; Kuru v. Tejo (1918) 3 Pat. L.J. 43, 43 I.C. 288 ; Charu Chandra v. Sambhu Nath (1918) 3 Pat. L.J. 255, 46 I.C. 358; Sabitri v. Sari (1933) 19 Pat. 359, 145 I. C. I, ('33) A. P. 306; Manekchand v. Ganeshlal (1933) 35 Bom. L.R. 588, 145 I.C. 582; ('33) A.B. 298.

(b) If the compromise includes land outsides the scope of the suit and that part is not embodied in thc decree, the petition as to land outside the suit requires registration (Pranal Anni v. Lakshmi Anni (1899) 26 I. A. 101, 22 Mad. 508; Hari v. Nirod (1921) 33 Cal. L.J. 437, 438, 61 I. C. 687, ('21) A. C. 383.)

(c) if the compromise relates only to the lands in suit and part of it is not embodied in the decree, that part must be registerd (Patha v. Esup (1906) 29 Mad. 365; Kashi v. Sumen (1910) 32 All. 206, 5 I. C. 234.)

(d) if the compromise is not embodied in the decree it must be registered Muthayya v. Venkataratanam (1902) 25 Mad. 553; Deoki v. Kala (1887) P, R. 76; Ghulam v. Ghulam (1923) 4 Lah, 263, 75 I. C. 461, ('23) A.L. 581; Sheo Prasad v. Nawal Kishore (1929) 27 All. L.J. 487, 116 I.C. 871.)

All these propositions may be summarized in the general statement that the compromise is exempt from rcgistration only so far as it is acted upon or is covered by the decree. The compromise may embody a transaction of gift or lease and in that case the decree based upon it would require registration See note "Decree operating to create a gift" and note "Decree operating to create a lease." The registered decree would be sufficient evidence of the gift or lease and there would be no necessity to fall back on the compromise. In the suit in which the petition was presented there would be no necessity to register the petition of compromise for it would be part of a judicial proceeding. The question of registration of the petition could only arise if the decree were not registered and it became necessary to use the petition of compromise as evidence of the gift or lease in an independent proceeding. In such a case, it is submitted that if the petition of compromise were not registered sec. 49 would be a bar to its use as an instrument of lease or as evidence of a gift or lease.

Petition of Compromise.—How far exempt after the amendment. -Since the amendment of clause (vi) a consent decree comprising lands outside the scope of the suit must be registered. Such consent decrees therefore stand on the same footing as decrees operating to creat a lease or a gift. But it is submitted that even though the decree must be registered the compromise leading up to the decree is still part of a judicial proceeding and does not require registration in the suit in which it is filed. In Sabitri v. Savi (Sabitri v. Savi (1933) 12 Pat. 359, 601, 145 I.C. I, ('33) A. P. 306) the learned Judges said : "It is inconceivable that the

legislature exempted a compromise decree from registration provided the compromise is within the scope of the suit, but intended that the compromise petition itself should require registration." It is equally inconceivable that the legislature directed the decree to be registered when it went beyond the scope of the suit, and intended that the compromise petition should also be registered. The registered decree is sufficient evidence of the transaction and there is no occasion to fall back upon the compromise petition. This might occur if the decree were not registered and it were sought to use the petition in some independent proceeding. In such a case it is submitted that sec. 49 would be a bar to the petition being used as the transaction or as evidence of the transaction. In Sabitri v. Savi (12 Pat. 359, 603, supra) the learned Judges pointed out that there is a distinction between a petition being used in the Court in which it is presented and its being subsequently used in another Court for the purpose of proving the right.

Embodied in the decree.—It is not necessary that the decree should repeat the terms of the compromise. The decree may merely say "suit decreed in terms of the compromise', (Jagadish v. Rasik (1925) 30 Cal. W.N. 307, 96 I.C. 753, ('26) A.C. 666), or "Parties have compromised ; in accordance with the terms of the compromise the suit dismissed". In such cases the terms of the compromise must be deemed to be incorporated in the decree (Jai Lagi v. Alliance Bank of Simla (1930) 12 Lah. L.J. 113, 128 I.C. 300, ('30) A.L. 855 ; Madhub v. Munshi (1932) 135 I.C. 203, ('32) A.L. 24). Where the Court does not refer to the compromise in its decree, the compromise, although mentioned to the Court. cannot be deemed to be embodied in the decree (Official Assignee of Madras v. Subba Rab ('34) A. M. 697.

Petition of compromise in execution proceedings.—The same principles apply to petitions of compromise in execution proceedings. Some of the cases cited were compromises filed in execution proceedings (Sardar Amer Sing v. Baswa Mal (1885) P.R. 51: Prabh Dayal v Gurmukh (1902) P. R. 98: Poorvanayi v. Kundron (1920) P. R. 98; Poorvanayi v. Kundrom (1920) 43 Mad. 688, 58 I.C. 554 F. B.) The Allahabad case of Surju Prasad v. Bawani (1879). 2 All 481.) is a good illustration of the present law. In execution of a money decree the land of the judgment debtor A was attached. A sold the land to B who objected to the attachment. A compromise was come to by which B was allowed to remain in possession of the land and B promised to pay the decretal debt and hypothecated the land to secure payment. The compromise petition was filed and the execution application and the objection were both dismissed. In a subsequent proceeding to enforce the hypothecation it was held that the petition was not admissible for want of registration. It will be observed that the petition was admitted in the execution proceeding though not registered but as it referred to land outside the scope of the decree under execution it could not be referred to in a subsequent proceeding as an instrument of hypothecation.

Petition of compromise in mutation proceedings.—A petition of compromise filed in a mutation proceeding in a revenue Court may only be a statement giving information to the Court of an already completed transaction or it may

be a formal record of the arrangement entered into by the parties. In the former case no question of registration arises (Satrohan Lai v. Nageshar Prasad (1916) 35 I.C. 770; Ram Gopal v. Tulshi Ram (1929) 61 All. 79, ('28) A.A. 641; Gharib Rai v. Mukh Lal (1928) 50 All. 31, 102 I.C. 902. ('27) A. A. 616 Bakhtawar v. Sunder Lal (1926) 48 All. 213, 90 I. C. 992. ('26) A. A. 173; Balde Singh v. Udal Singh (1921) 43 All. 1, 58 I. C. 732. ('21) A. A, 248; Bhagat v, Madho Prasad ('34) A. O. 462) In the latter case if it a document described in sec. 17 (1) it requires registration even though it be a record of a family arrangement (Ram Gopal v. Tulshi Ram (1929) 51 All. 79, ('28) A. A. 641; Msst. Bhagawn Dei v. Shib Singh (1830) 126 I. C. 345. ('30) A. A. 341; Rustam Ali v. Mssi. Gowra (1911) 33 All. 109.) for a family arragement though not a transfer of title is a declaration of title. In two cases however the Allahabad High Court held that such a petition of compromise was exempt because it was a family arrangement (Kokla v. Piari Lal (1913) 33 All. 502, 21 I. C. 29; Daya Shankar v. Hub Lal (1915) 37 All. 105, 27 I. C. 497.) In the case cited above the question whether such a petition when acted upon by the Court was exempt as part of a judicial proceeding was not considered. On this point there is a conflict of decisions. The Allahabad High Court held in one case (Baldeo Singh v. Udal Singh (1921) 43 All. 1, 58 I. C. 732.) that the petition was a step of judicial procedure and in another that it was not (Jagrani v. Bisheshar (1916) 38 All. 366, 35 I.C. 701.). The Chief Court of Oudh holds that the petition is exempt as a judicial proceeeding (Trilcki Nath v. Ram Manorath (1932) 7 Luck. 32, 132 I.C. 537, ('3I) A.O. 296; Sitla Baksh v. Jang Bahadur (1933) 8 Luck. 694, I45 1.C. 805, ('33) A. O. 347.) relying on a dictum of the Privy Council that proceedings in mutation eases if not judicial are at any rate quasi judicial (Sadik Husain Khan v. Hashim Ali (1916) 43 I. A. 212, 38 All. 627, 36 I.C. 104.)

Petition of compromise in testamentary proceedings.—The principles governing petitions of compromise filed in civil suits apply also to those filed in testamentary proceeding.) A applies for probate of a will, B files a caveat. Subsequently A and B present a petition to the Court stating that they have compromised the suit and that A and B should be equally entitled to certain immoveable porperty of the value of Rs. 500. No order is made on the petition, the Court saying that it cannot act on it. and probate it directed to be issued to A. The petition is not registered, B then sues A claiming a moiety of the property. The petition. not being registered, is inadmissible in evidence to prove B's claim, having regard to sec. 49 of the Act. (Kali Charan v. Ram Chandra (1903) 30 Cal. 785.)

Petition of compromise in criminal proceedings.—The principle of exemption of documents which are part of judicial proceedings connot be applied to criminal proceedings, for a criminal Court has no jurisdiction to make orders declaring title to land. In a calcutta case (Biraj v. Kedar Nath (1908) 35 Cal. 1010.) A in criminal proceedings which he had instituted against B filed a petition with drawing the proceeding as the dispute had been compromised. The terms of the compromise were stated in the petition and were that A should allow B to

remain in possession of the land in dispute for a period of nine years at a specified rent and that the razinama should be treated as lease. The complaint was withdrawn and subsequently A sued B for the rent. Maclean. C. J. held that the petition being unregistered was not admissible in evidence as a lease. The learned Chief Justice added that "if this petition had been filed in a civil proceeding and the petition had been followed by an order or decree, which embodied, directly or indirectly, its terms, then it would not have been necessary to have had it registered,") This judgment shows that the principle of Bindeshri's case has no application to criminal proceedings ; but the judge omitted to notice that a decree embodying a lease is not exempt from registration. In a case from Oudh (Jawahir v. Mata Din (1934) 148 I.C. 867, ('34) A O 116) a compromise filed in a criminal proceeding was admitted in evidence though unregistered as the value of the property was less than Rs. 100. The applicability of Bindeshri's case was not considered.

Security bond under C. P. C., O. 41, r. 5,—A security bond under O. 41. r. 5 of the Code of Civil Procedure hypothecating immoveable property of the surety does not require registration (Kasturi Lal v. Goverdhan Das (1934) 15 Lah. 282, 149 I.C. 300, ('34) A.L. 138 F.B. overruling Lahore Spinning & Weaving Mills Co. v. Uttam Chand (1919) P.R. 122 53 I.C. 463 ; Jayappa v. Shivangowda (1928) 52 Bom. 72, 107 I.C. 710, ('28) A.B. 42. This is on the principle that proceedings of Courts do not require registration. See note "Judicial proceedings" at p. 88. It makes no difference that the terms of the bond are not embodied in the order of the Court, for the rights under the bond only come into existence when the Court accepts the bond (15 Lah, 282, supra.) This principle was overlooked in a contrary decision of the Madras High Court (Nagaruru v. Tungatur (1908) 31 Mad. 330.

Assignment of security bond under C. P. C., O. 32, r. 16.—An assignment by the Court of a security bond under O. 32, r. 16 of the Code of Civil Procedure for the purpose of realization by suit is merely an order of the Court and does not require registration (Ram Saran v. Yudhistir Prasad (1931) 53 All. 786, 133 I.C. 904. ('31) A.A. 389)

Assignment of mortgage decree.—See notes under the same head to sec. 17 (1) (b) on p. 47 above.

Award.—Sec. 17 (2) (vi) as amended provides that nothing in clauses (b) and (c) of sub-sec, (1) applies to any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit. The amendment was made by sec. 10 of the Transfer of Property (Amendment) Supplementary Act, 1929. The clause as it stood before the amendment provided that nothing in clauses (b) and (c) of sub-sec. (1) applies to any decree or order of a Court and any award.

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The effect of the amendment is that an award which embodies a transaction under s. 17 (1) (b) or (c) is no longer exempt from registration. Such an award must be registered and is invalid if not registered. If application is made to the Court to file it, the Court must reject it for want of registration (Bachchan Lal v. Narottam Datt (1932) 30 All. L.J. 1090, 143 I.C. 423, ('33) A.A. 59 ; Jitendra Nath v. Nagendra Nath ('34) A.C. 815.) In a Peshawar case such an award was held not require registration because it was subsequently embodied in a decree (Hukam Chand v. Lobinda Ram (1933) 146 I.C. 1084, ('33) A Pesh. 83.) It is submitted that this is wrong, for the award was not made in a judicial proceeding. An award requires registration if it is made under the Arbitration Act or if it is made without the intervention of the Court under Schedule II, para. 20 of the Civil Procedure Code. But an award made on a reference by the Court under para. 1 of Schedule II in a suit, or under para. 17 on an agreement to refer is part of a judicial proceeding and would, it is submitted, be exempt under the rule in Bindeshri's case See Jitendra Nath De v. Nagendra Nath ('34) A.C. 815.)

In cases decided before the amendment of clause (vi) it was held that an award is none the less an award because the parties have signed it in token of (Wazir Ali v. Mahbud Ali (1917) P.R. 10, 22 I.C. 412; Yemnaua v. Reganshidappa (1927) 29 Bom. L.R. 297, 101 I.C. 351, ('27) A.B. 656, also Msst. Jasoda v. Punit Singh (1934) 146 I.C. 937, ('34) A.P. 48 but the report does not disclose the date of the award.) or because the parties had agreed to its terms before the award was made (Wazir Ali v. Mahbub Ali (1917) P.R. 10, 22 I.C. 412; Tara Kanta v. Raj Kishori (1910) 13 Cal. L.J. 158, 6 I.C. 361.)

SEC. 17 (2) (xi)—RECEIPTS FOR MORTGAGE CLAIM.

Earlier enactments.—This clause corresponds with cl. (n) of sec. 17 of Act 3 of 1877. Cl. (n) was inserted in that section by Act 7 of 1886,

Receipt for payment of money due under a mortgage.—This clause did not occur in sec. 17 of the Registration Act 3 of 1877 as originally passed. It was inserted for the first time in that section as cl. (n) by the Amending Act 7 of 1886. Before the amendment, the only clause which could apply to receipts for payment of money due under mortgages was cl. (c) of sub-sec. (1) of the present section. There were several decisions under that clause relating to such receipts. The object of the amendment was to supersede the decisions of the Allahabad High Court in Dalip Singh v. Durga Prasad ((1877) 1 All. 442.) and Imdad Husain v. Tasadduk Husain ((1884) 6 All. 335.) It was held in those cases that a mere receipt for payment of money due under a mortgage required registration under cl. (c), though it did not in itself purport to limit or extinguish the mortgagee's interest in the mortgaged property. The reason given was that payment of money due under a mortgage, whether it was payment of the whole or part of the mortgage-debt, extinguished ipso facto the mortgagee's interest in the pro-

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perty to the extent of such payment. It was also held in those cases that such payment was "payment of consideration on account of the limitation or extinction" of the mortgagee's right within the meaning of cl. (c). But even before the Amending Act the decision in Durga Prasad ((1877) I All. 442.) was dissented from by the High Court of Madras in Venkayyar v. Venkatasubbayyar ((1881) 3 Mad, 53.) and by the High Court of Bombay in Shidlingapa v. Chanbasapa ((1880) 4 Bom, 235.) and it as eventually overruled by a Full Bench of the Allahbad High Court in Jiwan Ali Beg v. Basa Mal ((1886) 9 All. 108 [F.B,]) decided in 1886. In Jiwan Ali's case it was held that neither an endorsement on a mortgage-deed acknowledging the payment of the whole or any part to the mortgage-debt nor any other receipt for payment of money due under a mortgage, limited or extinguished the mortgagee's interest in the mortgaged property, unless the endorsement or receipt purported on the face of it to limit or extinguish such interest. In other words, that a bare receipt for payment of money due under a mortgage did not carry with it any limitation or extinction of the mortgagee's interest in the property. Such a receipt, as held in the Bombay case above referred to, only modified the account between the mortgagor and mortgagee, and it did not therefore require registration, and was admissible in evidence to show the state of the mortgage account (Shidlingapa v. Chenbasapa (1880) 4 Bom. 235, 238.) In the same case it was also held that mere payment of a mortgage-debt, whether it was payment of the whole or a part thereof, could not be said to be "payment of consideration on account of the limitation or extinction" of the mortgagee's interest in the property. The reason given was that the term "consideration" in cl. (c) implied that the person himself to whom the money was paid [that is, the mortgagee] limited or extinguished his interest in the property in consideration of such payment, whereas such limitation or extinction (if there could be said to be any) as resulted from the payment on account of the mortgage-debt was the legal consequence of such payment, and not the act of the mortgagee ((1880) 4 Bom. 235, 238, supra; Venkayyar v. Venktasaubbayyar (1881) 3 Mad. 53; Sheikh Gugunfar v. Mahomed (1873) 20 W.R. 334, 336.)

The present clause is in conformity with the decision of the Full Bench in Jiwan All Beg v. Basa Mal ((1886) 9 All. 108, 114, where the earlier cases are reviewed.) It does not contain the word "consideration" which occurs in cl. (c), and on which an additional argument was based by Sargent, C.J., in the Bombay case referred to above in support of the view that a simple receipt for payment of money due under a mortgage did not require consideration. The only test under the present clause is whether the receipt purports to extinguish the mortgage. If it does, it requires registration, but not otherwise. But it is not clear whether the extinction should be of the whole of the mortgage security. Suppose two properties A and B are mortgaged ro secure payment of Rs. 1,000 and the mortgagor pays Rs. 400, and obtains a receipt from the mortgagee in these terms : " I hereby acknowledge payment of Rs. 400, part of the mortgage-debt, and release property A from the mortgage." Does the receipt require registration under this clause ? If the case were governed by cl. (c), the receipt

would require registration as limiting the mortgagee's interest in the mortgaged properties, or as extinguishing his interest in its entirety in one of the mortgaged properties. It is submitted that the receipt must be registered under the present clause also, as it purports to extinguish the mortgage on one of the properties in its entirety. Suppose now that there is only one property mortgaged to secure payment of Rs. 500, and the mortgagor pays Rs. 200, and obtains a receipt from the mortgagee in these terms: "I hereby acknowledge payment of Rs. 200, and agree that the property shall henceforth stand charged with payment of Rs. 300 only and interest." If the case were governed by cl. (c), the receipt would require registration as limiting the mortgagee's interest in the property. This seems to follow from the decisions is Shidlingapa v. Chenbasapa (1880) 4 Bom 235). and Jiwan Ali Beg's case referred to above (Jiwan Ali v. Basa Mal (1886) 9 All. 108 [F.B.]. Uuder the present clause, it is submitted, the receipt does not require registration as it does not purport to extinguish the entire mortgage. This view is supported by the decision in Sri Ram v. Kesri Mal (1896) 18 All. 338), but it is opposed to the decision in Gobardhan v. Jadunath ((1913) 35 All. 202, 19 I.C. 449. The latter decision, it is submitted, is not correct.

The result is that a receipt for payment of money due under a mortgage does not require registration under this clause, if it does not purports to extinguish the mortgage (Jiwan Ali Beg v. Basa Mal (1886) 9 All. 108; Shidlingapa v. Chenbasapa (1880) 4 Bom. 235; Venkayyar v. Venkatasubbayyar (1881) 3 Mad. 53; Gopalswami v. Kalyana (1925) 48 Mad. L.J. 155, 85 I.C. 433, ('25) A.M. 348, distinguishing Lakshmana v. Chenchuramayya (1917) 34 Mad. L.J, 79, 44 I.C. 132; Pranballa Saha v. Bhagaban Chanfra (1933) 37 Cal. W.N. 424, 145 I.C. 657). But it does require registration, if it purports to extinguish the mortgage (Gobardhan v. Jadunath (1913) 35 All. 202, 19 I.C. 449 [not good law): Mahamad Kasam v. Ranu (1907) 9 Bom. L R. 254 ; Nand Lal v. Gurditta (1902) Punj. Rec, No. 99: Jwala Prasad v Mohan Lal (1926) 48 All. 705, 97 I.C. 162, ('26) A A. 693). The present clause does not refer to the extinction of the mortgage debt but to the extinction of the mortgage itself, Extinction of the mortgage-debt does not ipso facto extinguish the mortgage.

It follows from what is stated above that a receipt which merely shows the state of account between the mortgagor and mortgagee does not require registration (Shidlingapa v. Chenbasapa (1880) 4 Bom. 235, 238.) Nor does a receipt which purports merely to be a settlement of the mortgage-debt between the mortgagor and mortgagee (Lakshman v. Damodar (1900) 24 Bom. 609; Uppalakandi v. Kunnam (1896) 19 Mad. 288; Sasi Bushan v. Ram Chandra Das (1931) 35 Cal. W.N. 861, I35 I.C. 871, ('31) A.C. 136.) A receipt whieh purports to show that what was really agreed upon between the parties was simple and not compound interest does not require registration (Kailash v. Sheikh Chennu (1915) 42 Cal. 546, 30 I.C 804.) It has been held that a document whereby a usufructuary mortgagee admits that the mortgage debt has been satisfied out of the usufruct and restores the land to the mortgagor's possession does not require registration (Rajani Kanta v. Ali Naoz (1929)

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56 Cal. 910, 122 I.C. 193, ('30) A.C. 79) but this seems to be a case on the border line. In a Rangoon case (U Tha Daung v. Ma Cho (1930) 8 Rang. 257, 126 I. C. 218, ('30) A.R. 277) a document was executed by the heir of the deceased mortgagee which purported to give credit to the mortgagor for a part of the principal and interest in consideration of the mortgagor paying all expenses in connection with the litigation relating to the estate of the deceased mortgagee. It was held that the document did not require registration the Court observing that there was a clear distinction between the discharge of a debt and the extinguishment of a mortgage though one may be the result of the other. In an Allahabad case (Gobardhan v. Jadunath (1913) 35 All. 202, 19 I.C, 449). The receipt is not set forth in the report. It is not clear whether the words "against the mortgaged property" in the last paragraph on p. 203 appeared in the receipt) it was held by the High Court of Allahabad that a receipt whereby the mortgagee gave up a part of the principal and interest in consideration of services rendered by the mortgagor to him required registration, the reason given being that the receipt purported to extingush the mortgage to the extent of a considerable portion of the mortgage-debt. This decision, it is submitted, is not correct. The receipt did not extinguish the mortgage, that is, the whole mortgage. The words of cl. (xi) are "extinguish the mortgage," not extingush the mortgage in whole or in part (See Sri Ram v. Kesri (1896) 18 All. 338, 340.) Moreover, it is inconsistent with the decision in Kailash v. Sheikh Chennu (1915) 42 Cal. 546, 30 I.C. 804,

Illustrations.

(a) A receipt endorsed on a mortgage-bond by the mortgagee runs in these terms: "Paid on the 21st December 1881, Rs. 3,500" (part of the mortgage-debt). The receipt does not require registration: Jiwan Ali Beg v. Basa Mal (1886) 9 All. 108.

(b) A receipt passed by a mortgagee to the mortgagor is in these terms : "I have this day received payment from you of Rs. 350 for principal and interest on account of the mortgage-debt. I have excused payment of balance of interest. Nothing remains due under the mortgage." The receipt does not require registration. It does not on the face of it purport to extinguish the mortgage : Neelamani v. Sukaduvu (1920) 43 Mad. 803, 806, 65 I.C. 255 ; Seshayya v. Subbamma (1898) 8 Mad. L.J. 269; Hari Narain v. Kusum (1910) 37 Cal. 589, 594-595, 6 I.C. 159 ; Suppan Chetti v. Yegnanarayana (1932) 136 I,C. 317, ('32) A.M. 141. See ill. (e) below.

(c) A receipt passed by a mortgagee to the mortgagor runs in these terms: "I have received Rs. 500 in full satisfaction of the mortgage-debt, and I will return the title-deeds to you." The receipt requires registration as it purports to extinguish the mortgage : Jwala Prasad v. Mohan Lal (1926) 48 All 705, 97 I.C. 162, ('26) A.A. 693.

(d) An endorsement made by mortgagee on a mortgage-deed releasing the mortgaged property in consideration of a cash payment of Rs. 300 requires registration : Parasharampant v. Rama (1910) 34 Bom. 202, 4 I.C. 588.

(e) A receipt passed by a mortgagee to the mortgagor is in these terms : "The mortgage-bond is returned. No money remains due. The receipt requires registration as it purports to extinguish the mortgage : Jwala Prasad v. Mohan Lal (1326) 48 All. 705, 97 I.C. 162, ('26) A.A. 693, dissenting from Piari Lal v. Makhan (1912) 34 All. 528, 16 I.C. 179 ; Asanuddin Monda v. Asmatulla (1932) 36 Cal. W.N. 738, 142 I.C. 517, ('33) A.C. 198.

(f) A passes a receipt to B in these terms : "You shall take this as a receipt for the discharge of the hypothecation deed." The High Court of Madras has held that the receipt, though it may operate to extinguish the mortgage, does not on the face of it purport to extinguish it, and does not therefore require registration : Gopalaewami v. Kalyana (1925) 48 Mad. L.J. 155, 85 I.C. 433, ('25) A.M. 447.

Co-mortgagees.—A mortgages his property to B and C to secure payment of Rs. 500, the shares of B and C in the loan being equal. A then pays off B, and takes an unregistered receipt from him releasing the mortgaged property to the extent of his one-half share. A then sells the property to C. B sues C to recover his one-half share of the mortgage-debt. C tenders the receipt in evidence to show that B's interest in the mortgage has been extinguished by the payment. The question is whether the receipt, being unregistered, is admissible in evidence. It was held by the High Court of Bombay in a case decided before the Amending Act 7 of 1886, that the receipt, being unregistered is not admissible in evidence (Ramapa v. Umanna (1883) 7 Bom. 123.) On the other hand, is has been held by the High Court of Allahabad in a case decided under the present clause that the receipt, not purporting to extinguish the entire mortgage, but only a part thereof, is admissible in evidence though unregistered (Sri Ram v. Kesri (1896) 18 All. 338.) It will be observed that in both the eases the contest was between a mortgagee on the one hand and the co-mortgagee who had purchased the equity of redemption of the mortgagor on the other. Such being the case, the receipt, though it required registration before the amendment, does not require registration under the present clause. It is not clear whether if the contest had been between the two mortgagees and one of them sought to rely on the receipt to show that the interest of the other in the property had ceased, the receipt would have been admitted in evidence if unregistered. We are inclined to think that it could not.

Part payment of mortgage-debt by a person not a party to the mortgage.—A receipt passed by a mortgagee to a person not a party to the mortgage for payment made by the latter on account of the mortgage-debt, whereby the mortgagee releases part of the mortgaged property from liability under the mortgage, does not require registration. The reason is that such a receipt does not operate as a release as between the parties to the mortgage (Gurdial v. Jauhri (1885) 7 All. 820 ; Ganga Bakhsh v. Jagannath (1905) 27 All. 305.

S. 17 (1) (XII).

Illustration.

A mortgages two properties X and Y to B to secure payment of Rs. 1,500 lent by B to A. A then executes a second mortgage of property X to C. C pays Rs. 700 to B, and obtains a receipt from B in these terms : "Received on account of the release of property X from C." Subsequently B sues A and C on his mortgage asking for a sale both the mortgaged properties. C tenders the receipt in evidence to prove payment of Rs. 700 to B and to prove also that B is not entitled to sell property X. The receipt does not require registration, and it is admissible in evidence : Gurdial v. Jauhri, (1885) 7 All. 820.

Oral Evidence.—See notes to sec. 17 (1) (c) under the same head, on p. 62 above.

SEC. 17 (1) (XII)—CERTIFICATE OF SALE,

Certificate of sale.—This clase corresponds with cl. (o) of sec. 17 of the Registration Act 3 of 1877. It was inserted in that section by the Amending Act 7 of 1888, and it was to be construed as if it had been inserted by Act 12 of 1879. Before that enactment there was a conflict of decisions whether a certificate of sale required registration, it being held in some cases that it did (Srinivasa v. Seshayyangar (1881) 3 Mad. 37 (F. B.); Kanahia Lal v. Kali Din (1879) 2 All. 392, 393; Padu v. Rakhamai (1873) 10 Bom. H. C. 435; Harkisandas v. Bai Icha (1879) 4 Bom 155.) and in others that it did not (Fakirchand v. Kahandas (1866) 3 Bom. H.C.A.C. 167; Masarat-un-nessa v. Adit Ram (1883) 5 All. 568 [F. B.]; Prokash Chunder v. Tarachand (1882) 9 Cal. 82 [F. B.]) The amendment gave effect to the latter decisions. Sec, 89 (2) of the Act provides for the filing of copies of certificates of sals granted under O. 21. r, 94, of the Code of Civil Procedure by the registering officer in Book No. 1. Sec, Sec, 89 (4) provides for the filing of copies of certificates of sale granted by Revenue Officers. A certificate granted by a Collector of sale of surplus lands acqnired by Government under the Land Acquisition Act, is exempt from from registration under this clause (Sarat Chandra v. Jatindranath (1908) 35 Cal. 614.

SEC. 17 (2) EXPLANATION—RECITAL OF PAYMENT OE EARNEST MONEY.

This Explanation is new. It was added by sec. 2 of the Indian Registration (Amendment) Act, 1927. The Explanation says that the document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such a document contains a recital of the payment of any earnest money or of the whole or of any part of the purchase money. The Explanation supersedes the decision of the Privy Council in Dayal Singh v. Indar Singh ((1926) 53 I. A. 214, 98 I. C. 508, ('26) A. PC. 94, followed in Ningappa v. Gyanaji (1927) 51 Bom. 231, 101 I. C. 155. ('27) A.B. 157. It was

held in that case that where an agreement for the sale of immovale property aeknowledged the receipt of Rs. 1,000. part of the purchase price paid by the buyer as earnest money, and the buyer sued the seller for specific performance, the agreement required registration under sec. 17 (1) (b) inasmuch as the buyer was entitled to a charge upon the property in respect of the earnest money under sec. 55 (6) (b). This decision was at variance with a long series of decisions (See Sangawa v. Huchangowda (1924) 48 Bom. 166, 83 I. C. 533, ('24) A.B. 174) in which it was held that such an agreement fell under sec, 17 (2) (v) and that it did not require registration. Moreover, it was not brought to the notice of the Privy Cauncil that the Transfer of Property Act did not apply in the province in which the case arose (See in this connection Lakhmidas & Co. v. Sir D. J. Tata (1927) 51 Bom. 247, 101 I. C. 229, ('27) A.B. 195). The Explanation is retrospective and has been applied in subsequent cases (Nagarbashi Banik v. Meghnathan Maishan (1931) 58 Cal. 449, 129 I.C. 839, ('31) A.C. 171; Changa Singh v. Gajjan Singh (1932) 135 I.C. 669, ('32) A.L. 95; Bansidhar v. Sampat Kumar Singh (1927) 49 All 806, 103 I.C. 417, ('27) A.A. 287; Madirazu v Somu (1930) 53 Mad. 750, 125 I.C. 539, ('30) A.M. 683; Abdul Latif Mian v. Debi Mahton (1934) 15 P.L.T. 443, ('34) A. P. 495).

SEC. 17 (3)—AUTHORITY TO ADOPT.

Authority to adopt. - Written authorities to adopt as on, not conferred by a will, were made compulsorily registrable for the first time by Act 8 of 1871, if they were executed after January 1, 1872. The object of the enactment was to provide a safeguard against fraud. As regards an authority to adopt conferred by a will, it was thought that wills were generally subject to the probate test, and that it was not therefore necessary that such an authority should be made compulsorily registrable. Hence authorities to adopt conferred by will have been expressly excepted from registration (Bhasha v. Indar (1888) 16 Cal. 556, 16 I.A. 53; Bachoo v. Khushaldas (1902) 4 Bom. L. R. 883, 885-886).

Whether a written authority to adopt is testamentary or non-testamentary is a question of construction in each case. A writing is not necessarily testamentary because the executant chooses to call it a will. If the writing amounts to a present authority to adopt, that is an authority which may be exercised at any time after its execution, it is a non-testamentary instrument, and requires registration, though the executant may have described it as a will (Jagannatha Bheema Deo v. Kunja Behri Deo (1921) 48 I. A. 482, 44 Mad. 773, 64 I.C. 458, ('22) A. PC. 162.) The fact that the writing also contains directions for the guardianship of the adopted son or for delivering possession of the property to him does not necessarily constitute it a will (1921) 48 I.A. 482, 44 Mad, 773, 64, I.C. 458, ('22) A. PC. 162, supra ; Soma Sundara v. Durrisami (1903) 27 Mad. 30).

Ss. 17—20

A Hindu who had not attained his majority so as to be competent to make a will executed a document purporting to dispose of his property; it also conferred authority to adopt, which he was of an age to do validly. The document was registered as a will, but it was not presented for registration by any person who was entitled under sec, 40 to present an authority to adopt. It was held by the Privy Council that the document having no legal effect as a will, the authority to adopt could not be treated as one conferred by a will, and that it was ineffectual, since it was not duly registered as an authority to adopt (Kondapall v. Mandapaka (1925) 52 I.A. 305, 48 Mad. 614, 89 I.C. 733, ('25) A. PC. 196).

Deed of adoption.—A deed of adoption, as distinguished from an authority to adopt, does not require registration (Vishwanath Ramji v. Rahibai (1931) 55 Bom. 103, 128 I.C. 901, ('31) A.B. 105; Shivlingappa v. Haribai (1890) Bom. P. J. 78, cited in Fatimabai v. Shaikh Hassan (1907) 9 Bom. L. R. 1071, 1079). This is because it is not the deed, but the adoption itself that creates the status of adopted son and confers an interest in the property of the adoptive father. But if the deed declares or reserves an interest for a third person in immoveable property, and such interest exceeds in value Rs. 100 the deed requires registration under clause (b) of this section (Pirsab v. Gurapp (1914) 38 Bom. 227, 24 I.C. 716).

Authority to adopt executed in a Native State.—Clause (3) is a clause affecting status. The Indian Legislature has no authority to legislate as to the status of subjects of Native States. This clause therefore does not apply to an authority to adopt executed in Native States by domiciled subjects of those States. Such authorities are admissible in evidence in British India without registration (Venkatapayya v. Venkata Ranga Row (1920) 43 Mad. 288, 302, 59 I.C. 978.

The entire portion beginning from page 24 of ihis book upto the above lines under sec. 17 is a reproduction of Mullah's book "The Registration Act"

[38][**18.** DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL.— **Any document not required to be registered under section 17 may also be registered under this Act.**

S. 18. No need of registration of an instrument creating tenancy for a year or less although governed by the Transfer of Property Act. For the purpose of acquisition of tenancy for a year or less even when the tenancy is governed by the Transfer of Property Act, it is not necessary that there should be a registered instrument at all. *Province of East Pakistan Vs. Abdul Jalil Molla* (1968) 20 DLR 1223.

19. DOCUMENTS IN LANGUAGE NOT UNDERSTOOD BY REGISTERING OFFICER.—**If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.**

20. DOCUMENTS CONTAINING INTERLINEATION, BLANKS, ERASURES OR ALTERATIONS—(1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signature or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the registers of such interlineation, blank, erasure or alteration.

S. 20. Alterations in document— Registration may be refused even when alterations are immaterial.

The ordinary reading of section 20 of the Registration Act would show that any interlineation, blank, erasure or alteration in the document, whether it is material to the document or not, or whether it causes any doubt with regard to its genuineness or not, authorizes the Registering Offcer to exercise his discretion, and refuse to accept the same for registration. In fact the Registration Act, which divests a certain person of his rights in provisions of the Act, though they may seem to be technical, must be strictly complied with in order to prevent forgeries and the procurements of conveyances by fraud or undue influence. Gul Zaman Vs. Sher Muhammad Khan, PLD 1954 Pesh. 88.

21. DESCRIPTION OF PROPERTY AND MAPS OR PLANS—(1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and any by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is stiuate in several districts. by such number of true copies of the map or plan as are equal to the number of such districts.

S. 21. Description of property maps or plans.

if the properties are sufficiently identifiable it must be operative in respect of such properties as would answer the description. 60 C. L. J. 243 : 39 C. W, N. 120, 33 C. W.N. 1211.

the provisions of the sec. are imperative. 31 A. 523.

the registration of a document without the map referred to therein is ineffective, 18 C. 556, 41 C. 972, 1925, Bom. 34, I. C. 455.

22. DESCRIPTION OF HOUSES AND LAND BY REFERENCE TO GOVERNMENT MAPS OR SURVEYS.—**(1) Where it is, in the opinion of the Government practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Government may, by rule [37] made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.**

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

PART IV

OF THE TIME OF PRESENTATION

23. TIME FOR PRESENTING DOCUMENTS—**Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :**

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

[38]23A. RE-REGISTRATION OF CERTAIN DOCUMENTS.—**Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present**

the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration :

Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.]

Ss, 23, 25. Limitation—Documents presented after four months—No application under S. 25—Registration effected without considering the question of delay—Registration not legal.

The docoument originally having been duly presented by the claimant its subsequent presentation under section 75(2) by a counsel who was not properly authorised would not make the registration invalid. *Muhammad Ibrahim Khan Vs. Sarbiland Khan* PLD 1952 Pesh. 82

S. 23. Document validly presented for regisration within 4 months of execution must be registered.

The Registration Act prescribes a period of four months within which a document has to be presented for registration but once the presentation is made in time, no period is prescribed as to within which the same must be registered. *Mst. Hasina Begum* (1972) 24 DLR 6.

S. 23. Delay condoned under S. 25—Period may be added to that allowed under S. 23. *Perjahan Mian* (1962) 14 DLR 227 ; PLD 1963 Dacca 389.

Ss. 23—25

Document registered at wrong place. May be registered at the right place at any time—No limitation for re-registration. *Abdul Hakim* PLD 1965 Azad J & K I.

Document validly presented for registration within 4 months of execution must be registered. *Mst. Hasina Begum* (1972) 24 DLR 6.

S. 23-27. Time for presenting documents.

for the purpose of registration a document need not be dated and parol evidence may be given as to the date of execution. 1 C. L. J. 126.

where a document is registered presumption will be that the document was executed on the date it bears, 1926 M. W. N. 939 : 1926 Mad. 744. 96 I. C. 26.

an executant registering a deed after altering the date as it was time-bared cannot question the deed. 16 C. W. N. 585.

presentation of insufficiently stamped deed is good presentation. 11 C.750.

although time for presentation is fixed no time for registration is fixed by the Act. 15 B.L.R. 228. 11C. 750, 15C. 538.

the registering officer has no jurisdiction to register a document presented after 30 days from the order of the District Registrar even if such time has been extended by the latter. 5 C.L.J. 188.

under s. 25 the Registrar is given discretion to extend the time of presentation. 1931 Lah. 710.

registration of deed without excusing delay is illegal. 1939 Lah. 292 : 184 I.C.556.

24. DOCUMENTS EXECUTED BY SEVERAL PERSONS AT DIFFERENT TIMES—Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

25. PROVISION WHERE DELAY IN PRESENTATION IS UNAVOIDABLE.—(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in [89](Bangladesh) is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in case where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

S. 25. Extension of time for registration—Decision of Registrar cannot be challenged in Civil Court.

So far as the power to extend time for registration by condoning the delay u/s. 25 of the Registration Act, is concerned, the District Registrar is the sole and final authority, and the question of the District Registrar accepting the document out of time cannot be agitated in a Civil Court. *Nabadwip Ch. Karmakar Vs. Madhu Sudan* 7 DLR 235 (DB.)

Delay in registration—Right of the Registrar to condone delay is exclusive and civil court cannot question it. (1955) 7 DLR 235.

26. DOCUMENTS EXECUTED OUT OF BANGLADESH—**When a document purporting to have been executed by all or any of the parties out of [Bangladesh] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—**

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in [Bangladesh],

may, on payment of the proper registration fee, accept such document for registration.

27. WILLS MAY BE PRESENTED OR DEPOSITED AT ANY TIME.—**A will may at any time be presented for registration or deposited in manner hereinafter provided.**

PART V

OF THE PLACE OF REGISTRATION

[40]28. PLACE FOR REGISTERING DOCUMENTS RELATING TO LAND. **[41][(1)—Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) [42][(d) and (e), section 17, sub-section (2), and section 18, in so far as such documents affects immoveable property] shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.**

Ss. 27, 28

[43][(2) Notwithstanding anything contained in sub-section (1),—

(a) after a document is registered, no party thereto shall be entitled to question the validity of its registration on the ground that the property which purported to give jurisdiction to the Sub-Registrar to register it either did not exist or was fictitious or insignificant or was not intended to be conveyed; and

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

S. 28. Fraud on registration—Fictitious inclusion of Land.

Where land not intended to be mortgaged was included in a mortgaged deed merely to get registration of the deed before a particular registering officer who would otherwise be in incompetent to register it, the registration of the deed was a fraud on the registration law and did not affect the immovable property comprised in the deed but the registration was good as regards the personal covenant to repay the mortgage money and enable the mortgagee to me for it within 6 years as provided by Article 116 of the Limitation Act. (1953) 5 DLR 290, 45 All. 27 FB 46 Mad. 435 52 Mad. 105 F.B.

Onus to prove that there was evasion of registration laws is generally on the person who prefers that allegation. But where on the face of the document, it is clear that the property included in the document for registration purpose is "fictitious" the onus shifts in the persons relying on the document. (1956) 8 DLR 679. 41 IA 110 : 48 IA 127 : 61 IA 286, 63 IA 169, AIR 1941 All. 179. AIR 1935, BOM. 54, 22 C.W.N. 894, AIR 1930 All. 786.

Ss. 28-31. Place for registration documents relating to land.

In proceedings for registration title to property cannot be gone into, ; s. 28 does not require anything more than the existence of property within the jurisdiction of a particular Sub-Registrar in order to entitle him to register the document. 1925 Pat. 787.

False entry of property to give jurisdiction to a particular registering officer vitiates the document. 18 C.W.N. 817, 41 C. 972, P.C. 43 M. 436 : 24 C.W.N. 985: 33 C.L.J. 440 P.C. 48 C. 509 P.C., 1926 Bom. 165, 32 C.W.N. 241 : 47 C.L.J. 124 : 1928 : Cal. 385, 1929 Mad. 426, 1929 A. 959, 1937, Cal. 347 : 171 I.C. 965, Contra. 39 C.W.N. 120 : 60 C.L.J. 243.

But fictitious property included by mortgagor not in collusion with the mortgagee does not affect the mortgage. 1925 Mad. 430, 1927 Mad. 92 : 98 I.C. 195, 1929 Mad. 432, and where in a sale deed certain property was included with the sole object of registering the document in the place where that property was situated and the parties agreed that after the document was registered the vendee should reconvey this item to the vendor, it was not fraud on the registration law. 49 B. 821. 1925 Bom. 514.

A small item of property included only for registration at a particular place does not vitiate the registration if the property is intended to be transferred. 1925 Pat. 194, 1946 Cal. 465: 227 I. C. 449. 1946 Oudh 92. But where this small property is not intended to be transferred but is only a device to evade the Registration law, the registration is not valid. 59 M. 539: 63 C.L.J. 382: 40 C.W.N. 545: 1936. A.L.J. 258: 1936 M. W. N. 305, 38 Bom. L.R. 457: 1936 P. C. 91, P. C. 56 A. 468, 38 C.W.N. 1101: 60 C.L.J. 67: 36 Bom. L.R. 867: 1934 P. C. 157 Pc.

Where the small item was intended to be transferred the registration is not invalid because transferee fails to prove title of the transferor. 1941 All 179: 195 I.C. 25, 1952 Nag. 145 F.B.

The falsity of the entry must be proved by the person alleging it 22 C.W.N. 894, 29 C. 654: 6 C.W.N. 856, 31 C. 146, 1930 All. 786, 52 A. 793, 1932 Mad. 311, 54 M. 352.

Registration by a person authorised under sec. 30 (2) is valid even though additional fee is not paid 1946 Cal. 465: 50 C.W.N. 569: 227 I. C. 449.

A document registered without jurisdiction is a nullity. 14 C. 444.

Where the office of the Sub-Registrar was amalgamated with that the Registrar with whom the conveyance was registered, non-statement of this fact did not affect registration. 58 C. 133: 1931 Cal. 478. 3 C.L.J. 165, 18 C. 556.

S. 28. Registration—Onus of proving that registration was not required—On whom rests.

No wide proposition of law can be laid down to the effect that in every case the person relying on the document must first discharge the onus of establishing that there has been no evasion of the Registration Laws.

In a case where the document ex-facie disclose that the property is so insignificant that it is hardly capable of effective enjoyment, the onus would by reason of that fact alone, be shifted upon the person seeking to rely upon that document to show that it was nevertheless a validly registered document. But in a case where the property does exist and is capable of effective enjoyment, it cannot be said that even in such a case the onus would still be upon the person relying upon the document to prove that the transferor had title to the transferred property. In such a case there is a presumption in favour of the validity of registration. *Akamal Ali Khandaker Vs. Abdul Hai Kazil* 8 DLR 718 (DB) PLD 1957 Dacca 164 : PLR 1956 Dacca 216.

29. PLACE FOR REGISTERING OTHER DOCUMENTS. —(1) Every document [44][not being a document referred to in section 28 or a copy of a decree or order], may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the [Government] at which all the persons executing and claiming under the document desire the same to be registered.,

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the [Government] at which all the persons claiming under the decree or order desire the copy to be registered.

30. REGRISTRATION BY REGISTRARS IN CERTAIN CASES.— (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

[45](2) Notwithstanding anything contained in section 28 any Registrar may receive and register any document without regard to the situation in any part of Bangladesh of the property to which the document relates if he is satisfied that there is sufficient cause for doing so.]

S. 30. Registrar, if satisfied, can register any document without regard to the situation of the property in any part of Pakistan. *Mamtazul Karim* (1970) 22 DLR 146.

Karachi District Registrar can register any document relating to property situated in any part of Pakistan. *S. M. Lutfullah Vs. Bibi Badrunnessa* (1968) 20 DLR 1019.

Ss. 30, 32, 34. Registration of document at wrong place—Re-registration may be effected at right place—No time limit prescribed for exercise of discretion. *Abdul Hakim Vs. Ali Mohd.* PLD 1965 Azad J & K-1.

31. REGISTRATION OR ACCEPTANCE FOR DEPOSIT AT PRIVATE RESIDENCE.— [46][The presentation, registration, or deposit of documents under this Act shall ordinarily] be made only at the office of the officer authorized to accept the same for registration or deposit :

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document

for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI

OF PRESENTING DOCUMENTS FOR REGISTRATION

32. PERSONS TO PRESENT DOCUMENTS FOR REGISTRATION.—Except in the cases mentioned in [47]* * * section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented [48]* * *,—

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

If the alleged executant of a document denies having executed it the Registering Officer is to refuse its registration, If in spite of such denial, the R. O. registers the document, that will be illegal and of no legal effect.

A document is normally required to be presented for registration by the Executant and if the execution of any document so presented by a person other than the executant, is denied by the Executant himself, in such event the Registering Officer is required to refuse registration of such document.

Any registration of any document made by a Registering Officer under the Registration Act in the absence of its Executant when earlier such execution was denied by the said Executant in writing, must be held to have been made illegally without any lawful authority having no legal effect. (1982) 34 DLR———215.

Md. Asiruddin Vs. Bazlur Rahman.

S. 32. Invalid registration—fresh deed by legal representatives.

Registration is invalid when presented by a wrong person—vendee entitled to a fresh deed of sale by the legal representatives of a deceased vendor even though the registration of the original document is invalid. Court competent to direct legal representatives to execute a fresh deed of sale in terms of the original deed. (1935) 7 DLR 263.

S. 32

Assign—A person does not become an assign until the document is registered and his assignment perfected—does not include a person who claims under a document sought to be registered. *Kobbad Ali Vs. Abdul Rashid* (1961) 13 DLR 326.

Vendor dying before registration—Deed presented for registration by a person not legal representative of vendor—Registration invalid—How may be validated. *Hafez Ahmed Vs. Obedur Rahman* (1955) 7 DLR 263.

Persons to present documents for registration.

A minor claiming under the deed may present, 1938 Cal. 120: 177 I.C. 517.

Where a document is executed by two or more persons the presentation by the agent of one of them is sufficient. 65 C.L.J. 140: 41 C.W.N. 590: 18 Pat. L.T. 315: 1937 P.C. 46: 1937 M.W.N. 520 P.C.

Presentation by unauthorised person vitiates registration. 19 C.W.N, 282 P.C. 35 A. 34. 1954 S. C. 316: 1954 S.C.R. 919: 1954 S.C.J. 395 : 1954 S.C.A. 979. even when it is admitted by the executant, as the law must be strictly followed. 19 C.W.N. 282 P. C. 25 C.W.N. 73 P.C., appeal from 34 A. 331, Contra, where the executant gives consent to such presentation, 35A. 72 or where the document is presented by incompetent person but a competent person comes to the office before registration. 35 A. 134, the law is complied with.

The words "person executing cannot be read merely as person signing o'it mean the person who by a valid execution enters into obligation under the instrument. 40 C.W.N. 1051 : 64 C.L.J. 31 : 1936 Cal. 442, 55 C. 532 : 1928 P.C. 38: 32 C,W.N. 629 P.C.

All the heirs of the deceased executant need not combine to present a document for registration 58 C 876 : 133 I.C. 191, 55 C.L.J. 107 : 1932 Cal. 588 55 C. 1008 :

32 C.W.N. 646: 1928 Cal. 565, in the same case it has been held that when there are widow, brother, mother and sister are heirs, the widow alone can present a kabala executed by her husband.

Presentation by pleader if not duly authorised is not valid. 3 Rang. 938.

When the executant is dead presentation by some or one of the heirs at law is valid. 47 A. 294: 84 I.C. 78 : 1925 All. 215, 55 C. 1008: 32 C.W.N. 646 : 1928 Cal. 565.

Ss. 32 and 33 are imperative and must be strictly followed. 33 C.L.J. 109, 2 Lah, 5: 58 I.C. 333, 44 A. 514 P.C. 1933 All. 233.

The term "representative" in s. 32 refers to the legal representative or by virtue of s. 2 the guardian or committee of the persons described but does not include clerk or agent. 31 M.L.T. 304 : 49 I.A. 395, 1922 P.C. 359 50 C. 166: 27 C.W.N. 533 : 37 C.L.J. 343 P.C.

S. 32

Under s. 2 representative includes a guardian and in the absenee of a legally appointed guardian the natural father of a minor boy given in adoption is a representative. The presentation of an authority to adopt may be made by the adopted sons representative. 32 C.W.N. 261: 1929 M.W.N. 47: 49 C.L.J. 148 : 52 M. 175: 1929 P.C. 24: 114 I.C. 17 P.C. 1950 P.C. 138: 1949 P.C.R. 688: (1950) S.C.J. 120: 5 DLR F. C. 76.

Where a deed of gift in favour of minor married girl was presented by her father who was not her natural or legal guardian, the deed was void. 26 C.W.N. 369 P.C. 51 M. 462.

Although if the endorsement by a Sub-Registrar on a mortgage deed as regards presentation purports to show an invalid presentation there is nothing in the act to prevent a person from showing that the endorsement made by the Sub-Registrar was inaccurate and proving what the real fact was 60 M. L.J. 652: 35 C.W.N. 577: 34 L. W. 36: 53 C.L.J. 373: I.R. 1931 P. C. 159: A.I.R. 1931 P.C. 75: 1931 M.W.N. 615: 131 I. C. 767: 1931 A.L.J. 444: 58 I.A. 115, 33 Bom. L.R. 867: 9 Rang. 170 P.C.

Acceptance of presentation of document by the Registrar is prima facie evidence of proper presentation and after such acceptance the burden of proving any alleged informality rests on the person who challenges the registration. 27 C.W.N. 437: 37 C.L J. 377; 25 Bom. L.R. 655: 44 A 514, P.C. (11 B 691, 19 C.W.N. 282: 37 A. 49: 42 I.A. 22 P.C.)

An acceptance of an unauthenticated power of attorney can be cured by sec. 87 (act in good faith) or by the executant's 23 A. 233, 28 A. 707, but if the authority of the agent is revoked before registration, and such revocation is not known to either the grantee or the registering officer, the document is not invalidated. 30 C. 265: 7 C.W.N. 229.

When a document is presented by an agent holding an invalid power of attorney and is registered the registration is a nullity. 50 B. 628: 1926 Bom. 479:28 Bom. L.R. 949.

Handing over of a deed by the husband of a pardanashin lady to the Sub-Registrar does not vitiate the registration. 1940 Oudh 152: 185 I.C. 441.

Where the date of the deed in the special power of attorney to present documents for registration was altered, presentation was not valid. 60 M.L.J. 441: 53 C.L.J. 198: 35 C.W.N. 354: 12 Pat. L.T. 543: 33 L. W. 596: 131 I.C. 321: 10 Pat. 481: 58 I.A. 58: I.R. 1931 P.C. 97: 1931 A.L.J. 419: 14 O.L.J. 403: 33 Bom. L.R. 434: 1931 M.W.N. 241 : 8 O.W.N. 548: A.I.R. 1931 P.C. 52 P.C.

A pardanashin lady executing a power attorney is not bound to personally attend at the Sub-Registrar's office. The Sub-Registrar may attest the execution after he has been satisfied as to its execution. 3 Pat L. T. 442: 67 I.C. 315.

Where the executant of a power of attorney being ill sent the document through an agent to the Sub-Registrar who came to the executant and was satisfied

as to its execution, the registration was valid though its presentation was irregular. 42 A. 487: 25 C.W.N. 73 : 28 M.L.T. 98: 22 Bom. L.R. 1362 P.C., 44 A. 514.

When a deed was not properly registered as it was presented for registration by an agent not duly authorised, the executants cannot be estopped from pleading its invalidity because there can be no estoppel against the statute. 53 C.L.J. 198: 35 C.W.N. 354: 1931 A L.J. 419: 14 O.L.J. 403: 8 O.W.N. 548: 58 I.A. 58: 10 Pat. 481: 60 M.L.J. 441; A.I.R. 1931 P. C. 52: I.R. 1931 P.C. 97: 1931 M.W.N. 241: 33 Bom. L.R. 534 12 Pat. L.T. 543: 33 L. W. 596: 131 I.C. 321 P.C.

Ss. 32 & 35. Registration of a Kabala presented by a wrong person.

The registration of a kabala presented by a wrong person would not debar the transferee from obtaining a fresh kabala from the legal representative when the registration of the instrument has not hit the transaction. (1955) 7 DLR 263.

A contract relating to sale of immovable properties can not be said to have been specifically performed till the kabala embodying the terms of the contract is presented for registration either by the executant of his legal representative. Ibid.

"Assign"—The word "Assign" means a donee. When used as verb, it means "to transfer or (a place) formally make over to another" or to allot to a person, to appoint or set it apart for a purpose", and if used as a noun is means "one to whom a property or right is leagally transferred."

A person who takes under a deed or gift or hiba-bil-iwaz is an assign within the meaning of section 35 of the Act (1959) 11 DLR 516.

Even without the statement of the Sub-Registrar his endorsement on the deed would be relevant evidence of execution of the document. The endorsement of the admission of the parties to a document made on a deed by a registering officer was evidence, under section 60, Registration Act, of the fact of the execution and that the mere fact that it was in accordance with section 35 that the Registrar questioned the parties as to whether they had executed the deed or not did not mean that the endorsement did not fall under section 58 when that section expressly provided for such an endorsement. (1960) PLR 1 (W.P.) 573.

An assign or donee under a deed of hiba-bil-iwaz may present a docoument for registration (1959) 11 DLR 516.

Registration by an assign when legal representatives are not available.

"Assign"—a document when after the death of the executant prescribed for registration by an assign admitting execution can be validly registered, when legal representatives are not available.

An assign within the meaning of Section 35 (1)(c) of the Act claiming under a document is competent to present the document and admit its execution for the purpose of affecting registration, as the legislative inserted the word "assign" in the third clause of S. 35 to provide for the case where the representative would not appear and unless the transferree was authorised to appear and admits the execution, the deed could not be registered.

A husband who takes property as a donee under hiba-bil-iwaz executed by his deceased wife is competent to present, as an assign, the deed and admits its execution for registration on behalf of the deceased execution (1957) 9 DLR 678—8 DLR (Dac.) 401.

33. POWER-OF-ATTORNEY RECOGNIZABLE FOR PURPOSES OF SECTION 32.—(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely ;—

(a) if the principal at the time of executing the power-of-attorney resides in any part of [Bangladesh] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesid resides in any other part of [Bangladesh], a power-of-attorney executed before and authenticated by any Magistrate ;

(c) if the principal at the time aforesaid does not reside in [Bangladesh] a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, [Bangladesh] Consul or Vice-Consul or representative of 49* * *the [Government] ;

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely :—

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from presonal appearance in Court.

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

S. 33. Power of attorney recognized.

Where a person having a power of attorney executes a document he is entitled to present it under S. 32(a). 74 I.C. 776.

It is the duty of the Sub-Registrar to satisfy that the power of attorney gave the holder the necessary power and the Registering officer's endorsement raises the presumption that the holder of it had the power to admit execution. 1928 Pat. 304.

The expression resides does not exclude temporary residence. 65 C.L.J. 140; 41 C.W.N.590, 1937 M.W.N. 520; 18 Pat. L.T. 315; 1937 P.C. 46 P.C. 1954 S. C. 316 : 1954 S.C.R. 919 : 1954 S.C.J. 395 ; 1954 : S.C.A. 979.

S. 33(1)—Power of Attorney executed and authenticated in India by a Pakistani, temporarily residing there, is valid even though Pakistan address of the executant is given therein.

Brajendra Mohan Vs. Tamijuddin (1964) 16 DLR 125.

34 ENQUIRY BEFORE REGISTRATION BY REGISTERING OFFICER.—(1) Subject to the provisions contained is this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 ;

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed ;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

Secs. 34, 35, 58 and 59.

Formalities about registration of the document and the consequence that follows such registration—All formalities after registration including its explanation by the Sub-Registrar complied with.

There is an endorsement of the Registrar to the effect that the execution of the deed was admitted by the executant before the Registrar and he (executant) was identified in his presence. Under the provisions of the Registration Act every document that needs to be registered must be presented for registration by the persons executing the said document or by the persons claiming under the same or representative or assigns of such persons executing or by an agent duly authorised in that regard. After the said document was presented by a proper person to the satisfaction of the Registrar, the registering officer would be under a duty to enquire whether or not such document was in fact executed by the persons by whom it purports to have been executed after satisfying himself as to the identity of the persons appearing before him admitting that he had executed the document. When all those formalities as required under sections 34, 35, 58 and 59 have been complied with, the Registering Officer shall endorse thereon a certificate containing the word "registered" and the said document shall then be admissible for the purpose of proving that the document has been duly registered and that the facts mentioned in the endorsement have occured as therein mentioned. This being the legal position a document when registered it would be assumed that the document was explained to the executant before registration who admitted its execution and the receipt of consideration and that the whole proceeding and endorsement were regular and in order. It would also be an evidence of the fact of presentation of the document for registration before the registering authority by the person so recorded and also be an evidence of the fact of the person being properly identified as mentioned in the deed to the satisfaction of the registering authority.

—Endorsement of the Registrar on the document—Its presumptive value, rebuttal thereof.

—Ss. 34—35

The endorsement of the Registrar would be a strong presumptive evidence of the fact that the document was explained to the executant who admitted his execution and receipt of consideration and that the whole proceeding and the endorsement made therein were regular and in order and the said endorsement could only be rebutted by the plaintiff by adducing strong evidence proving the allegation that the executant was not in his sense, at the time of the execution of the deed or that any fraud was committed upon the Sub-Registrar by an imposter.

Haji Kari Abdur Rahman Vs. Abdur Rahim Gazi.

(1983)35 DLR———132

S. 34 : Enquiry before registration.

An attorney signing the deed on behalf of the principle is the person executing it. 1950 Bom. 326 5 D. L. R. Bom. 195.

Where a matter is referred under S. 34 (4) and proviso to S. 34 (1) to the Registrar, he may direct the registration if he is of opinion that the delay was due to unavoidable accident or urgent necessity. 86 I.C. 797 : 48 M. L.J. 221 : 1925 Mad. 619.

Registrar is not to enquire if the executant is minor or major 1938 Nag. 385 178 I.C. 920.

If the Registrar refuses registration on the ground of minority, the question of minority may at once be brought into civil court and there determined 8 C. 967 : 11 C.L.R 315.

Where a minor registers a document it will not be invalid if there is nothing to show that he appeared to the Registrar to be a minor or the fact of minority was brought to his notice. 21 C. 872.

When the question of minority of the executant arises, a certificate of the Sub-Registrar that the mother and uncle of the executant appeared with him and produced a medical certificate that the executant was 18 years of age is admissible in evidence if it is not conclusive. 1926 All 674 : 96 I.C. 332.

An improper registration on a wrong conclusion as to stamp will not affect a document. 32 C.W.N. 535.

All things done before a Registrar in his official capacity will be presumed to be done duly and in order. 10 C.W.N. 522 : 33 C. 537 : 3 C.L.J. 349 : 8 Bom. L.R. 375 . 1 M.L.T. 131 : 116 M.L.J. 161 P.C. 44 A. 514 P.C.

35. PROCEDURE ON ADMISION AND DENIAL OF EXECUTION RESPECTIVELY.—(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) if any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

[50][Provided further that the [Government] may, by notification in the [51][Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

Procedure on admission and denial of execution.

The words "person executing" in s. 35 cannot be read merely as "person signing"; they mean something more, namely the person who by a valid execution enters into obligation under the instrument. 55 C. 532 : 47 C.L.J. 396 : 32 C.W.N. 629 : 108 I.C. 342 : 1928 P.C. 38 : 26 A.L.J. 121 P.C. 40 C.W.N. 1051 : 64 C.L.J. 31 : 1936 Cal. 442.

Execution must mean voluntary execution, the signing of the document out of the executant's free will, 1 C.L.J. 126.

The failure of the executant to appear amounts to denial of execution. 53 M. 491 : 1930 Mad. 490.

—S. 35

When the executant admits his signature as being made on blank paper and denies the execution, it is sufficient admission of execution for the purpose of registration. 6 C.W.N. 329 contra. 1917 Pat. 40, 1950 Pat. 370.

In case of bakalam signature a person whose name is put with his authority in evidence of his assent to a document, is execution within S. 35, 29 C.W.N. 539.

Document registered upon the appearance and admission of one of the executants is not effective against others. 46 C.L.J. 109 : 50 C. 180.

The wife being herself the donee, may validly register the deed of gift in representative capacity. 33 C. 584 : 10 C.W.N. 717: 4 C.L.J. 340, 20 A. 392, 25 M. 672.

Where the executant is dead all the legal representatives should admit before registration. 1933 All. 302 : 145 I.C. 754.

When the donor is dead some one may admit the document for registration as he is practically the assignee. 20 C.W.N. 1345.

Admission of husband on wife's behalf is an irregularity curable by sec. 87. 37 A. 294 : 1925 All. 215 : 14 I.C. 786.

An executant who executes a document on behalf of himself and on behalf of some other person under an invalid power of attorney may appear and admit the execution of the document by himself. 51 B. 971: 103 I.C. 906 : 1927 Bom. 487 F.B. 28 Bom. L.R. 949.

Where a sale deed was executed on behalf of the principal by an agent holding a power of attorney, but the power was not produced and at time of registration another person holding a power of attorney from the principal admitted execution before the Registrar, held that there was a valid admission of execution and title passed to the vendee, 29 C.W.N. 539 ; 1925 Cal. 703.

The omission to seal a deed is a mere defect in procedure which is cured by sec. 87. 7 C.W.N. 528.

A harmless lie does not deserve sentence of imprisonment. 40 C.W.N. 1059 : 1936 Cal. 418.

Will—Registration not proof of voluntaries.

Mere registration can not be regarded as in law, affording sufficient period of the voluntary execution of the will much less of its being executed while of sound disposing mind by the testator. Where there are circumstances of suspicion, it is the duty of the Court to accept such evidence with great caution and only to the extent to which it goes. (1955) 7 DLR (F. C.) 165.

Registration of a document upon admission of its execution—whether execution was under decrees or misrepresentation does not fall within the scope of the section.

Md. Jafar Ali Vs. Md. Abdul Majid (1967) 19 DLR 40.

—S. 35

Document validly presented for registration—Registration can not be refused.

Md. Hasina Begum. (1972) 24 DLR 6.

Representative—plural is also included—Execution must be admitted by all the representatives.

Kobbad Ali (1961) 13 DLR 326.

S. 35(1) (c) Registration—Admission of execution of document for registration after the death of the executant by or on behalf of all his legal representatives.—Ibid.

S. 35 (1)(C) :

Assign—Meaning of—Not a person claiming under the document.

The words assign in section 35 (1)(C) of the Registration Act, 1908 does not and should not include a person claiming under the document sought to be registered. Kobbad Ali V. Abdul Rashid 13 DLR 326. PLD 1961 Dacca 638.

In construing section 35 of the Registration Act, the word "assign" occuring in clause (c) of sub-section (1) should be given its ordinary signification. The word "assign" may mean even a donee, for, if it is used as a verb, it means "to transfer or formally make ever to another" "or to allot (a place) to a person to appoint or set it apart for a purpose" and, if used as a noun, it means "one to whom a property or right is legally transfered." Hence a person who takes under a deed of gift viz, Hiba-bil-iwaz is an assign within the meaning of section 35 of the Act and can present such a document for registration after the death of the donor as the section does not prohibit it, but on the other hand, expressly provides for such a case. Manir-ud-Din V. Shaikh Abbas. (1959) 11 DLR 516 PLD 1960 Dacca. 217 : PLR 1959 Dacca 1311.

Assign—May present document for registration and admit its execution.

An assign within the meaning of section 35 (1) (c) of the Registration Act claiming under a document is competent to present the document and admit its execution for the purposes of effecting registration according to law, as it is quite possible that the Legislature inserted the word 'assign' in the third clause of section 35 to provide for the case where repesentative would not appear and uless the transferee was anthorised to appear and admit the execution, the deed could not be registered.

A husband who takes property as done under Hiba-bil-iwaz executed by his deceased wife competent to present, as an assign, the deed and admit its execution for registration on behalf of the deceased executant. Maniruddin Vs. Sk. Abbas 9 DLR 678 ; DLR 1958 Dacca. 401.

Representative—Plural is also included— Execution must be admitted by all the representatives.

The Singular number used in clause (c) of sub-section (1) of section 35, Registration Act, 1908 includes the plural and, therefore, where there are more representatives than one, all the representatives must join in the admission before it can be duly registered under the Act. Kobbat Ali Vs. Abdul Rashid 13 DLR 326 (FB). PLD 1961 Dacca 638.

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PART VII

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

36. PROCEDURE WHERE APPEARANCE OF EXECUTANT OR WITNESS IS DESIRED.—If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion call upon such officer or Court as the [Government] directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

37. OFFICER OR COURT TO ISSUE AND CAUSE SERVICE OF SUMMONS. —The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

38. PERSONS EXEMPT FROM APPEARANCE AT REGISTRATION-OFFICE. —(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. LAW AS TO SUMMONSES COMMISSIONS AND WITNESSES.—The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and mutatis mutandis, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

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PART VIII

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT

40. PERSONS ENTITLED TO PRESENT WILLS AND AUTHORITIES TO ADOPT.—(1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or Sub-Registrar for registration.

41. REGISTRATION OF WILLS AND AUTHORITIES TO ADOPT.—(1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be ;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX

[52][DEPOSIT AND DISPOSAL OF WILLS]

42. DEPOSIT OF WILLS—[53][(1)] any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement to the nature of the document.

[54][(2) The testator shall also endorse on the cover the name and address of the person to whom the original document shall be delivered after registration thereof, after his death.]

Deposit of wills.

Where a sealed cover containing a will was presented before the Sub-Registrar a pleader signing on the cover as identifier and the Sub-Registrar signing his name in his office register were not attesting Witnesses. 1929 Pat. 401;8 Pat. 419..

—Ss, 43—46

43. PROCEDURE ON DEPOSIT OF WILLS—(1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. WITHDRAWAL OF SEALED COVER DEPOSITED UNDER SECTION 42—If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied and the applicant is actually the testator or his agent, shall deliver the cover accordingly.

45. PROCEEDINGS ON DEATH OF DEPOSITOR—(1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3 [55][and then deliver the deposited will to the nominee of the testator or his representative].

[56][(2) If, in respect of any will deposited, no steps are taken by the testator or other person under section 44 or sub-section (1) of this section; the Registrar shall follow the procedure hereinafter provided for the disposal of such will or sealed cover.]

46. SAVING OF CERTAIN ENACTMENTS AND POWERS OF COURTS.—(1) Nothing hereinbefore contained shall affect the provisions of [57][Succession Act, 1925] or the power of any Court by order to compel the production of any will.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

[58][46A. DESTRUCTION OF WILLS—(1) Any will in deposit with a Registrar at the commencement of the Registration (Amendment) Ordinance, 1962, and any will thereafter deposited may be destroyed after following the procedure hereinafter provided, if the will is not registered before such destruction.

(2) Every registering officer shall on the first day of July in the year next after the commencement of the Registration (Amendment) Ordinance, 1962, and on the first day of July in every succeeding third year, send by post a notice to every depositor and his nominee, inquiring about the depositor's present address and shall enter on the cover and in his registers any new andress supplied in response to such notice.

(3) If, as a result of such notice or in any other manner, the Registrar is satisfied that the testator has died, the Registrar shall, after making an entry in his books as to the death of the testator and the nature of the information on which he has acted, open the cover in the presence of a judicial officer (not below the rank of a [59][Munsif]). He shall thereupon issue a notice to the executor, if any, and also to such other person or persons deriving any benefit under the will as the two officers may determine, informing them about the existence of the will and also that unless steps are taken within a period of six months therefrom for registration of the will the document shall be liable to be destroyed.

(4) Notwithstanding the expiry of the period specified in the notice, until the will is actually destroyed in accordance with the provisions of the destruction of Records Act. (V of 1917), the registration of the same can be effected, at the request of the person entitled thereto, on payment of the proper charges.]

PART X

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION

47. TIME FROM WHICH REGISTERED DOCUMENT OPERATES—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

—S. 47

Defendant's Kabala was executed earlier than the plaintiff's kabala which though executed later was, however, registered before the defendant's kabala. Held : Execution of the defendant's kabala being earlier in point of time will have precedence over the plaintiff's Kabala.

Azizuddin Vs. Abu Taleb Sarder (1983) 35 DLR 360

S. 47.—In the case of successive transfers of the self same property in favour of different persons by a common vendor by registered documents, the dispute as to the procedure of one document over the other has to be determined in accordance with the principles laid down in S. 47.

Jainullah (1963) 15 DLR 77 = PLD 1964 Dhaka 12.

Document 'A' executed earlier but registered later than documents "B". Document "A" has precedence over document "B". —Ibid.

Registration by subsequent transferee effected prior to registration by prior transferee—Registration of both within limitation of four months—Priority would be given to prior transferee.

The law gives a four months period for registration and if the document is registered within that date, the subsequent transferee cannot be heard to say that as he got his document without notice, and during the period allowed to the earlier transferee, got his own document registered first he must be deemed to be a bona-fide purchaser for value, such a plea, if allowed would lead to much fraud. In such a case, therefore, the document executed first in order of time had priority over the other though the first document may not have been registered until after the second. Duraisami V. Angappa AIR (33) 1946 Mad. 140 (D B.)

When an unregistered deed is executed, although the deed requires registration, transfer of title remains in abeyance till the deed is registered, but as soon as it is registered, the transfer operates in the words of section 47 not from the date of the registration but from the date on which it would, if no registration was needed, have taken effect. Ataullah Malik (1964) 16 DLR (SC) 298.

Time runs from the date of execution and not from the date when it is copied and endorsed as registered. —Ibid.

Mortgage—Takes effect after registration from date of execution.

Green and White Ltd., PLD 1963 Dhaka 1469.

Registration of transfer—Effects only parties to document—Does not affect third parties. Mohd. Meher Ali Mondal (1965) 17 DLR 365.

Registered document operates from the date of execution : parties to it are bound from the date of its execution, but the document comes into being on the date of its registration M/S. Green & White (1963) 15 DLR 492.

S. 47

Purpose of enacting section 47 is to check fraud. M/s. Green & White (1963) 15 DLR 492.

Date of execution of document of sale of some property, between persons claiming title on the basis of documents executed by the same vendor—and not the date of registration—confers title to the property. Jainullah Vs. Anu Mia (1963) 15 DLR 77.

Section 47 is intended to safeguard the interest of a bonafide vendee under an instrument which though duly executed is awaiting registration by ensuring that he is not deprived of the property in case his vendor turns round to take advantage of the fact that the said instrument is still unregistered and executes a fresh kabala and gets it registered purporting to convey the self same property in favour of another. In the case of successive transfer of the self same property in favour of different persons by a common vendor by registered documents the dispute as to the precedence of one document over the other has to be determined in accordance with the principles laid down is section 47. —Ibid.

Mere registration of the sale deed does not operate to pass title.

Where there is neither possession of the property alleged to have been sold, nor any proof of the payment of consideration mere registration of the sale deed does not operate to pass title to the vendee. (1955) 7 DLR (WPC) 62.

It can not be laid down as a general rule that mere registration of instrument without reference to other circumstances operates to transfer the property. (1955) 7 DLR 443.

Where a deed of sale was collusively created to defeat the title of the defendant by anti-dating the same to date prior to the date of the execution and registration of the defendants document it can not be said that mere registration has the effect of transfering title. —Ibid.

A document executed earlier but registered later will have precedence over a document which though registered earlier in point of time was in fact executed later on the principle that it is execution and not registration that determines the precedence of one document over another. (1957) 9 DLR 258.

Time from which registered documents operate.

Document operates from the date of registration 22 C.W.N. 318,16 C.W.N. 612 : 15 C.L.J. 61, 20 B. 158,29B. 42, 11 1.A. 218 P.C. 6 B. 380, 1926 All. 549.

A registered document operates from the date of execution. 1939 Pat. 96 : 178 I.C. 505, 1942 Oudh 201 : 89 I.C. 686.

Priority between two registered documents relating to some property is determined by the date of execution. 1946 Mad. 140. 58 Mad. L.W. 244.

Where subsequent to the execution of a mortgage and prior to its registration the property is attached, the attachment does not affect the mortgage lien. 36 C.W.N. 733; 59 Cal. 1176, 1938 Pat. 134 : 174 I.C. 374 I.C. 372. 1948 Pat. 60.

Ss. 47—49

48. REGISTERED DOCUMETS RELATING TO PROPERTY WHEN TO TAKE EFFECT AGAINST ORAL AGREEMENTS.—**All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession [60][and the same constitutes a valid transfer under any law for the time being in force :**

Provided that a mortgage by deposit or title-deeds as defined in section 58 of the Transfer of Property Act, IV of 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property].

S. 48

When registered documents are to take effect against oral agreement.

Where a subsequent purchaser is aware of a previous agreement of sale to another person he acquires no title. 1928 Cal. 754.

A subsequent registered mortgage is entitled to priority over an earlier oral charge, not accompanied by delivery of possession, of which the mortgagee has no notice. 1934 Bom. 189.

[61][**49.** EFFECT OF NON-REGISTRATION OE DOCUMENTS REQUIRED TO BE REGISTERED—**No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall—**

(a) **operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property, or**

(b) **confer any power to adopt unless it has been registered.**]

Synopsis :

1. Adverse possession.
2. Collateral purpose.
3. Partition deed.
4. Possession.
5. Specific performance.

Adverse Possession.

Adverse possession—If an unregistered deed may be produced in evidence to show that the possession is adverse.

Irrespective of the fact whether a person has matured his title by a adverse possession or not, he is entitled to show by the production of an unregistered

document that with effect from a certain date his possession of a certain property had a certain character and nature Muhammad Khan V. Muhammad Zaman Khan PLD 1956 (W.P.) Pesh. 12.

Collateral purpose.

S. 49 : A document though required to be registered under the Registration Act but not registered, can yet be admitted for collateral purposes, as to prove the nature of possession—Such a document can be used to prove acquisition of title by adverse possession.

Khalilur Rahman Vs. Prov. of E. Pak. (1977) 29 DLR 239

Document not registered—May be admitted in evidence to prove if another document was extinguished by it.

A document which compulsorily registrable but was not registered may be admitted in evidence to prove whether another document extinguished by it or not. P.& T. Co—op Housing Society Ltd. Vs. Manzoor Ahmad PLD 1961 (W.P.) Karachi 53.

Unregistered document—May be produced in evidence for a collateral Purpose.

A document which is not registered can be produced and admitted into evidence in order to prove the collateral purpose, for example the nature of possession of a certain person over a certain property.

A person, who has been put in possession of the property as a result of an unregistered document can protect his posssession by the production of that document, and nor suit the person, who has executed it and has actually put him in possession of the property. Jana V. Saida PLD 1952 Pesh. 68.

Unregistered deed of relinquishment—Admissible for collateral pupose.

An unregistered deed of relinquishment was not admissible so as to affect the property in question it was admissible for a collateral purpose viz. to prove the nature and character of the possession of defendants as from the date of the deed though the character and nature of possession cannot be separated from the main transaction evidenced by the document. Muhammad Khan V. Muhammad Zaman Khan. PLD 1956 (W.P) Pesh. 12.

Partition Deed.

S. 49. Partition deed—Unregistered deed cannot be produced in evidence to prove partition.

Where an unregistered partition deed which was compulsorily registerable was sought to be used for the purpose of proving that by the partition between the paities each party was in exclusive possession of the property alloted.

Held : that the document having been executed as a deed of partition it could not be held that the use of it to prove partition was a collateral purpose. *Bal. Kishan Vs. Salig Ram* AIR (33) 1946 All. 476 (D. B.)

—S. 49

Partition deed—If may be used to show nature of possession even when it is unregistered.

A document effecting a partition which is inadmissible in evidence for want of registration can in view of the proviso to S. 49 be used as evidence of a colleteral transaction not required to be effected by registered instrument. It can, therefore, be referred to for the purpose af explaining the nature and character of the possession thenceforth held by the parties under it. *Abdul Haq Vs. Mohd. Hashim* AIR (33) 1946 All 200 (D. B.)

Possession.

Lease deed unregistered—Admissible for proving nature of possession.

Where, in a suit for recovery of house rent, the defendant denied the title of the plaintiff in the land and the plaintiff produced an unregistered lease showing that the defendant took lease of the house from him, the trial court rejected the lease deed on the ground that it was not registered and therefore, was not admissible in evidence.

Held : that the unregistered lease deed may not go to prove the plaintiffs title but under section 49 of the Registration Act, 1908 it was admissible in evidence to explain the nature of possession of the defendant. *Ahmed Shah Khan Vs. Abdul Barkat.* (1959) 11 DLR 427. *PLD* 1960 Dhaka 107

Possession—Unregistered document may be produced in evidence to prove nature of possession.

A document inadmissible in evidence for want of registration can be admitted and relied upon for collateral purpose which includes the purpose of ascertaining the character of a person's possession over the property. *Hawabal Vs. Sharif.* PLD 1961 (W.P.) Kar. 412.

An unregistered compromise petition giving possession to a Hindu widow in lieu of maintenance may be considered for the collateral purpose of explaining the nature of the possession of the widow *Bal Mohan Vs. Onkar Mall.* AIR (33) 1946 Pat. 55.

Specific Performance.

S. 49. Specific performance of agreement to sell—Unregistered sale deed is admissible in evidence.

In the suit for specific performance of the contract of sale the unregistered sale deed is admissible under the proviso to S. 59 as evidence of the contract of sale. *Jhaman Mahton Vs. Amrit Mahton* AIR (33) 1946 Pat. 62.

An unregistered document could be received in evidence in a suit for specific performance. *Hajee Saru Meah Vs Jahanara* 8 DLR 616.

Ss. 49, 17. Document requiring registration but not registered—Admissible in evidence. *Anwar Sultana* PLD 1964 (W.P) Karachi 116.

—S. 49

Deed compulsorily registrable—Not registered—Effect—Transfer can not enforce any right, transfered by the deed, against the transferee. *Abdullah Bhai* (1964) 16 DLR (SC) 169 ; PLD 1964 SC 106.

Document not registered—May be admitted in evidence to prove of another document was extinguished by it. *Manzoor Amed* PLD 1961 (W.P) Karachi 53.

Possession—Unregistered document may be produced as evidence to prove nature of possession. *Sharif* PLD 1961 (W.P) Karachi 412.

Unregistered deed used as evidence of a contract. Proviso to section 49 of the Registration Act allows an unregistered deed which is required to be registered to be used as evidence of a contract in a suit for specific performance or as evidence of performance of a contract for the purpose Sec. 53A of the transfer of property Act. (1952) 4 DLR 632.

Unregistered instrument cannot have the effect of creating any interest in the land. An unregistered instrument cannot have the effect of creating any interest in the land which can be created by a registered instrument only, It can not be used for the purpose of proving that the party setting it up acquired any title to the property. Endorsement requires registration but not registered on a lease admissible collateral purposes. (1955) 7 DLR 60.

Unregistered document received in evidence, An unregistered document could be received in evidence in a suit for specific performance (1956) 8 DLR 616—8 PLR (Dac) 326. 8 PLR (Dac) 394.

An unregistered document (in this case a lease) may be used for the purpose of showing the nature of possession though not of proving title. (1959) 11 DLR 427.

If an endorsement on a lease is not admissible in evidence for want of registration, for the purposes of proving that a certain plot was included in the document it is admissible for collateral purposes, such as to prove what land the lessee was holding on the basis of the lease or to explain the possession of the lessee and the extent of the land in his possession on the basis of the lease. (1955) 7 DLR 60.

Unregistered document relating to land though is not admissible to prove title to the land can however be relied on for a collateral purpose. *Dwijendra Nath Pathak* (1973) 26 DLR 480.

Lessee put in possession but the deed of lease not registered—lessee entitled to use unregistered lease deed as shield to prevent transferor from enforcing any right except these arising under such leases. *Pak Employees Co-opertive Housing Society* (1969) 21 DLR (W.P.) 345.

S. 49(c) and 17(1)(b). Document compulsorily registrable but not registered—Admissible in evidence due to elimination of sub-clause (e) of Section 49.

Question of admissibility of a documhnt in evidence is a matter of procedure and, therefore, governed by law current at that time. —Ibid

S. 49

Effect of non-registration of documents.

An unregistered document relating to movable and immovable property may be admitted in evidence if the contracts are separable. 1931 Mad. 580: 132 I.C. 305, 1932 Lah. 545: 138 I.C. 369, 147 Bom. 464.

A sale of tangible immovable property can be effected only by registered deed. 36 C. 989, or when the value of the property is less than Rs. 100 by delivery of possession, and the unregistered document may be referred to as evidence of intention 29 C. 623, 2 I.C. 413, but when the value of the property is less than Rs. 100 and is already in the possession of the vendee the deed of sale must be registered as there cannot be delivery of possession 34 C. 207, 5 C.L.J. 390, 22 C. 179.

An unregistered mortgage deed for more than Rs. 100 does not affect any immovable property. 32 C.L.J. 479 P.C.

A memorandum constituting a bargain between the parties must be registered. 50 C. 338: 38 C.L.J. 41: 28 C.W.N. 1: 44 M.L.J. 602: 25 Bom. L.R. 582 P.C.

Where the property is divided by a registered partition deed an unregistered document proving reunion is not admissible in evidence 51 M. 977: 1928 Mad. 1113, 43 M. 244 P.C. Dist.

An unregistered agreement regarding partition is not admissible as regards the transaction. 49 C.L.J. 98: 52 M. 83: 33 C.W.N. 233: 1929 M.W.N. 43, 1929 P C. 13: 114 I.C. 5: 31 Bom. L.R. 264, P.C. but a partition list is admissible. 1929 Mad. 291 1922 P.C. 266.

The proviso to the amended sec. clearly makes the unregistered documents admissible for collateral purposes.

Proviso to sec. 49 applies to documents executed prior to its coming into effect. 64 C.L.J. 558.

In an ejectment suit possession under unregistered lease may be relied on 37 C.W.N. 333 Cal. 610.

Reference to unregistered lease for collateral purpose. 1933 Cal. 440.

An unregistered mortgage bond is admissible to prove simple money debt 58 C.L.J. 403: 37 C.W.N. 915; 1933 Cal. 786.

Under s. 49 of the Registration Act documents which should be registered but are not registered are inadmissible in evidence of a transaction affecting the property, but when they are put forward to prove an admission it cannot be said that they are put forward as evidence of a transaction affecting that property. 49 C.L.J. 532: A.I.R. 1929 Cal. 636.

An unregistered sale deed is evidence of the contract in a suit for specific performance. 1946 Pat. 62: P. 325.

An unregistered partition deed is admissible to prove divisiou of status. 1937 Mad. 843: 176 I,C. 218.

An unregistered mortgage bond is admissible to support a claim for a money decree 1940 Lah. 486: 193 C. 789.

An unregistered deed may be admitted to prove the nature and character of possession. 1940 Pat. 498: 187 I.C. 583, 46 C.W.N. 419, 1944 Mad. 550: 216 I.C. 255. 1947 Lah. 335, 1953 Pat. 365.

Though the unregistered kabuliyat may not be admissible to prove the tenancy itself, the recitals contained therein may be referred to as explaining the nature and character of the possession of the property in question by the tenants. 46 I.A. 285.

An unregistered agreement to lease is admissible in a suit for specific performance. 1943 Cal. 586: 47 C.W.N. 123: 209 I.C. 566.

50. CERTAIN REGISTERED DOCUMENTS RELATING TO LAND TO TAKE EFFECT AGAINST UNREGISTERED DOCUMENTS.—(1) **Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1),** [62]**[and every document registrable under section 18, in so far as such document affects immovable property or acknowledges the receipt or payment of any consideration in respect of any transaction relating to immovable property], shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not** [63][:]

[64][**Provided that the person in possession of the property under an unregistered document prior in date, would be entitled to the rights under section 53A of the Transfer of Property Act, 1882 (IV of 1882) if the conditions of that section are fulfilled:**

Provided further that the person in whose favour an unregistered document is executed shall be entitled to enforce the contract under the unregistered document in suit for specific performance against a person claiming under a subsequent registered document, subject to the provisions of clause (b) of section 27 of the Specific Relief Act, 1877 (I of 1877)].

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

—S. 50

Competition between registered and unregistered documents.

The section contemplates a case where there is a conflict between the documents of the same kind one being registered and the other unregistered. 1927 Mad. 699.

In a competition between a document which is compulsorily registerable and registered and one which is optionally registerable and is unregistered the former will prevail whether the unregistered document be of the same nature as the registered document or not, unless the person claiming title under the unregistered document proves that the other took it with notice of his title. 9 C.W.N. 14, 35 A. 271, 34 A. 631.

purchaser of immovable property paying the consideration of 500 and being placed in possession and having the right to sue the vendor for specific performance, has the right to retain possession against a subsequent purchaser under a registered conveyance. 18 C.W.N. 445, 18 C.W.N. 657 8 C. 597, 6 B. 515, 8 A. 540, 16 M. 148, 1938 Mad. 546. 22 C.W N 522, 20 C.W N. 149. 19 C.W N. 250 P.C. 24 C.W.N. 468 but the burden of proof lies upon the person who alleges such knowledge or notice 18 C.W.N. 657, 25 M.

S. 54 of the Tr. P. Act is not exhaustive; a person in possession under an agreement which is time barred and not formally executed and registered may contest the title of a subsequent purchaser under registered deed. 28 C.L.J. 77, 23 C.W.N. 284, but there must be delivery of possession according to circumstances. 23 C.W.N. 513.

though specific performance of an agreement may be too late to enforce, possession is itself a title to remain in possession. 23 C.W.N. 284.

Kabala—Execution and registration of, will not pass title unless consideration was paid, when it was intended that consideration must also pass. Kabuliat and patta will not create relationship of land lord unless they are delivered up. (1960) 12 DLR 517.

Unregistered sale deed with possession—does not override subsequent registered sale deed *Prodil Khan* PLD 1965 Peshwar.

[*The following passages which have dealt with section* 50 *upto its end are reproduced from Mulla's book "The Registration Act"*]

Analysis of the Section.

Scope of the section.—Under this section a registered document is entitled to priority over an unregistered document—

(I) if it is of the kind mentioned in cls. (a), (b), (c) or (d) of sec. 17 (I) (compulsorily registrable), or the kind mentioned in cl. (a) or (b) of sec. 18 (optionally registrable) ;

(2) if it has been "duly registered" (See notes under the same heading below) ;

(3) if it covers the same property as that covered by the unregistered document (Gungaram V. Kalipodo (1885) 11 Cal 661, 666.)

But an unregistered decree or order is not liable to be postponed to a registered document. See notes, "Not being a decree or order", below.

It is not necessary for the operation of this section—

(a) that the rival deeds should have been executed by the same person (See notes, "Rival deeds need not be executedby the same person," on p. 218 below) ; or

(b) that the unregistered document should be of the same nature as the registered document. See notes "Whether such unregistered document be of the same nature as the registered document or not," below.

Sub-section (I). This sub-section is dealt with in the notes on or pages 123 onwards.

"Shall take effect".—See notes, "Section does not invalidate unregistered documents that are optionally registrable," below.

"Duly registered".—See notes under the same heading, below.

"Every unregistered document.—See notes under the same heading, below.

"Relating to the same property."—See notes, "Rival deeds must be a antagonistic," below.

"Not being a decree or order".—See notes under the same heading below.

"Whether such unregistered document be of the same nature as the registered document or not."—See notes under the same heading /below.

"Any document mentioned in sub sec. (2) of section 17".—It is enacted by sub-sec. (2) of the present section that the provisions of sub-sec. (I) as to priority shall not apply to any document mentioned in sub-sec. (2) of sec. 17. Sec. 50 of the Act of 1877 contained a similar provision. A certificate of sale is one of document mentioned in sub-sec. (2) of sec. 17 (see cl. xii of that sub-section, and cl. (o) of sec. 17 of the Act of 1877). Therefore, nothing contained in sub-sec. (I) of the present section applies to a certificate of sale. Hence a certificate of sale, though registered, is not entitled to priorty over an unregistered document.

Certificates of sale were exempted from registration for the first time by Act 7 of 1888 by inserting cl. (o) in sec. 17 of the Act of 1877. At the same time sec. 50 of that Act was amended by including cl. (o) in the second paragraph of that section which corresponds with sub-sec. (2) of the present section. Before the amendment there was a confict of opinion whether a certificate of sale required registration, and whether sec. 50 of the Act of 1877 and of the earlier Acts applied to such certificates (See Fakirchand v, Khandas (1866) 3 Bom.H.C.A.C. 167 (not entitled to priority-Act 19 of 1843 and Bombay Reg. 9 of 1827); Narasayya v, Jungam (1884) 7 Mad. 418 (not entitled to priority-Act 3 of 1877) ; Ramaraja v, Arunachala (1884) 7 Mad. 248, 252 (entitled to priority).

Since the amendment it is clear that sec. 50 does not apply to certificates of sales.

"Or to any registered document which had not priority under the law in force at the commencement of this Act." —Before the amending Act 21 of 1929 awards were documents under sec. 17 (2) and within the exception made by sec. 50 (2). A registered mortgage of the 2Ist March 1925 was therefore held not to have priority over an unregisteeed award of the 20th March 1925 creating a charge over the same property (Pahlumal v. Naraindas (1933) 143 1. C. 863, (33) A.S. 151 F.B.)

See note, "Where both documents are cxecuted while Act 16 of 1864. Act 20 of 1866 and Act 8 of 1871 were in force," below.

Explanation to the section.—This section provides that every document of the kind mentioned in cls. (a), (b), (c) and (d) of sec. 17, and cls. (a) and (b) of sec. 18, shall. if duly registered, take effect as regards the property comperised therein against every unregistered document relating to the same property. and not being a decree or order.

The Explaanation appended to the section explains what is meant by "unregistered." It may be split into two parts as follows t—

(I) In cases where Act 16 of 1864 or Act 20 of 1866 was in force in the place and at the time in and at which the unregistered according to such Act; and,

(2) in cases where the unregistered document is executed after the Ist day of July, 1871 (being the date on which the Registration Act 8 of 1871 came into force,)" "unregistered" means not registered under Act of 1871 or the Act of 1877.

It will be observed that the words "in the place and at the time" are used in connection only with the Acts of 1864 and 1866. Two conditions, therefore, must be satisfied to postpone an unregistened document executed whiie Act 16 of 1864 and Act 20 of 1866 were in force to a registered document. The one is that the property to which such document relates must be situate in a place in which Act 16 of 1864 or Act 20 of 1866, was in force, as the case may be (See Dhan Mal. v. Ganga Ram (1893) Punj, Rec. No. 95, per Rivaz. J.). The reason why the words "in the place and at the time" are used in conuection only with Act 16 of 1864 and Act 20 of 1866 seems to be that while the Acts of 1871 and 1877, and the persent Act, extended to the whole of British India except such districts as the Local Government might with the sanction of the Governor-General in Council exclude from their operation, the operation of Act 16 of 1864 was confined in the first instance to the Presidencies of Bengal, Madras and Bombay, with power to Government to extend it to other parts of British India (see. 71), and the operation of Act 20 of 1866 was confined in the first instance to such parts of British India in which Act 16 of 1864 wns in force on the first day of may 1866, with a similar power. Pursuant to that power

the Acts of 1864 and 1866 were extended to different places in British India at different times, and hence the limitation in the Explanation as to place and time as regards the Act of 1864 and 1866.

Priority of Registered over Unregistered Documents.

Competition between registered and unregistered documents.— The question of the priority of a registered over an unregistered document, may be considered under the following five heads according to the dates of execution of the documents, namely,—

I. Where both documents are executed before the Registration Act 16 of 1864 came into force, that is, before January, I, 1865.

II. Where one of the documents is executed before Act 16 of 1864 came into operation, that is January I, 1964, and the other after that date.

III. Where both documents are executed while Act 16 of 1864 Act 20 of 1866 and Act 8 of 1871 were in force.

IV Where one of the documents is executed before Act 3 of 1877 came into force. that is, April 1, 1877, and the other after that date.

V. Where hoth documents are executed after Act 3 of 1877 came into force.

1. Where both documents are executed before the Registration Act 16 of 1864 came into force, that is, January 1, 1865. The question of priority of a registered over an unregistered document, in cases where both the documents were excuted before January 1, 1865, would be governed by the provisions of the Regulations mentioned above and of Acts I and 19 of 1943. This subject has been dealt with fully in the notes under the head, "History of the section, "sub-head Regulations," on p. 202 above. Suffice it to say that registration under those enactments was optional, and a registered document was entitled to priority over an unregistered document relating to the same property, unless the holder of the registered document had notice of the prior unregistered document. Further, except in cases governed by Bombay Regulation 9 of the same nature as the registered document ; if it was not so, there was no priority (Male shappa v. Bassappa (1863) 1 Bom. H.C. 10 ; Haramgir v. Spiers (1864) 2 Bom. H.C. 204 ; Trikam v. Hirji (1994) 18 Bom. 332) force (Chuterdharee v. Nursingh Dutt (1870) N.W.P. 371. or Act 20 of 1866 was in force (Doolal Bivee v. Nada Shaha (1870) 13 W.R. 446 ; Imrit Singh v. Koylashoo (1869) II W.R. 559 ; Grija Singh v. Greedharee Singh (1868) 10 W.R. 65 (Title completed by possession) ; Sreemutty Fyezoonnissa v. Moulvie Sadatoollah (1874) 22 W.R. 3 (Title completed by possession) ; Khandu v. Tarachand (1877) I Bom. 574 (Though the point was left open, the result must be the same even if both documents were executed for a consideration less than Rs. 100) : Parmaya v. Sonda (1880) 4 Bom 459 ; Kishori Lal v. Sham Karan (1884) 4 All. W.N. 184 ; Venkatanarsamah v. Ramiah (1879) 2 Mad. 108. The decision to the contrary in soodha Ram v. Obhoy Chunder (1873) 19 W.R. 279, is not good law), or Act 8 of 1871, was in force (Chatter

Singh v. Ram Lal (1881) 3 All. 488 ; Ram Baran v. Murli (1881) 3 All . 505 ; Timmu v. Deva Rani (1882) 5 Mad. 265) or Act 3 of 1877 was in force (Tirumala v. Lakshmi (1881) 2 Mad. 147 ; Desai Lallubhai Mundas (1896) 20 Bom. 290; Hargovind v. Kishan (1906 28 All. 607 Dhan Mal v. Ganga Ram (1893) Punj. Rec. No. 95.) or executed and registered after the present Act came into force. The grounds on which this conclusion is based are (I) that there was no system of compulsory registration before Act 16 of 1864 when the unregistered document was executed, and (2) that there is nothing in the language of sec. 68 of Act 16 of 1864 and sec. 50 of the subsequent Acts to entitle a document executed and registered after January. I, 1865, to priority over an unregistered document executed before that date (Doolal Bivee v. Nada Shaha (1970) 13 W R. 446, 447 ; v. Khandu v. Tarachand (1877) I Bom. 574, 575 ; Hargovind v. Kishan (1906) 28 All. 607, 608). It does not make any difference that the registered document was one compulsorily registrable under Act 16 of 1864 or any of the subsequent Act. The holder of such a document cannot claim priority even under sec. 50 of the Registration Act 3 of 1877 or of the present Act, for though these sections give priority to a registered document compulsorily registrable over an unregistered document, one of the conditions for the application of that section is that the unregistered document must be one executed on or after January, 1. 1865, as appears from the Explanation to the section (Tirumala v. Lakshmi (1881) 2 Mad. 147 ; Dhan Mal v. Ganga Ram (1893) Punj. Rec. No. 95) and not one executed before that date. See notes, "Explanation to thesection," above.

Illustrations.

(I) In 1862 A executes a deed of sale of mango-gardan to B. The deed is not registered. In 1867 A executes another deed of sale of the same garden to C. This deed is registered. B's deed having been executed before Act 16 of 1864 came into force, C's deed, though registered. is not entitled to priority over B's deed ; I mrit Singh v. Roylashoo Ker (1869) II W. R. 559.

(2) In 1864 A executes a lease for twenty years to B. The lease is not registered. In 1879 A executes a deed of sale of same property to C. This deed is registered under the the Registration Act 3 of 1877. C's deed is not entitled to priority over B's deed : Tirumala v: Lakshmi (1880) 2 Mad. 147.

III. Where both documents are exeuted while Act 16 of 1864, Act 20 of 1866, and Act 8 of 1871 were in force.—We next proceed to consider the case where both documents executed while Acts 16 of 1864. 20 of 1866 and 8 of 1871 in force, that is, between Jamuary I, 1865, and March 31, 1877. Under sec. 50 of Act 3 of 1877 and of this Act, every document compulspro ;u regostrab;e under sec. sec. 17, cls (a), (b), (c) and (d), as well as every document optionally registrable under cls (a) and (b) of sec. 18. is, if duly registered, entitled to priority over an unregistered document relating to the same property. But under Act 16 of 1864 (Sec.68) and Acts 20 of 1866 and 8 of 1871, there was no priority for a registered over an unregistered document, unless the registered document was optionally registrable (see

p. 200 above). Under those Acts it was only a registered document optionally registrable, and was entitled to priority over an unregistered document. A registered document compulsorily registrable had no priority under thos Acts over an unregistered document. The result is that if two documents relating to the same property were executed while Act 16 of 1864 was in force, and one of them being optionally registrable is registered, and the other is not, the former is entitled under see. 68 of the Act to priority over thelatter (Gobind Chunder v. Poorno Chunder (1868) 10 W R.36). The result would be the same if both the documents were executed while Act 20 of 1866 (Panha v. Fatta (1875) 12 Bom. H C. 179; Venkayya v. Kotayya (1883) 6 Mad 153) or Act 8 of 1871 was in force, or one executed while Act 16 of 1864 was in force and the other while Act 20 of 1866 was in force (Ali Azim Khan v. Islam Khan (1870) 14 W.R. 483) And by virtue of the Explanation to sec. 50 of Act 8 of 1871 (See p. 200 above), a document optionlly registrable, and executed and registered while Act 8 of 1871 was in force, is entitled to priority over an unregistered document executed while Act 16 of 1864 or Act 20 of 1866 was in force, provided the property to which the documents relate is situated in a place where those Acts were in force. But if the registered document was compulsorily registrable, it had no priority under any of the said three Acts over a document that was optionally registrable, but not registered (Shaikh Ryasutulla v. Doorga Churn (J875) 24 W.R. 121; Jethobhai Girdhar (1896) 20 Bom. 158, 164).

In 1867 A executes a deed of mortgage of his property to B for Rs. 95. The deed is optionally registrable under Act 20 of 1866 and is not registered. In 1876 A executes a deed of sale of the same property to C for Rs. 150. The deed is compulsorily registrable, and it is registered under Act 8 of 1871. C's deed, being compulsorily registrable, is not entitled to priority over B's deed which was optionally registrable.

"Duly registered".—There was no difficulty, up to the time of the passing of the Registration Act 3 of 1877, in deciding cases of the kind given in the above illustration, for the decisions proceeded on the language of sec. 68 of Act 16 of 1864, and sec. 50 of Acts 20 of 1866 and 8 of 1871, which was clear beyond all dobut. But the enactment of sec. 50 of the Act of 1877, which created a priority for documents compulsorily registrable, gave rise to some difficulty. Had sec.50 of the Act of 1877 a retrospective operation on documents compulsorily registrable under the provious Acts, namely, Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871, and registered under those Acts, or did it apply to compulsorily registrable documents registered under Act 3 of 1877? The answer depended on the meaning of the words "duly registered" in sec. 50 of the Act of 1877. It has been held by the High Court of Bombay that the section has no retrospective effect, and that the words "duly registered" in that section mean duly registered under the Act of 1877, and not under any prior Act (Raniltker v. Joshi (1881) 5 Bom. 442; Iccharam v. Govindram (1881) 5 Bom. 653; Lakshmandas v. Dasrat (1882) 6 Bom. 168, 192; Rupchand v. Davlatrav (1882) 6 Bom. 495; Shivram v. Saya (1889) 13 Bom 229; 233).

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According to the Bombay decisions the sale deed to C in the case put in the above illustration, not having been registered under the Act of 1877, is not entitled to priority over the mortgage deed to B. According to those decisions the sights of the parties must be decided according to the law in force when the documents were executed. The reasons for the view taken by the High Court of Bombay may be stated in the words of Melvill, J. (Kanitkar v. Joshi (1881) 5 Bom. 442, 445, 446): "Under the law in force at the time of the registration (i.e. Act 8 of 1871), the plaintiff's title (that is, B's title in the case put in the above illustration) was good against that of the defendant (that is, C). If we apply section 50 of the new Act, the plaintiff (B) loses his right, and the defendant (C) acquires a title to which, when he registered his deed, he had no claim. It is to be presumed that the Legislature did not intend, by a retrospective operation, to destroy one existing title and to set up another .. ... — The express provision contained in the Explanation to section 50 of Act III of 1877, by which retrospective effect is given to the word 'unregistered,' in some measure suggests the inference that such retrospective effect was not intended to be given to the word 'registered'.

In 1882, a majority of the Full Bench of the Allahabad High Court held, as was done by the High Court of Bombay, that the section was not retrospective (Sri Ram v. Bhagirath (1882) 4 All. 227 (F.B.): Bhola Nath v. Baldeo (1879) 2 All. 198 ; Kanhiya Lal v. Bansidhar (1884) 4 All. W.N. 136; Karamat Ali v. Muhamad (1886) 6 All. W.N.15). Stuart, C.J., dissented from the majority, and expressed the opinion that the words "duly registered" meant duly registered under the law for the time being in force, whether it was the Act of 1864 or of 1866 or of 1871 or of 1877. In a later case (Habib-ullah v. Nakched Rai (1883) 5 All. 447, 451), a Divisional Bench of the same High Court, consisting of Stuart, C.J., and Broadhurst, J., held that the section was retrospective, though the latter judge was a party to the Full Bench case. According to this decision, C's deed in the case put in the above illustration would be entitled to priority over B's deed, though it was registered under Act 8 of 1971. The same point again came up in a later case (Dori Lal v. Umed Singh (1983) 6 All 164) before a Divisional Bench of the same High Court consisting of Stuart, C.J., and Straight, J., when Stuart C.J., adhered to the opinion expressed by him in the Full Bench case. The learned judge observed that the Full Bench decision did not apply to the facts of the case (though it certainly did), and criticised the reasoning of the majority judgment as "an argument with respect to the policy of the Act and not an exposition of an existing law to be judicially interpreted with reference to its actual terms" He then went on to say : "Here the 'Explanation' appended to sec. 50 of the Registaration Act is distinctly and intentionally retrospective. and it cannot be got rid of on any views of vested rights or otherwise, but must be applied and enforced, and the meaning of the 'Explanation' is that registration under any of the Acts mentoined in it is to have precisely the same effect as to the priority of any registered instrument as registration under Act III of 1877. If my colleagues differ from me on this point, I would feel obliged by their saying to what possible cases the registration provided in the 'Explanation' applies" (The

answer had already been given by the majority of the Full Bench, namely, in cases where the registered document for which priority is claimed, was registered under Act 3 of 1877). Straight, J, who was a party to the Full Bench judgment, held that the case was directly governed by the ruling of the majority of the Full Bench and that he considered himself bound by it.

The High Court of Madras has held that sec. 50 of Act 3 of 1877 is retrospective in its operation (Kallacolathuran v. Subbaroya (1880) 3 Mad. 73; Muthanna v. Alibeg (1882) 6 Mad. 174.) In one of the cases the learned Judges said : "As by the Explanation appended to the section, 'unregistered' means not registered according to the particular Act in force at the time of execution, it is left to be inferred that 'registered' means 'registered' according to any such Act" (Kallacolathuran v. Subbaroya (1882) 6 Mad. 174, 176.)

The point arose, but was not decided, in a Colcutta case (Oghra Singh v. Ablakhi koer (1873) 4 Cal. 537.) It was there held that sec. 50 of Act 3 of 1877 did not apply to the case as the suit was filed in 1876 before the Act came into force. In a later case it was said by the Calcutta High Court that the words "duly registered" meant registered under the Act of 1877 (Gungaram v. Kalipodo (1885) 11 Cal. 661, 666.)

"*Nothing in sub-section* (1) *applies....to any registered document which had not priority under the law in force at the commencement of this Act.*"—Summarizing what has been stated in the preceding paragraph, we may say that the words "duly registered" in sec. 50 of Act 3 of 1877, refer according to the Bombay decisions, to documents registered *under the Act of* 1877, while according to the Madras decisions, they refer to documents registered *under any law for the time being in force for the registration of documents.* The course of decisions in Allahabad is not uniform. The position, then, before the passing of the present Registration Act 16 of 1908, was this, that according to the Bombay decisions and some of the decisions of the Allahabad High Court, a registered document, compulsorily registrable, had no priority over an unregistered document optionally registrable, unless the former document was registered under the Registration Act 3 of 1877.

While drafting the Registration Bill which eventually became Act 16 of 1908, the Legislature was confronted with a difficulty. That difficulty arose from the definition of "registered" in the General Clauses Act 10 of 1897, sec. 3 (45). That definition runs thus : "Registered,' used with reference to a document, shall mean registered in British India *under the law for the time being in force for the registration of documents.*' The definitions in sec. 2 of the General Clauses Act apply only to Acts passed after its commencement. Such being the case, the definition of "registered" in that Act did not apply to the expression "registered" in sec. 50 of the Registration Act 3 of 1877. But it would apply to that expression in the new Registration Act, with the result that a document registered under any Act before the Act of 1877 would acquire priority over a previous unregistered document. This would alter

the law as interpreted in Bombay, and would confer on documents registered before the Act of 1877 a priority which they did not possess according to the Bombay decisions and according also to some decisions of the Allahabad High Court. It was, on the whole, thought best to keep those documents in the same position as regards priority as they occupied under the Act of 1877, and to attain that object the words, "or to any registered document which had not priority under the law in force at the commencement of this Act," were added in sub-sec. (2) of the present section. The result is that the law on the subject is left where it was at the commencement of this Act.

Summarizing the above, it may be said that the word "registered' in sub sec. (1) has the meaning assigned to it by sec. 3 (45) of the General Clauses Act, subject to the limitation that the rule as to priority contained in that sub-section is not to apply "to any registered document which had no priority under the law in force at the commencement of this Act."

IV. Where one of the documents is executed before Act of 1877 come in to force, that is April 1, 1877, and the other after that date.—A document registered under Act 3 of 1877, whether its registration is compulsory (Lachman Das v. Dip Chand (1880) 2 All. 851 [F. B]; Gangaram v. Kuar Gir (1880) 2 All. 431 ; Abdul Rahim v. Ziban Bibi (1883) 5 All. 593 ; Gobind Ram v. Bataso (1883) 3 All. W.N. 104 ; Kondayya v. Guruvappa (1882) 5 Mad. 139; Shib Chandra v. Johobux (1881) 7 Cal. 570; Gungaram v. Kalipodo (1885) 11 Cal. 661 ; Keshav v. Vinayak (1894) 18 Bom. 355; Jethabhai v. Girdhar (1896) 20 Bom. 158.) or optional (Janki Prasad v. Sri Matra (1885) 7 All. 577, 581. is entitled to priority over an unregistered document executed while any one of the previous Acts, namely, Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871, was in force, and optionally registrable under it. This follows from the language of the Explanation appended to sec. 50 of Act 3 of 1877 [see p. 201 above], reproduced in the Explanation to the present section. See notes, "Scope of the section," on p. 208 above, and note "Explanation to the section," on p. 209 above.

Illustration.

In 1875 A executes a mortgage deed of his property to B to secure an advance of Rs. 80. The deed is optionally registrable under Act 8 of 1871, and is not registered. In 1878 A executes a deed of sale of the same property to C for Rs. 200. The deed is compulsorily registrable, and is registered under Act 3 1877. C's deed is entitled to priority over B's deed : Lachman Das v. Dipchand (1880) 2 All. 851 (F. B.). The result would be the same if B's deed was executed while Act 16 of 1864 or Act 20 of 1866 was in force, and was unregistered.

V. Where both documents executed after Act 3 of 1877 came into force.—A document registered under Act 3 of 1877 of the present Act, whether it is registrable compulsorily or optionally, is entitled to priority over an unregistered

document executed after that Act came into force. This follows from the language of the first paragraph of sec. 50 of Act 3 of 1877 which is the same as that of sub-sec. (1) of the present section.

Section does not invalidate unregistered documents which are optionally registrable.—All that is provided by the present section is that a registered deed shall take effect against an unregistered document relating to the same property. It does not invalidate documents that are optionally registrable, and are not registered (Ganga Ram v. Bansi (1880) 2 All. 431, 432 ; Aziz v. Ladha Singh (1883) Punj. Rec. No. 102, at pp. 317, 318.) Thus a mortgage, optionally registrable, but not registered, is not in itself invalid (Ramaraja v Arunachala (1884) 7 Mad. 248, 252.) Hence if the mortgaged property is sold by a subsequent mortgage under a registered deed the mortgagee under the prior unregistered deed is entitled to the surplus, if any, left after the satisfaction of the registered mortgage. The mortgage, though not created by a registered document, is not invalid merely by reason of the document not being registered (Dhanpal Singh v. Budh Singh (1913) 35 All. 271, 19 I. C. 783 ; Padmanabh v. Khemu (1894) 18 Bom 684.) The effect of non-registration is that the unregistered mortgage will rank as a second mortgage, and the subsequent registered mortgage will rank as the first mortgage. It need hardly be stated that if the prior mortgage was compulsorily registrable, and not registered, it could not affect the property comprised in it having regard to sec. 49, and the prior mortgagee would not be entitled to the surplus sale-proceeds. A claim for surplus sale-proceeds is in reality a claim to enforce payment of money charged upon the mortgaged property (See Barhamdeo v. Tara Chand (1913) 41 Cal. 654, 41 I. A. 45, 21 I. C. 961.

Rival deeds need not be executed by the same person.—It is not necessary under sec. 50 of the Act that the rival deeds should be executed by the same person. It is sufficient if the property comprised in the registered deed is the same as that comprised in the unregistered deed. Thus when a prior unregistered document is executed by the owner thereof, and the subsequent registered deed is executed by his assign (Gungaram v. Kalipodo (1885) 11 Cal. 661, 666. or, after the owner's death, by his heirs (Makandas v. Shankardas (1875) 12 Bom. H. C. 241 ; Chunilal v. Ramchandra (1898) 22 Bom. 213 ; Kondiba v. Nana (1903) 27 Bom. 408, 411-412 ; Umbika Churn v. Dhurmo Doss (1869) 11 W. R. 128 [a case under Act 19 of 1843]. the section will apply, and the registered deed will have priority over the prior unregistered deed. It is the same title which is conveyed by both documents, and that is sufficient ((1898) 22 Bom. 213, 215, supra.

Illustration.

In 1865 A executes a mortgage deed of his property to B to secure a loan of Rs. 50. The deed is optionally registrable, and is not registered. In 1867 A sells the same property to C by a registered deed. In 1874 C sells the property by a registered deed to D. In 1878 D sells the property by a registered deed to *F* for Rs. 300. The sale deed to F is entitled to priority over *B*,s mortgage deed, though it is executed not by *A*. but by *D*, a purchaser from *A*'s purchaser (C) : *Gungaram* v. Kalipodo (1885) 11 Cal. 661.

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Rival deeds must be antagonistic.—This section provides that a registered document shall take effect, as regards the property comprised therein, against every unregistered document relating to *the same property*. It seems clear that this provision can only apply to cases in which the property conveyed by the two documents is the same, or in which the property conveyed by one document includes the property conveyed by the other. In other words, it applies where the two documents are antagonistic, not where effect can be given to each without infringement of the other (Sobhagchand v. Bhaichand (1882) 6 Bom. 193, 208 (F. B.); Bapuji v. Satyabhamabai (1882) 6 Bom. 490; Ramaraja v. Arunachala (1884) 7 Mad 248; Narasayya v. Jungam (1884) 7 Mad. 418. Ramachadra v. Krishna (1886) 9 Mad. 495; Lackhmichand v. Kastur (1872) 9 Bom. H. C. 60; Ishri Prasad v. Gopi Nath (1912) 34 All. 631, 635, 17 I. C. 19. See also Maganlal v. Shakra (1898) 22 Bom. 945; Dhondi v. Appa (1928) 30 Bom. L. R. 720, 113 I. C. 523, ('28) A. B. 269.) "Thus if a mortgages his estate to *B*, and afterwards sells the same estate to C, C may, by registering his conveyance, get rid of the unregistered mortgage; but he cannot do so, if his conveyance is, in terms, only a conveyance of the equity of redemption; for then the estate given to *B* and the estate given to C are separate and distinct, and can exist together. So if *A mortgages or sells* to *B*, and afterwards *C* purcnases at a Court sale the then existing right, title, and interest of *A*, *C* buys in the one case the equity of redemption, and in the other case nothing at all. Registration, therefore, cannot help him; for, on the very face of his certificate of sale, the property comprised therein is not the property perviously conveyed to *B*, but only the residue of *A*'s estate after such conveyance". 6 Bom. 193, 208.

Illustrations.

(1) In 1878 *A* executes a mortgage deed of his property to *B* to secure a loan of Rs. 75. The deed is optionally registrable, and is not registered. In 1879 *A* sells the same property by a registered deed to *C subject to B*'s mortgage. *B* sues *C* to enforce his mortgage by a sale of the mortgaged property. *C* contends that the mortgage deed to *B* not being registered, his sale deed is entitled to priority over the mortgage deed, and *B* cannot therefore proceed against the *property*. *C*'s contention cannot preveil, for what was sold to *C* was *A*'s equity of redemption, and not *A*'s entire interest in the property, and effect can be given to each document without infringement of the other. Had the sale to *C* not been subject to *B*'s mortgage, his sale deed would have prevailed under sec. 50 over *B*'s mortgage deed. But the sale being subject to the mortgage, *B* is entitled to a decree for sale : Ramachandra v. Krishna (1869) 9 Mad. 495.

(2) In 1870 A executes a mortgage deed of his property to B to secure a loan of Rs. 90. The deed is optionally registrable, and is not registered. In 1872 the property is put up for sale in execution of a decree obtained by a creditor of A against him, and it is purchased by C for Rs. 77. C obtain, a certificate of sale, and it is registered. B sues C to enforce his mortgage by a sale of the mortgaged property. C contends that both documents being

optionally registrable and his certificate being registered, it is entitled to priority over B's mortgage deed under sec. 50 of Act 8 of 1871. This contention cannot prevail, for a purchaser at a Courtsale acquires only the right, title and interest of the judgement-debtor in the property sold, and the property being subject to the mortgage at the date of sale, what C purchased was not A's entire interest in the property, but the property subject to the mortgage. The case, therefore, stands on the same footing as the case put in ill. (1), and B is entitled to a decree for sale : Sobhagchand v. Bhaichand (1882) 6. Bom. 193 (F. B.). Note.—This question cannot now arise., for a certificate of sale being one of the documents mentioned in sub-sec. (2) of sec. 17, sec. 50 does not apply to it :

(3) A executes an unregistered mortgage in favour of B. Subsequently B sells the property to C by a registered deed. A sues B and C for redemption. Here the mortgage deed is passed by a person who is the owner of the property, while the sale-deed is passed by one who has only the rights of a mortgagee. The titles under which the competing deeds are passed are quite different, and in order that there should be a competition between two documents under sec. 50 the title must be the same. Here there is no identity of title. C therefore takes the property subject to the mortgage of B : Dhondi v. Appa (1928) 30 Bom. L. R. 720, 113 I.C. 523, ('28) A. B. 269.

"Every unregistered document."—This includes a san-mortgage, that is, a mortgage of property in Gujarat which is deemed to be complete though not accompanied with possession. A san-mortgage bond which is optionally registrable, and not registered, is liable to be postponed to a subsequent registered mortgage deed relating to the same property as much as any other unregistered document (Jethabhai v. Girdhar (1896) 20 Bom. 158.

"Not being a decree or order."—A decree or order, though unregistered, is not liable to be postponed to a subsequent registered document relating to the same property. It follows from this that if a mortgagee under a deed optionally registrable, and not registered, obtains a mortgage-decree upon his mortgage, he is entitled, by virtue of decree, to priority over a subsequent transferee of the same property under a registered instrument (Kolluri v. Ammanna (1880) 3 Mad. 71 ; Baijnath v. Lachman Das (1885) 7 All. 888.) But the decree must not be merely a money-decree. Decrees excepted from the operation of sub-sec. (l) are decrees which by their nature are either compulsorily registrable under cls. (a), (b), (c) or (d) of sub-sec. (l) of sec. 17 or optionally registrable under cl. (a) or cl. (b) of sec. 18 that is,decrees which create, declare, etc., an interest in immoveable property. A mortgage-decree, as distinguished from a money-decree, is a decree of that kind. Such a decree supersedes the unregistered mortgage deed, the deed merging in the decree,and itself operates as a document of title, which, though unregistered, is entitled to priority over the subsequent registered document (Keshav v. Vinayak (1894) 18 Bom. 355 [F. B.]).

But the unregistered decree will not be entitled to priority, if it is obtained after the execution of the subsequent registered document (Shabi Ram v. Shib Lal (1885) 7 All. 378 ; The Himalaya Bank, Ltd. v. The Simla Bank, Ltd. (1886) 8 All. 23 ; Raghubans v. Ganga (1886) 6 All. W. N. 133 ; Jagrup Rai v. Radhey Singh (1891) 13 All. 288 ; Baldeo Prasad v. Baldeo (1901) 21 All. W. N. 112 ; Madar v. Subbarayulu (1883) 6 Mad. 88 ; Jethabhi v. Dayalji (1896) 20 Bom. 158 ; Ishan Chandra v. Gonesh Chandra (1901) 28 Cal. 139 ; Ram Ditta v. Amir Chand (1889) Punj. Rec. No. 195 ; Pir Bakhash v. Kadir Bakhash (1898) Punj. Rec. No. 32.) As stated by Edge, C.J., in an Allahabad case ((1891) 13 All. 288, 289, supra.), "under sec. 50 of the Registration Act the decree or order which is not to be effected by a registered document must be a decree or oder made prior to the execution and registration of the registered document."

Illustration

In 1880 A executes a mortgage deed of his property to B to secure an advance of Rs. 50. The deed is optionally registrable, and is not registered.

In 1882 A executes a mortgage deed of the same property to C. The deed is registered.

If B obtains a mortgage-decree before the execution and registration of the mortgage to C, the decree will supersede the unregistered mortgage, and, though not registered, will not be liable to be postponed to the mortgage deed to C. Suppose that the property is sold under the decree and purchased by D. Suppose also that C obtains a mortgage decree upon his mortgage, and that the property is sold under the decree and purchased by F. D will be entitled, for the reasons given above, to possession of the property to the exclusion of F.

But if B obtains a mortgage decree on his mortgage after the date of execution of the mortgage deed to C, the decree will have no such effect.

The rights of the parties in such a case remain what they were before the decree. Prior to the decree C's deed, being registered, had priority over B's unregistered deed. This priority is not affected by any decree obtained by B subsequent to the execution of mortgage to C.

Sec. 17 (2) (vi) is now amended by excluding from its operation decrees or orders expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit. It follows that such a decree made on a compromise requires registration. Such a decree, however, is not expressly included in sec. 17 (1). It would, however, fall within sec. 17 (1) (b), however inappropriate it may be to call a decree an "instrument." The words used in sec. 50 are "not being a decree or order." Though sec. 17 (2) (vi) is amended, sec. 50 is not. The only way in which the two sections can be reconciled is by holding that the words "decree and order" in sec. 50 refer to decrees and orders which are exempted from registration under the amended sec. 17 (2) (vi). The words first appeared in sec. 50 of the Act of 1871 in which there was no section corresponding to sec. 17 (2) and have been retained by inadver-

tence in subsequent Registration Acts (Pahlumal v. Naraindas (1933) 143 I C. 863, ('33) A.S. 151 F. B.).

"Whether such unregistered document be of the same nature as the registered document or not."—Under this section a registered document is entitled to priority over an unregistered document, whether the latter document be of the same nature as the former or not (Shrish Chandra v. Mongril (1904) 9 Cal. W.N 14 : Dhondi v. Appa (1928) 30 Bom. L. R. 720. 113 I.C. 523. ('28) A B. 269). Thus a registered deed of sale may be entitled to priority over a registered deed of mortgage or gift. There was a similar provision in the corresponding sections of the Acts of 1864, 1866, 1871 and 1877.

Under Bengal Regulation 36 of 1793, Madras Regulation 17 of 1802, Bombay Regulation 4 of 1802, and Act 19 of 1843, a registered document was not entitled to priority over an unregistered document unless the latter document was of the same nature as the former. Thus a registered deed of sale could have priority over an unregistered deed of sale only, but not over an unregistered deed of gift or mortgage. Bombay Regulation 9 of 1827 contained a provision similar to that in the present section.

Sub-sec. (2).—See notes under the head. "Scope of the section," on p. 123 above.

Explanation to the section.—See notes under the same heading, on p. 125 above.

Notice of prior unregistered document.

This subject may be considered under the following head, namely,—

A.—Notice of prior unregistered document of which registration is optional; and

B.—Notice of prior unregistered document of which registration is compulsory.

A—Notice of prior unregistered document of which registration is optional.—In the early Regulations on registration existing in the various Presidencies before 1843, the doctrine of notice was expressly recognized. By this recognition of the doctrine, it was found that fraudulent unregistered claims were often set up as of previous date as against bona fide registered documents, and much prejury was committed in investigations touching the fact of such notice. To suppress such practices Act 1 of 1843 was passed expressly abolishing the doctrine of notice as regards priorities. But in subsequent legislations, that is, in Acts 16 of 1864, 20 of 1866, 8 of 1871, 3 of 1877 and the present Act 16 of 1908, no mention at all has been made of the doctrine of notice as regards competition between registered and unregistered documents. Taking this to be an implied revival and recognition of the doctrine, all the High Courts (although some of them at first held a different view) have at present concurred in giving full effect to the doctrine, on the ground that il the doctrine

is ignored, the registration law which is expressly intended to prevent fraud would be a most effectual instrument for perpetrating fraud. The proposition on which unanimity is established may be stated thus : that a subsequent registered document, with actual notice of a prior unregistered document of which registration is optional, cannot take effect against such unregistered document (Shivram v. Genu (1882) 6 Bom. 515; Dundaya v. Chenbasapa (1885) 9 Bom. 427; Hathising v. Kuvarji (1886) 10 Bom. 105; Moreshwar v. Dattu (1888) 12 Bom. 569; Jivandas v. Framji (1870) Bom. H.C.O.C. 45, 73; Narain Chunder v. Dataram Roy (1882) 8 Cal. 597 [F. B.]; Fuzludeen v. Fakir Mahomed (1880) 5 Cal. 336; Abdool Hossein v. Raghu Nath (1886) 13 Cal. 70; Nani Bibee v. Hafizullah (1884) 10 Cal. 1073; Bhalu Roy v. Jakhu Roy (1885) 11 Cal. 667; Hurnandun Singh v. Jawad Ali (1900) 27 Cal. 468; Gouree Kant v. Gridhur (1869) 13 W.R. 456; Sreenath Churn Das v. Dwarkanath (1870) 14 W.R. 318; Diwan Singh v. Jadho Singh (1897) 19 All. 145, on app. (1898) 20 All. 252; Ram Lal v. Bachcha Singh (1912) 10 All. L.J. 114, 16 I.C. 625 (no notice); Krishnamma v. Suranna (1893) 16 Mad. 148 [F. B.]; Chinnappa v. Manickavasagam (1902) 25 Mad. 1; Shankar Das v. Sher Zaman (1900) Punj. Rec. No. 56). This doctrine of notice, it may be observed, has been applied to cases arising under all the Registration Acts commencing with Act 16 of 1864. The notice, to affect the subsequent deed, must have been received by the holder of that deed at or before the execution of his deed. The Allahabad High Court has held that the doctrine applies even if the subsequent transferee had no notice of the prior unregistered document at the time of execution of his deed, but receives notice before it is registered (Khiali Ram v. Himmata (1908) 30 All. 238, followed in Rodhal Mal v. Ramjidas (1933) 146 I.C. 40, ('33) A.L. 609). The same Court has held that where the subsequent purchaser buys with notice of the prior unregistered document, and the property is pre-empted, the purchase by the pre-emptor is affected by the notice which his vendor had, though he himself had no notice of the prior document at the time of pre-emption; the reason given being that a pre-emptor stands in the shoes of his vendor in respect of all the rights and obligations arising from the sale to his vendor (Tejpal v. Girdhari Lal (1908) 30 All. 130). The burden of proving notice, where notice is alleged, rests upon the person who alleges the notice. Such notice must also be averred in the pleadings (Chinnappa v. Manickavasagam (1902) 25 Mad. I; Magu v. Bholi Dass (1911) 19 Cal. L.J. 352, 354, 20 I.C. 195).

A property is mortgaged first by a registered instrument to secure a loan of Rs. 300, and afterwards by an unregistered mortgage to the same person to secure a loan of Rs. 99. By the second deed of mortgage the mortgagor agrees to pay both amounts before he could redeem. The mortgagor subsequently sells the property to a purchaser who has no notice of the unregistered mortgage. The purchaser is not bound by the covenant contained in the second mortgage deed to repay both amounts, and he is entitled to redeem on payment of the amount secured by the first mortgage (Ram Ghulam v. Ram Chandra (1925) 47 All. 338, 80 I.C. 177, ('25) A. A. 325).

Illustration.

In 1878 A executes a mortgage deed of his property to B to secure an advance of Rs. 50. The deed is optionally registrable, and is not registered. In 1884 A sells the same property to C by a registered deed. C had at the date of his purchase notice of the prior unregistered mortgage to B. C's deed is not entitled to priority over B's mortgage. Abdool Hossein v. Raghu Nath (1886) 13 Cal. 70.

B.—Notice of prior unregistered document of which registration is compulsory.

It is settled law [see preceding paragraph] that a subsequent registered document with notice of an earlier unregistered document of which registration is optional is not entitled to priority over the earlier unregistered document. But this principle does not apply where the earlier document is compulsorily registrable, and is not registered. The holder, therefore, of a subsequent registered document, is entitled to priority over the holder of an earlier unregistered document of which registration is compulsory even though the holder of the registered document has notice of the earlier unregistered document (Harnam Das v. Hira (1885) Punj. Rec. No. 90 [F. B.]. The reason is that where a document is compulsorily registrable, but is not registered, it does not affect the property comprised in it having regard to sec. 49. The holder of such a document acquires no title to the property, and notice of such a document on the part of the holder of a subsequent registered document cannot confer upon him a title which he otherwise has not. It is different, however, in the case of a document which is optionally registrable, and is not registered. Here the holder of the document has a perfectly good title to the property. The document is not touched by sec. 49. The only effect of the document being unregistered is that if the property is subsequently transferred to another person by a registered document, the latter document will acquire priority over the prior unregistered document, unless the holder thereof had notice of the prior document. In other words, notice is effective as between two documents which are valid in law, but not where one of the documents is invalid by reason of non-registration.

Whether possession is equivalent to notice.

This subject may be considered under the following heads, namely—

A.—Whether possession under an unregistered document optionally registrable is equivalent to notice of such document.

B.—Whether possession under an unregistered document compulsorily registrable is equivalent to notice of such document.

A.—Whether possession under an unregistered document optionally registrable is equivalent to notice of such document.—

As seen in the notes above, all the High Courts are unanimous in holding that the holder of a subsequent registered deed, with actual notice

of an earlier unregistered deed of which registration is optional, is not entitled to priority over the holder of the earlier deed. Suppose now that the holder of the subsequent registered deed had no actual notice of the earlier unregistered deed, but the holder of the earlier unregistered deed was in possession at the date of execution of the subsequent deed, does his possession amount to notice to the holder of the subsequent deed so as not to entitle the subsequently registered deed to priority over the earlier unregistereed deed.

The High Courts of Bombay (Lakshmandas v. Dasrat (1882) 6 Bom. 168, 187-188 [F. B.]; Sharfudin v. Govind (1903) 27 Bom. 452. 469-470: Kondiba v. Nana (1903) 27 Bom. 408; Waman v. Dhondiba (1880) 4 Bom. 126; Dundaya v. Chenbasappa (1885) 9 Bom 427; Balaram v. Appa (1872) 9 Bom. H C. 121; Manmai v. Dashrath (1872) 9 Bom H.C. 147: Nagesh v. Balvantrav (1872) 9 Bom. H.C. 151; Ganpat v. Khandu (1867) 4 Bom. H.C. 69; Hari v. Hari (1900) 2 Bom. L. R. 110; Karbasappa v. Dharmappa (1900) 2 Bom. L. R 223.) Madras (Krishnamma v. Suranma (1893 16 Mad. 148 [F. B.], and Allahabad (Bhikhi Rai v. Udit Narain Singh (1903) 25 All. 366. 370; Ram Autar v. Dhanauri (1886) 8 All. 540. have held that possession amounts to notice of such title as the person in possession may have ; and any other person who takes a mortgage or other charge upon. or purchases immoveable property without ascertaining the nature of the claim of the person in possession, does so at his own risk. The holder of the prior deed may be in actual possession, or he may be in constructive possession through his tenants. But if he leases the property to his own vendor, the constructive possession which he has through the vendor as his tenant does not amount to notice to the subsequent transferee. The reason is that the vendor's possession can afford no notice to the subseqent transferee of the first transferee's title. Finding his intended vendor in possession, the subsequent transferee would have no reason to suppose that he was there otherwise than as owner (Moreshwar v. Dattu (1888) 12 Bom. 569. 572; Chunilal v. Ramchandra (1898) 22 Bom. 213, 216; Pindee v. U HPA (1928) 6 Rang. 315. 112 I.C. 230, ('28) A.R. 237).

Illustration.

A sells land to B for Rs. 75, and puts B into possession. The sale deed is optionally registrable, and is not registered. A then sells the same land to C by a registered conveyance. B's possession amounts to notice to C of B's title, with the result that C's deed is not entitled to priority over B's deed. But if B lets the land to A, and A is in possession at the date of the sale to C, B's possession through A as his tenant does not amount to notice to C of B's title, for the apparent possession is in A. C's vendor.

The High Court of Calcutta has held that possession is not conclusive evidence of notice, though it is very cogent evidence, of notice, and that you cannot deprive a subsequent registered deed of property over a prior unregistered deed, unless it be proved that the subsequent transferee was aware, or ought to have been awere when he took his transfer, that the first transferee was in possession of the property and had acquired the property under the udregistered deed.

The mere fact that the subsequent transferee had notice of the first transferee's possession is not sufficient. It must also be proved that he knew or ought to have known that the first transferee got the property under the unregistered deed (Narain Chunder v. Dataram Roy (1882) 8 Cal. 597 [F. B.]. overruling Dinonath v. Auluck (1881) 7 Cal. 753, and approving Fuzludeen v. Fakir (1879) 5 Cal. 336: Nani Bibee v. Hafizullah (1884) 10 Cal. 1073, 1075, 1076; Magu v. Bholi Das (1914) 19 Cal. L. J. 352, 20 I.C. 195; Narain Doss v. Gunga Ram (1873) 20 W. R. 287; Hakeem v. Beejoy (1874) 22 W.R. 8.). The distinction between the view taken by the High Court of Calcutta and that taken by the other High Courts may be explained by the following—

Illustration.

A, who owns certain land, leases it to B. In 1875 A sells the land to B for Rs. 75. The sale deed is optionally registrable and is not registered. B who was in possession of the land as A's tenant before the sale, continues in possession as owner after the sale. In 1876 A sells the same land to C by a registered deed. C sues B for rent of the land, alleging that B was A's tenant, and that B became his [C's] tenant after the sale of the land to him. It is admitted by C that he knew when he bought the land that B was in possession, but it is alleged that he honestly believed that B was in possession as A's tenant, as B was in occupation of the land as A's tenant for some years past, and that he did not know of the sale to B. Is C's deed entitled to priority over B's According to the Bombay High Court, it is not, for C having notice of B's possession, it must be held also that he had constructive notice of the title on which B held the land: Kondiba v. Nana (1903) 27 Bom. 408, 412-413. According to the Calcutta High Court, it cannot be presumed in a case such as the above that C was aware of B's title, for the possession which B held, after the sale deed to him was executed, was perfectly consistent with B's previous position as tenant to A (C's vendor) under the lease: Fazludeen v. Fakir (1880) 5 Cal. 336, 343, 350.

Possession to continue to the date of subsequent transfer.—Whether possession is conclusive evidence of notice or merely "very cogent evidence" of notice, it cannot amount to notice of either kind unless it continues to the date of the subsequent transfer (Ghisu v. Amirullah (1881) 1 All. W.N. 33. See also Narain Chunder v. Dataram Roy (1882) 8 Cal. 597, 608-610).

Transfer of Property Act, sec 3, Explanation II.—It is now provided by Explanation II annexed to the definition of "notice" in sec. 3 of the Transfer of Property Act that any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

B.—Whether possession under an unregistered mortgage compulsorily registrable is equivalent to notice of such document —

—S. 50

As regards mortgages it has been held by the Chief Court of the Punjab that a subsequent registered deed is entitled to priority under the section over an unregistered deed of mortgage compulsorily registrable, but not registered, though the mortgagee may be in possession under his mortgage (Mushka Khan v. Jafir Khan (1884) Punj. Rec. No. 126. See also Issuree v. Lall Beharee (1874) 21 W.R. 421.)

Adverse possession under an unregistered document.—A document compulsorily registrable, but not registered, may give a starting point for limitation, though it may not effect a transfer of the property comprised in it (Immudipattam v. Periya (1901) 24 Mad. 377, 384, 28 I.A. 46). The present section does not affect the operation of the law of limitation as to adverse possession in favour of a person who claims under an unregistered document (Nallamuttu v Betha (1900) 23 Mad. 37; Budankayala v. Vinayaka ((1903) 26 Mad. 72) In 1865 A executes a deed of sale of his land to B for Rs. 399, and puts B into possession of the land. The deed, though compulsorily registrable, is not registered. In 1876 A sells the same land to C by a registered deed. In 1878, that is, more than 12 years after the date of the sale to B, C institutes a suit against B for possession. It is contended for C that his deed being registered is entitled to priority over B's deed, and he is therefore entitled to possession. On behalf of B it is conceded that C's deed is entitled to priority, but it is contended that, that does not conclude the matter, and that he (B) having been in adverse possession for upwards of 12 years, C's claim should be disallowed. B's contention must prevail, and C's suit should be dimissed (Sambhubhai v. Shivlaldas (1880) 4 Bom. 49; Uttam Chand v. Janji Ram (1918) Punj. Rec No. 111 .p. 358, 48 I.C. 390.). The result would be the same if the sale deed to B was optionally registrable, and not registered (23 Mad. 37, supra; 26 Mad. 72, supra).

Optional registration and Transfer of Property Act.— Optional registration was abolished by the Transfer of Property Act, 1882, as to sale deeds by sec. 54, and as to mortgage deeds by sec. 59 as amended by Act 6 of 1904. But this is confined to territories to which that Act extends; outside those territories, optional registration, under the Registration Act is still in force.

Fraud as affecting priority.

Fraud as affecting priority.—It is a well recognised maxim of law that no man can gain title by fraud (Sheik Rahamtulla v. Sheik Sariutulla (1865) I Beng. L.R. 82, per Peacock, C.J.; Ram Autar v. Dhanauri (1886) 8 All. 540, 542.). It may be said of this Act, as it was said by Lord Redesdale of the Irish Registration Act (6 Anne, c. 2), that "the intention was to make priority of registry the criterion of title to all intents and purposes whatsoever. But this does not exclude anything which affects the conscience of the party himself who claims under the registered deed; it never was the intention of the legislature to give a priority of right to commit a fraud; but its meaning was that, parties dealing fairly, priority should be given to him who had the

registered instrument, and that in equity as well as at law" (Latouche v. Lord Dunsant, I Seh. & Lefroi, 137, 159; Meer Shumshare v, Syud Lutafut (1872) 18 W.R. 504; Annu Mal v. The Collector of Bareilly (1906) 28 All. 315). In Sreenath v. Ram Comul ((1865) 10 M I.A. 220, 3 W.R. P.C. 43; Krishnamma v. Suranna (1893) 16 Mad. 158, 160-161; Narasimulu v. Somanna (1885) 8 Mad. 167, 168.), which was a case under Act 19 of 1843, their Lordships of the Privy Council said: "Their Lordships think that it could not be intended by the Act that a deed which was tainted by fraud, although in other respects genuine, should be placed on the same footing as an honest and bona fide deed. They are not disposed so to construe the Act, but they think that at all events a registered deed cannot be deprived of the priority given by the Act unless it be both alleged and proved that there was fraud on the part of the grantee (holder of subsequent registered deed), and in this case no fraud is alleged, and certainly none is proved, on the part of Mozoomdar. It would be going much too far to impute fraud to a purchaser upon the mere ground that he had bought up a possible claim, and, so far as their Lordships can find there is nothing beyond this affecting Mozoomdar either in point of allegation or of proof." The mere fact that a mortgagee parts with the title deeds of the mortgaged property to the mortgager and the mortgagor subsequently obtains a loan on the security of the deeds from B who advances the money without notice of the first mortgage, does not amount to fraud so as to postpone the first mortgage to B's (Balmakundas v. Moti (1894) 18 Bom. 444. See also Monindra Chandra v. Troyluckho Nath (1898) 2 Cal. W. N. 750; Damodara v. Somasundra (1889) 12 Mad. 429 and Madras Building Company v. Rowlandson (1890) 13 Mad. 383; Rangasami v. Annamalai (1908) 31 Mad. 7, Chettiappa v. Periasami (1910) 20 Mad. L. J. 979, 7 I. C. 810.

In this connection we may note the provisions of sec. 78 of the Transfer of Property Act, 1882, which it is provided that "where, though the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee."

Subsequent registered document obtained pendente lite.

Where the subsequent registered document is obtained pendente lite.—Sec. 52 of the Transfer of Property Act, 1882, relates to the doctrine of lis pendens. That doctrine was in force in British India even prior to that enactment (Lakshmandas v. Dasrat (1882) 6 Bom. 168.) The doctrine of lis pendens is that pendente lite, that is, pending the suit, neither party to the suit can alienate the property in dispute so as to affect his opponent. The doctrine applies to alienations made before as well as after service of summons on the defendant in the suit (Faivaz Hussein v. Munshi Prag Narain (1907) 29 All. 339, 34 I.A. 102.) But if the document ise xecuted before the institution of the suit, the fact of its being registered pendente lite is immaterial (Bapuji v. Icharam (1877) Bom. H.C. P. J. 81; Venkataramana v. Rangiah Chetti (1921) 41 Mad. L. J. 399, 70 I. C. 212, ('22) A. M. 249, refusing to follow the contrary decision in Tilakdhari Singh v. Gour Narain (1920) 5 Pat. L. J. 715, 59 I. C. 290, ('21) A. P. 150.) It also applies

to alienation made pending proceedings in execution to realize a mortgage after a decree for sale (Shivji v. Waman (1898) 22 Bom. 939 ; Raj Kishen v. Radha (1874) 21 W. R. 349 ; Jharoo v. Raj Chunder (1886) 12 Cal. 299.)

Illustrations :

In 1882 A mortgages his house to B to secure a loan of Rs. 75. The mortgage deed is optionally registrable, and is not registered. In 1883 B sues A on the mortgage, and obtains a decree for sale. Pending the suit, A sells the house to C by a registered deed, and puts C into possession of the house. The house is sold in exclusion of B's decree and purchased by P. P sues C for possession. C contends that he being a purchaser under a registered deed is entitled to possession to the exclusion of P, as P purchased the house in execution of a decree obtained on an unregistered document. P contends that C having purchased the house pending the suit, the alienation is ineffectual as against him. P's contention must prevail, and he is entitled to possession. The unregistered mortgage being merged in the mortgage decree, there is no question of any competition between a registered and an unregistered document to which sec. 50 could properly apply. The question is whether C's purchase is not subject to the decree. C's purchase having been made pending the suit, is subject to the mortgage decree, and, the deed of sale in his favour, whether registered or not, can give him no rights as against the right which P has as purchaser under the decree (Bhagwandas & Das v. Nathu Singh (1884) 6 All. 444 ; Gulabchand v. Dhondi (1874) 11 Bom H. C. 64.) Compare notes, "Not being a decree or order," above.

Registration is notice :

Registration as notice.—The law on the subject has now been codified in Explanation I to sec. 3 of the Transfer of Property Act. The Explanation was inserted in the section by sec. 4 of the Transfer of Property (Amendment) Act, 1929, which was subsequently amended by sec. 2 of Act V of 1930. The Explanation is as follows:—

"**Explanation I.**—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the where the property is not all Situated in one Sub-district, or where the registered instrument has been registered under sub-section (2) of sec 30 of the Indian Registration Act, 1901, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that:—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act. 1908, and the rules made thereunder,

(2) the instrument (or memorandum) has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act".

The effect of the section is that registration of a document which is compulsorily registrable is to be deemed to be notice to a person subsequently acquiring the property comprised in the instrument or any part thereof, or any share or interest in it (Ram Lal v. Shiama Lal (1931) 29 All. L. J. 73, 131 I. C. 38, ('31) A. A. 275).

Previous law.—Before the amendment of the Transfer of Property Act there was a conflict of opinion on the question whether registration of a document under the Registration Act was of itself constructive notice of the transaction effected by the document. The High Courts of Bombay (Lakshmandas v. Dasrat (1882) 6 Bom. 168; Dundaya v. Chenbasapa (1885) 9 Bom. 427; Chintaman v. Dareppa (1890) 14 Bom. 506; Narayan v. Bapu (1893) 17 Bom. 741; Dina v. Nathu (1902) 26 Bom. 538; Mahomed v. Bai Cooverbai) and Allahabad (Janki Prasad v. Kishen Dat (1894) 16 All. 478, 479; Churaman v. Balli (1887) 9 All. 591. held that it was. On the other hand, it was held by the High Court of Madras that registration did not amount to notice in any cases. (Shan Maun Mull v. Madras Building Company (1892) 15 Mad. 268.). The decisions in Calcutta were not uniform. In some cases the Calcutta High Court took the same view as the Madras High Court. (Inderdawan v. Gobind Lall (1896) 23 Cal. 790, 794; Preonath v. Ashutosh (1900) 27 Cal. 358, 362. See also Debendra v. Ramtaran (1904) 30 Cal. 599 607.). In two cases, however, namely Monindra Chandra v. Troyluckho Nath (t), (1899) 2 Cal. W. N, 750.), and Bunwari Jha v. Ramjee ((1902) 7 Cal. W. N. 11.) that Court declined to accept the contention that registration was notice per se; at the same time it refused to accede to the view that in no case could registraation be notice in itself. In the latter case Brett and Mittra, JJ., said: "Whether it [registration] is or is not [notice in itself] depends, we think, upon the facts and cricumstances of each case upon the degree of care and caution which an ordinary prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act." In the former case Sir Lawrence Jenkins, said: "Apart from authority, however, I should have thought, having regard to the statutes applicable in this country that the proposition involved is not one of law but of fact, and that as each case arises it should be determined whether in that individual case the omission to search the register taken together with the other facts amounts to such gross negligence as to attract the consequence which results from notice, and it well may be that this test will serve to reconcile the apparent conflict of view that at first sight the cases suggest." In the Punjab it was held in one case (Kanshi Ram v. Pir Baksh (1904) Punj. Rec. No. 134), that mere registration did not amount to notice, but in a later case (Alliance Bank of

Simla v. Bhai Kahan Singh (1915) Punj, Rec. No. 4, 25 I. C. 856.), it was held that in the circumstances of that case registration of a mortgage deed was sufficient notice thereof to a subsequent transferee of the same property.

The question whether mere registration of a document was per se constructive notice of the document came up before the Judicial Committee in Tilakdhari Lal's case. In that case their Lordships, after a review of the decisions of the several High Courts, refused to accept the view taken by the High Courts of Bombay and Allahabad that registration of a deed was of itself constructive notice of the deed in every case as well as the view taken by the High Court of Madras that in no case was registration of a deed of itself constructive notice of the deed. They accepted the view taken by the High Court of Calcutta in the two cases referred to above, and observed that the true position was best stated in the passages cited above from the judgments of Brett. J., and Mittra, J., and Sir Lawrence Jenkins. Their Lordships held that registration of a document is not of itself constructive notice of the transaction effected by the document, and that it depends upon the circumstances of each case whether an omission to search the register is such gross negligence as to place the person so omitting in the same position as if he had actual notice. The Privy Council decision has been followed in several cases (Ghulam Muhammed v. Mirza (1924) 5 Lah. 368, 84 I. C. 174. ('25) A. L. 25 [registered deed of adoption]; A. L.R. M. Chettiar Firm v. L. P. R. Chettiar Firm (1924) 4 Rang. 238, 98 I.C. 19, ('26) A. R. 195 [registered mortgage]). But it has been superseded by the Explanaton added to sec. 3 of the Transfer of Property Act. The Bombay High Court had held that registration cannot operate at notice of an unregistered instrument referred to in the registered deed (Chunilal v. Ramchandra (1898) 22 Bom. 213; Sharfudin v. Govind (1903) 27 Bom. 452.) but these decisions are, it is submitted, also superseded by the amended section of the Transfer of Property Act.

Fraudulent concealment.—The Bombay High Court has held that registration does not amount to notice where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment-debtor's interest in the property brought by the judgment-creditor to sale. Thus, where A mortgaged his property to B by a registered deed, and B then obtained a decree against A for a money-claim unconnected with the mortgage and had the mortgaged property sold by the Court in execution of his decree, and it was purchased by C who had no notice of the mortgage, the mortgage not having been declared in the proclamation of sale, it was held that B would lose his rights under the mortgage as against C if the concealment of the mortgage was fraudulent, and that the registration of the mortgage would not in such a case amount to notice of the mortgage to C (Agarchand v. Rakhma (1888) 12 Bom. 678, 682; Dhondo v. Raoji (1896) 20 Bom. 290. See also Tukaram v. Ramchandra (1876) 1 Bom. 314, where the mortgage was optionally registrable and was not registered.

Registration is not notice to prior transferees.—The decision of the Privy Council has made it clear that registration is not notice to prior transferees (Tilakdhari Lal v. Khedan Lal (1920) 47 I. A. 239, 48 Cal. 1. 57 I. C.

465, ('21) A, PC. 112.) Thus when a mortgage makes a sub-mortgage of the mortgaged property, and the sub-mortgage is registered, the registration of the sub-mortgage does not amount to notice of the sub-mortgage to the mortgagor so as to vitiate payments made by the mortgagor to his mortgagee without actual notice of the sub-mortgage (Sahadev v. Shekh Papa (1905) 29 Bom. 199, followed in Viswanatha v. Chinmukutti (1932) 55 Mad. 320, 135 I. C. 535, ('32) A. M. 115.)

Failure of consideration.

Failure of consideration.—It has been said in some cases that registration of a sale-deed constitutes a sufficient delivery of the deed to pass the interest in the property comprised therein (Ponnayya v. Muttu (1894) 17 Mad. 146, following Narain Chunder v. Dataram Roy (1882) 8 Cal. 597, 610; Kanshi Ram v. Tota Ram (1906) Punj. Rec. No. 40.) But it cannot be laid down as a general rule that mere registration of a deed without reference to other circumstances operates to transfer the property (Rama Linga v. Ayyadorai (1905) 28 Mad. 124.) Thus there may be cases in which the whole or part of the consideration for the deed may not be paid. Does the fact that the sale-deed is registered operate to pass the property to the purchaser in such cases? The answer is that it is a question of intention in each case. If the intention of the parties was that the ownership should not pass to the whole of the consideration, mere registration of the deed will not pass the title to the purchaser (Sheo Narain v. Durbari (1897) 2 C. W. N. 207; Mauladau v. Raghunandan (1899) 29 Cal. 7; Sarat Chandra v. Hari (1900) 4 Cal. L. J. 338; Bhagan v. Allah Ditta (1911) Punj. Rec. No. 55, p. 213, 9 I. C. 547; Ram Singh v. Ganga Ram (1922) 3 Lah. 389, 66 I. C. 161, ('22) A. L. 356.) But if there was no such intention, the property will pass to the purchaser even if no portion of the consideration is paid, though the vendor may in such case be entitled to a charge on the property for the unpaid purchase-money (Motichand v. Sagun (1905) 29 Bom. 46, 50-51 ; Moidin v. Avaran (1888) 11 Mad. 262: Gostho v. Rohini (1908) 13 Cal. W. N. 692; Jadunandan v. Koer Kalyan (1912) 16 Cal. W. N. 612, 13 I. C. 653 [mortgage]; Nilmadhab v. Hara Prasad (1912) 17 Cal. W. N, 116, 16 I. C. 940; Shib Lal v. Bhagwan Das (1889) 11 All. 244.) Similarly, mere registration of a deed of transfer does not pass the title if the intention of the parties was that the ownership should not pass until the happening of a certain specified event (Ramalinga v. Ayyadona (1905) 28 Mad. 124.)

Illustration.

A sells his property to B by a registered deed for Rs. 500. At the time of the execution of the deed B pays only Rs. 200, leaving a balance of Rs. 300. A then sells the same property to C by a registered deed. If it was the intention of A and B that the ownership of the property should not pass to B until the balance was paid, C will be entitled to the property

by virtue of his purchase. But if there was no such intention, the ownership would pass to B, and the sale deed in favour of C would not pass any interest in the property to him.

Specific Relief Act, 1877, sec. 27.

Specific Relief Act, sec. 27.—Neither the Transfer of Property Act, 1882, nor the Registration Act, nor the decisions as to the effect of notice with reference to sec. 50 of the Registration Act, override the doctrine of equity contained in sec. 27 of the Specific Relief Act. It is provided by sec. 27 (b) of the Specific Relief Act that specific performance may be granted against a third party claiming under a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. The words used are "transferee for value" and they signify a person to whom the property is transferred for value which can only be under a registered instrument when the value exceeds Rs. 100. The intention is to adopt the equitable doctrine of notice in suits for specific performance, to protect bona fide purchasers for value and to treat at the same time purchasers with notice as persons purchasing subject to the vendor's pre-existing contractual obligation or with notice of a trust in favour of the party entitled to specific performance. Neither the Transfer of Property Act nor the Registration Act overrides this provision of the Specific Relief Act (Kannan v. Krishnan (1890) 13 Mad. 324, 329.)

[Portions from Mullas book ends here]

PART XI

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS

(*A*) *As to the Register-book and Indexes*

51. REGISTER-BOOKS TO BE KEPT IN THE SEVERAL OFFICES.—(1) The following books shall be kept in the several offices hereinafter named, namely :—

A—In all registration offices—

Book 1. "Register of non-testamentary documents relating to immoveable property" ;

Book 2. "Record of reasons for refusal to register" ;

Book 3. Register of wills and authorities to adopt" ; and

Book 4. "Miscellaneous Register".

B—In the offices of Registrars—
Book 5, "Register of deposits of wills."

(2) In Book I shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered or filed all documents registered under * * * section 18 which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

(5) If, in the opinion of the Registrar, any of the books mentioned in sub-section (1) is in danger of being destroyed or becoming illegible wholly or partially, the Registrar may, by a written order, direct such book or portion thereof as he thinks fit, to be recopied and authenticated in such manner as may be prescribed by rules, and the copy prepared and authenticated under such direction shall, for all purposes of this Act and of the Evidence Act, 1872, (I of 1872) be deemed to be the original book or portion and all references in this Act to the original book shall be deemed to be to the book or portion so recopied and authenticated.

S. 51. Register-books to be kept in the offices.

A deed of sale is not invalid simply because owing to an error of procedure it is entered in Book No. IV instead of Book No. 1, 37 Bom. L. R. 833: 16 Pat. L. T. 739: 39 C.W.N. 1191: 1935 P.C. 165 P.C. 1927 Mad. 586, 40 C.W.N. 1012: 1936 Cal. 212.

52. DUTIES OF REGISTERING OFFICERS WHEN DOCUMENT IS PRESENTED.—(1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated thereof according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

S. 52. Duties of registering officers when document is presented.

No act done in good faith will invalidate registration merely because of defect in procedure. 45 M.L.J. 497: 25 Bom. L. R. 1248: 75 I. C. 7 P. C. 1931 Lah. 677; 132 I.C. 881.

53. ENTRIES TO BE NUMBERED CONSECUTIVELY.—All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

54. CURRENT INDEXES AND ENTRIES THEREIN,—In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

55. INDEXES TO BE MADE BY REGISTERING OFFICERS, AND THEIR CONTENTS.—(1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. I.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such documeut and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectiveiy appointed thereunder, aud after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs.

[(7) If, in the opinion of the Registrar, any of the indexes mentioned in sub-section (1) is in danger of being destroyed or becoming illegible wholly or partially, the Registrar may, by a written order, direct such index or portion thereof, as he thinks fit, to be recopied in such manner as may be prescribed by rules, and any copy so prepared shall, for the purposes of this Act and of the Evidence Act, 1872 (I of 1872) be deemed to be the original index or portion and all references in this Act to the original index or portion shall be deemed to be references to the index or portion prepared as aforesaid.]

56. [*Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar and filed*]. *Rep. by the Indian Registration (Amendment) Act*, 1929 (*XV of* 1929), *s.* 2.

57. REGISTERING OFFICERS TO ALLOW INSPECTION OF CERTAIN BOOKS AND INDEXES, AND TO GIVE CERTIFIED COPIES OF ENTRIES.—(1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. I and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Snbject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provision, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(*B*) *As to the procedure on admitting to Registration.*

—Ss. 57-58

S. 57 read with s.51

Registering officers are required to supply copies of documents entered in the Registration books u/s.51 which are admissible to prove the contents of the original.

Under section 51 of the Registration Aet all registration officers have been directed to keep certain books in which all documsnts that have been registered are to be entered. Section 57 of the same Act directs Registering Officers to give certified copies of all documents entered in such books.

Mukhlesur Rahman Vs. Shaukat Ali (1984) 36 DLR 285.

58. PARTICULARS TO BE ENDORSED ON DOCUMENTS ADMITTED TO REGISTRATION.—**(1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:—**

(a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and

(c) any payment of money or delivery of goods made in the presence of the registering office in reference to the execution of the document, and any admission of receipt of considern-tion, in whole or in part, made in his presence in reference to such execution.

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

S. 58. Particulars to be endorsed.

Court may treat the registration endorsement as sufficient proof though it is not bound to do so. 1940 Nag. 382: 193 I. C. 41.

An endorsement made in accordance with s. 58 (I) (c) raises the presumption that consideration was paid and the onus is on the person who alleges that it is untrue to prove it. 90 I. C. 229 (c), 1937 Oudh 443: 170 I. C. 523, Contra sub-registrar's note as to consideration is not evidence. 1927 Pat. 49.

The signatures of the registering officer and of the identifying witness affixed to the registration endorsement on the back of the document are sufficient attestation unde the T.P. Act. 61. C. 525, 38 C.W.N. 753: 1934 Cal. 772. 1940 Nag. 382: 193 I.C, 41.

Ss. 58 and 60. Sub-Registrar's endorsement on the deed would be a relevant evidence of execution.

Even without the statement of the Sub-Registrar his endorsement on the deed would be a relevant evidence of execution of the document. The endorsement of the admission of the parties to a document made on a deed by a registering officer was evidence under section 60, Registration Act, 1908, of the fact of the execution and that the mere fact that it was in accordance with section 35 that the Registrar questioned the parties as to whether they had executed the deed or not did not mean that the endorsement did not fall under section 58 when that section expressly provided for such an endorsement. PLR (1960) I WP 573.

Ss. 58, 59, 60(2)(35). Endorsement on documents by registering officer—Evidence of execution of document.

Under section 60(2) Registration Act the certificate is admissible for the purpose of proving that the facts mentioned in the endorsement referred to in section 59 have occurred in manner as therein mentioned. One of the endorsements mentioned in section 59 is that which is made under section 58 and the endorsement under section 58 relates to the admission of execution of the document by parties to the document. The admission, therefore, of the parties to the document, which is mentioned on a deed by the registering officer, is evidence under section 60 of the fact of the execution. The mere fact that it is in accordance with section 35 that the registrar questions the parties as to whether they have executed the deed or not does not mean that the endorsement will not fall under section 58 when section 58 expressly provides for snch an endorsement. Nur Muhammad V. Karim Bibi PLD 1959 (W.P.) Lah. 932 : PLR 1960 (I) W.P. 573.

59. ENDORSEMENT TO BE DATED AND SIGNED BY REGISTERING OFFICER **—The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.**

60. CERTIFICATE OF REGISTRATION.—**(I) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.**

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of

proving that the document has been duly registered in th emanner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

S. 60. The document cannot be registered as registered before the certificate is endorsed thereon and signed, sealed and dated in terms of section 60, nor has it to wait for acquiring the character of a registered document till after compliance with the other provisions that follow section 60. Mohd. Karam Ali Sarkar (1965) 17 DLR 365 ; PLD 1965 Dhaka 305.

The presentation of document for registration and admission of its execution are merely preliminary slips towards registration. A document can be said to be registered only when the registering officer, after completing the preliminary formalities enjoined u/s 34, 35, 58 and 59 of the Registration Act, 1908 has endorsed thereon the certificate required u/s. 60 of the Act. Ajimudin Pramanik 17 DLR 231.

—Certificate by the Registering officer that the document is "registered" —its consequences.

Section 60 of the Registration Act only provides that when a certificate containing the word "registered" is endorsed by the Registering officer on the document, the document is admissible for the purpose of proving that it was duly registered in the manner provided by the Act and that the facts mentioned in the endorsement referred to in section 59 occured as mentioned there in.

Md. Safar Ali Vs. Md. Abdul Majid (1967) 19 DLR 40.

Section 60 indicates when a document can be said to have been registered, The section speaks about the completion of registration.

Azimuddin Bhuyan (1968) 20 DLR 355.

Certificate of registration.

A document is registered only when it is entered in the book 1945 Pesh. 9: 218 I.C. 365.

Sub-Registrar's endorsement is admissible in proof of the facts mentioned. 1937 Oudh 443 : 176 I.C. 523, 1949 Pat. 393 : 27 P. 86, 1948 Nag. 110.

When a document is registered it is to be assumed that the document was explained to the executants who admitted its execution and the receipt of consideration and that the whole proceeding and endorsement etc. were regular and in order. 102 I.C. 283. 33 C, 537 P.C. 51 I.A. 18 Rel. on.

61. ENDORSEMENTS AND CERTIFICATE TO BE COPIED AND DOCUMENT RETURNED.—(1) **The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.**

(2) The registration of the document 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 on the receipt mentioned in section 52.

S. 61. Deed of disclaimer—Does not become deed of transfer by registration in Book I on payment of ad valorem court fee.

The fact that the document was registered in Book No. 1 and ad valorem stamp fee was paid on the document by itself cannot turn a deed of disclaimer into a deed of transfer, when there is nothing in the document which might be said to transfer any interest to any party. Muhammad Arabullah Vs. Durgaparsad PLD 1960 Dhaka 249 ; (1959) 11 DLR 539.

62. PROCEDURE ON PRESENTING DOCUMENT IN LANGUAGE UNKNOWN TO REGISTERING OFFICER.—**(I) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.**

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. POWER TO ADMINISTFR OATHS AND RECORD OF SUBSTANCE OF STATEMENTS—**(1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.**

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) Special Duties of Sub-Registrar

64. PROCEDURE WHERE DOCUMENT RELATES TO LAND IN SEVERAL SUB-DISTRICTS.—**Every Sub-Registrar on registering a non-testamentary**

document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as him self in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. PROCEDURE WHERE DOCUMENT RELATES TO LAND IN SEVERAL DISTRICTS.—(1) Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registars subordinate to him within whose sub-district any part of such property is situate : and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D) Special Duties of Registrar

66. PROCEDURE AFTER REGISTRATION OF DOCUMENTS RELATING TO LAND.—(1) On registering any non-testamentary document relating to immoveable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Snch Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

67. PROCEDURE AFTER REGISTRATION UNDER SECTION 30, SUB-SECTION (2).—On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

(E) Of the Controlling Powers of Registrars and Inspectors-General

68. POWER OF REGISTRAR TO SUPERINTEND AND CONTROL SUB-REGISTRARS.—(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

S. 68. Power of Registrar.

The Registration Act does not empower the sub-registrar or the Registrar to order the production of document after it has been registered and delivered to the party with a view to examine the stamp duty. 1932 Lah. 495.

69. POWER OF INSPECTOR-GENERAL TO SUPERINTEND REGISTRATION OFFICES AND MAKE RULES.—(1) The Inspector-General shall exercise a general superintendence over all the registration offices in [68][Bangladesh], and shall have power from time to time to make rules[69] consistent with this Act—

(a) providing for the safe custody of books, papers and documents[70] * * *;

(b) declaring what languages shall be deemed to be commonly used in each district;

(c) declaring what territorial divisions shall be recognized under section 21;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively ;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63 ;

(f) regulating the form in which registering officers are to make memoranda of documents ;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

(h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ;

(i) declaring the holidays that shall be observed in the registration-offices ; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the [Government] for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.

S. 69. Power of Inspector-General.

Rule 174 under s. 69 incapacitating a Registering Officer from registering a document in which he is personally interested concerns procedure only, violation of that rule does not invalidate a document if it is done in good faith. 32 C.L.J. 471 ; 28 M.L.T. 220 ; 42 A. 609 P.C.

70. POWER OF INSPECTOR-GENERAL TO REMIT FINES.—The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.[71].

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[72][PART XI-A

OF THE COPYING OF DOCUMENTS BY MEANS OF PHOTOGRAPHY

70A. APPLICATION OF THIS PART.—This Part shall apply to such areas only as are specified in a notification issued under section 70-D.

S. 70B-70E

70B. DEFINITION.—For the purposes of this Part "Photo Registrar" means a Photo-Registrar appointed under this Part.

70C.—APPOINTMENT OF PHOTO-REGISTRARS.—The Government may appoint a Registrar or Sub-Registrar or any other person to be a Photo-Registrar for the performance of duties under this Part :

Provided that the Government may, subject to such restrictions and conditions as it thinks fit, delegate the power of appointing Photo-Registrars to the Inspector-General of Registration.

70D.—DOCUMENTS MAY BE PHOTOGRAPHED IN AREAS NOTIFIED BY GOVERNMENT.—(1) The Government may, by notification in the official Gazette, direct that in any district or sub-district specified in the notification copies of documents admitted to registration under this Act shall be made by means of photography.

(2) On the issue of such notification it shall be translated into [Bengali] [73]and shall be posted in a conspicuous place at the registration offices affected by the notification.

70E APPLICATION OF ACT TO AREAS NOTIFIED UNDER SECTION 70D. In any district or sub-district in respect of which a notification has been issued under section 70D, the provisions of this Act shall, for the purposes of this Part, be subject to the following modifications, namely :—

(1) (a) Every document admitted to registration under section 35 or section 41 shall on every page—

(i) be signed in the presence of the registering officer by the person or any one of the persons presenting the document for registration ; and

(ii) be carefully marked with an identification stamp and the serial number of the document.



(b) It shall then be transmitted by the registering officer, unless he is himself the Photo-Registrar, to the Photo-registrar, and the registering officer or the Photo-Registrar, as the case may be, shall cause each side of each page of such document together with all stamps, endorsement, seals, signatures, thumb-impressions and certificates appearing thereon to be photographed without subtraction or alteration. He

—S. 70E

may for this purpose cut or untie, without breaking any seals, the thread or ribbon, if any, wherewith the pages of the document are sewn together, in order to separate the pages of the document, and, as soon as the document has been photographed, he shall, as far as practicable, exactly rebind the document, as before, and, if he has cut the thread or ribbon shall seal it over the joint with his seal:

Provided that the party presenting the document for registration shall, if he so desires, be allowed to be present and watch the unbinding, rebinding and sealing of the document :

Provided further that if the party presenting the document so requests the document shall be returned to him unbound:

Provided also that before or after transmission of the document to the Photo-Registrar the party presenting the document may require the registering officer to have it copied by hand under section 52, or if the document has been presented for registration under section 19 its translation copied under section 62 on payment of an additional copying fee.

(c) There shall then be prepared and preserved the negative and at least one photographic print and to each such negative and print the Photo-Registrar shall fix his signature and seals in token of the exact correspondence of the copy to the original document, as admitted for registration:

Provided that when more than one such negative is recorded on one length of film and the Photo-Registrar has affixed his signature and seal at the end of such length of film certifying in the manner prescribed by rules made in this behalf, the exact correspondence of all copies on such length of film with the original documents, the Photo-Registrar shall be deemed to have affixed his signature and seal to each such negative on such length of film.

(d) One set of such prints arranged in the order of their serial numbers shall be made up into books and sewn or bound together. To each such book the Registrar or Sub-Registrar shall prefix a certificate of the serial numbers it contains,

and the books shall then be preserved in the records of the Sub-Registrar. The negatives shall be preserved in such suitable place as the Inspector-General may prescribe.

(2) All words and expressions used in the Act with reference to the making of copies of documents by hand or the entering or filing of documents or memoranda in books provided under section 16 shall, so far as may be necessary, bə construed as referring to the making of such copies by means of photography or the entering or filing of documents or memoranda in books made up of copies prepared by means of photography.

(3) Where this Part applies the sections mentioned below shall be deemed to be modified as follows :—

(a) in section 19 the words "and also by a true copy" shall be omitted;

(b) sub-section (4) of section 21 shall be omitted;

(c) the words "according to the order of its admission" occurring in clause (c) of sub-section (1) of section 52 shall be omitted;

(d) section 53 shall be omitted;

(e) in sub-section (1) of section 60 the words "and page" shall be omitted;

(f) sub-section (1) of section 61 shall be omitted; and

(g) in sub-sectiou (1) of section 62,—

(i) for the word "transcribed" the word "copied" shall be substituted.

(ii) for the words and figures "copy referred to in section 19" the words "photograph of the original" shall be substituted.

70F. The Inspector-General may, with the previous approval of the Government, by notification in the official Gazette, make rules for the purposes of giving effect to the provisions of this Part.]

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PART XII

OF REFUSAL TO REGISTER

71. REASONS FOR REFUSAL TO REGISTER TO BE RECORDED.—(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. APPEAL TO REGISTRAR FROM ORDERS OF SUB-REGISTRAR REFUSING REGISTRATION ON GROUND OTHER THAN DENIAL OF EXECUTION.—(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Ss. 72 and 73. Appeal to Registrar from orders of Sub-Registrar refusing.

Refusal by a Sub-Registrar to register a document on the ground of failure to pay penalty in due time is an order refusing registration u/s 72 and is appealable to the Registrar. 24 C. W. N. 304.

When the registration is refused on the ground of denial of execution, a suit for the registration of the document is not maintainable unless an application has been previously made under the sec. 3 A. 397 F.B.

An appeal under this sec. is a continuation of the original proceeding and the Registrar has same powers as the Sub-Registrar. 1943 Mad. 749: 211 I.C. 453.

An appeal under s. 72 is required for a suit under sec. 77. 58 C. 681 1931 Cal. 664.

72. APPLICATION TO REGISTRAR WHERE SUB-REGISTRAR REFUSES TO REGISTER ON GROUND OF DENIAL OF EXECUTION.—**(1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.**

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

S. 73. No evidence produced before registrar—Registration refused—Remedy under S. 77 is not barred to the party. Nabadwip Chandra Karmakar Vs. Madhu Sudan (1955) 7 DLR 235.

Revision—order of Registrar not revisable by High Court. Gulab Vs. Fazal Ilahi PLD 1955 Lahore 26.

Registrar's order dismissing an application under Sec. 73 is no bar to a suit under section 77 when the plaintiff had no intention of abandoning his application. (1955) 7 DLR 235.

74. PROCEDURE OF REGISTRAR ON SUCH APPLICATION.—**In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be enquire,—**

(a) whether the document has been executed;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

S. 74. Enquiry by the Sub-Registrar under section 74 of the Registration Act as regards execution is merely a departmental duty and has no legal validity. Md. Cherag Vs Dullab Khan (1953) 5 DLR 17.

Ss. 74, 75. Statement of scribe in proceeding before Registrar—Scribe not available—Statement may be produced in evidence.

—Ss. 74 and 75

The scribe of a sale deed, a Hindu, had migrated to India and there was evidence that his whereabouts were not known.

Held that the statement of the scribe in the course of an enquiry held by the Registrar under sections 74 & 75 of the Act was admissible under section 33 of Evidence Act. in proof of the sale deed, because the Registrar was a person authorised by law to take evidence, proceedings were between the same parties or their representatives in interest. The defendant had the right and the opportunity to cross examine, and the question in issue, the execution of the document was the same in that inquiry, as in the suit. The condition precedent, that the witness can not be found or obtained without an amount of delay or expense which under the circumstances of the case, the court considers unnecessary had all been fulfilled in this case.

Haji Jan PLD 1957 Karachi 754.

S. 74. Procedure before registration.

Failure to pay a certain penalty according to the order of the Registering officer is noncompliance with the requirements of law within this sec. 94 I.C. 251: 1926 Lah. 451.

The provisions of s. 74 are mandatory, 1929 Pat. 500.

S. 74. Inquiry by Registrar—Scope of genuineness and execution of document may be required into legal effect or validity of document cannot be considered by Registrar. Pearjahan Mian (1962) 14 DLR 227.

75. ORDER BY REGISTRAR TO REGISTER AND PROCEDURE THEREON.—(1) If the Registrar finds that the document had been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of snch order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908 (V of 1908).

Ss. 75 and 76

S 75 (4)

Registering Officer in the process of registering a document acts in a quasi-judicial manner though the same is not a judicial proceedings it is none-the-less legal proceeding and as such the R.O. in registering a document acts as a 'Tribunal'.

Md. Asiruddin Vs. Bazlur Rahman. (1982) 34DLR 215.

S. 75. Order to register and procedure thereon

Refusal to appear after notice before the registration authorities amounts to denial of execution. 1925 Lah. 542.

The certificate of registration is proof that the document was duly registered in the manner provided by law above ease.

The language of this sec. as regards presentation is impeiative 40A, 435 ; 45 I, C. 37.

S. 75(2) Document duly presented—subsequent presentation by unauthorised person—Registration valid. Muhammed Ibrahim Khan PLD 1952 Peshwar 82.

S. 75. Although for want of proper admission of execution the document could not be registered at the first instance, yet when it was registered under section could not be registered at the first instance, yet when it was registered under section 75 of the Registration Act it was not possible to agree that the document had not been properly executed, particularly in the absence of any pleading or evidence to the effect or any question being raised in the court below. Mahammad Syed Ali (1958) 10 DLR 447. PLD 1959 1.

76. ORDER OF REFUSAL BY REGISTRAR.—(1) Every Registrar refusing-

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No. 2, and on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

—Ss. 76 & 77

S. 76. Refusal by Registrar.

The language of s. 76(a) is wide enough to cover all orders of the Registrar refusing registration, whether such orders are passed on documents presented to him on the first instance or otherwise. 86 I.C. 797: 48 M.L J. 221: 1925 Mad. 619.

Refusal to register a document without giving reason in support of the order amounts to refusal on the ground of denial of execution 108 I.C. 379 : 1928 Lah. 98.

The words "no appeal lies etc." exclude an appeal not only from an order directing registration but also from one refusing registration. 2.C. 131, 6 C. 168, 10 M. 179 F.B.

77. SUIT IN CASE OF ORDER OF REFUSAL BY REGISTRAR.—(1) **Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institue in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree [:][74]**

[75][Provided that failure to file a suit or the dismissal of a suit filed under this section shall not disentitle a party to any other remedy to which he may be entitled, on the basis of the unregistered document.]

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

S. 77. Suits for registration of document. When the suit is maintainable.

Where registration is refused no suit for specific performance lies but suit under this section lies. 1954 Mad. 681 : (1954) 1 M.L J. 396.

a suit to compel registration is maintainable only where the provisions of sec. 77 of the Act have been complied with 49 M. 302 : Mad. 530, 3 A. 397,49 B 40 ; 84 1.C. 416, 9 C. 850, 851, contra 2 A. 46, 6 A. 303. Independently of sec. 77 no suit to compel registration lies 95 I. C. 187 : 1926 Pat. 89 : 7 Pat. L.T. 730.

For a suit under s. 77 the following requisites are necessary /(1) authorised presentation (2) a refusal by the Sub-Registrar, (3) an appeal within time, (4) a refusal by the Registrar, (5) institution of suit within time. 731 1.C. 182.

a suit is competent under s. 77 of the Registration Act where the Registrar has made an order under s. 25 which in effect is a refusal to excuse delay in presentation for sufficient cause. 53 Bom. 644 : 1929 Bom. 365.

Refusal to register on the ground of non-appearance of the executant in time is an order under s. 72 and a suit to compel registration lies under s. 77.47 B. 290.

Refusal by Registrar on a wrong ground does not deprive the party of his right of suit under s. 77, 11 C.L.J. 251, 1929 Lah. 409, 40 M. 759 Ref.

Where the Sub-Registrar ordered that he could neither register nor refuse to register the sale-deed presented by the vendee because the executant had died and none was forthcoming as his representative, the order in substance amounted to an order of refusal within s. 77 and consequently the suit was maintainable. 28 Punj L. R. 349: 1927 Lah. 395: 102 I.C. 796, (16 I.C. 97, 34 A 165, 40 M. 759) Rel. on.

There is nothing in s. 77 of the Act which gives power to the Civil Court to make any order as to any costs awarded under cl. (4) of s. 75 of the Act 35 C.W.N. 28. (note).

All that the court is required to be satisfied is whether it had been executed. 55 C.W.N. 166.

Suit must be brought in the court within whose jurisdiction the registration office is situate. 1948 Cal. 53: 51 C.W.N, 755: 3 DLR Cal. 12.

Onus of proof is on the person who alleges execution but where the other party admits execution on blank paper the onus shifts. 1950 Pat. 370.

Valuation of the suit.

The valuation for the purpose of jurisdiction in a suit under this sec. is that fixed by the plaintiff 53 C. 1023: 30 C.W.N. 951 : 97 I.C. 762: 1926 Cal. 1091.

Necessary parties.

Parties to the deed only can be made parties in a suit for registration, third person cannot challenge the decision in such suit in a collateral proceeding. 3 Punj. L. R. 306, 1929 Lah. 409 : 11 Lah. L. J. 251.

Where the registering officer of his own accord refuses to register it, he is the proper defendant. 1945 Mad. 11 (1944) 2 M.L.J. 186.

Suit lies also for the registration of a document of which registration is optional.

Refusal of execution of document, the registration of which is optional, gives rise to a cause of action under the sec. 1 C.L.J. 126.

Necessary issues.

In a suit for registration of document the necessary issues are, (1) whether the document was executed and (2) legally and properly presented. 14 C.W.N. 12.

In a suit under this sec. the court cannot see to the validity of the document but only the genuineness. 24 C. 688: 1 C.W.N. 444, 29A. 284, 18 M. 255, 1950 Pat. 370. Doctrine of res-judicata applies.

—S. 77

Where a document was alleged to have been executed by a pardanashin lady, the question whether the document was executed under circumstances which would make it operative as against a pardanashin lady is alien to the enquiry under s. 77, 1932 Cal. 588. 55 C.L.J. 107.

Although the scope of an inquiry in a suit under s. 77 may be of restricted character, the doctrine of res-judicata is not excluded from full operation. 39, C.L.J. 40, 432.

But the mere failure of a suit under this sec. or is its infructuous termination cannot operate as res-judicata in a suit brought for the specific performance of the original contract and for recovery of possession of the immovable property. 1932 All. 96: 54 All. 68.

Claim for possession and mesne profits cannot be joined.

A claim for possession and mesne profits cannot be joined with a prayer for enforcing registration. 39 C. L.J. 40.

No other claim can be joined with the prayer to enforce registration of a document under s. 77 of the Registration Act. 56 C.L.J. 413, 39 C.L.J. 40 Fol.

S. 77. Decree not presented within 30 days from date of decree—civil court no more in seisin of the suit—Time cannot be extended by the court. *Ram Kamal* (1957) 9 DLR 106.

Decree presented after 30 days—Registrar may refuse to register—Meaning of decree—Ibid.

Execution of document admitted—Registration cannot be refused—Scope of suit under the section—Nature of enquiry.

When signature or mark is admitted in a document whether blank or partially written, or wholly written the case comes under section 77 of the Registration Act and the registration authority cannot refuse registration. The question whether the document is valid or forged, or partially written or tempered with is not within the scope of a suit under section 77 of the Registration Act nor is this a subject matter to be investigated by a registering authority. The remedy of the aggrieved party lies in a property framed suit before a competent court. The scope of inquiry in a suit under S. 77 of the Registration Act is of the same nature as an enquiry before the registering authority. *Rahasuddin Vs. Naresh* (1956) 8 DLR 848.

Where the Registrar refuse to register a sale deed it is open to the aggrieved party either to bring a suit for mere registration of the sale deed under S. 77 or to have recourses to the fuller and more comprehensive remedy provided by a suit for specific performance of the contract of sale. The suit for specific performance of the contract of sale is not barred merely because the aggrieved party does not choose to bring a suit under S. 77 within the prescribed time. *Jhaman Mahton* 1946 AIR 33 Patna 62.

—S. 77

S. 77. Where on the refusal of the Registrar to register a document the aggrieved party brings a suit under S. 77 the court is only concerned with the genuineness of the document sought to be registered, the question is whether the document is executed by the person by whom it is alleged to be executed and not its validity and the question of its validity must be determined in a suit properly framed for the purpose. *Jhaman Mahton Vs. Amrit Mahton* AIR (33) 1946 Patna 62.

A suit to compel the registration of a document does not lie outisde the provisions of section 77 of the Registration Act.

A suit, however, to compel the presentment of a document to the Registering officer may not be barred. *Shah Muhammad Vs. Inayatullah* PLD 1953 Lahore 87 ; PLR 1953 Lahore 210.

A suit for specific performance of a contract of sale of property instituted after the Sub-Registrar had refused registration of the sale deed is not a suit under section 77 Registration Act, and the period of limitation for such a suit is 3 years under Article 113, Limitation Act, in as much as the relief asked for was against the defendant directing him to have the sale deed registered and not a direction in terms of section 77 Registration Act that the deed be registered in the Registration office if presented within 30 days of the decree. *Pir Muhammad Khan Vs. Nadar Khan* PLD 1955 Peshawar 48.

Ss. 77, 82. Suits brought under Ss. 77 and 82—Points for determination common to both suits—proceedings under S. 82 must be stayed till determination of points in civil suit (1957) 9 DLR 693 : PLD 1958 Dhaka 136.

Extention of time, beyond 30 days where a party having failed to present a document for registration within 30 days from date of the decree under section 77 of the registration Act, applies to the civil court for extension of time, the court can not extend time when the final decree has been passed and the court is not in session of the case. Raikishori Vs. Ramkamal (1957) 9 DLR 106.

Document not presented within 30 days from the date of the decree—Registering officer may refuse registration—Decree means final decree. —Ibid.

A suit to compel the registration of a document does not lie outside the provisions of section 77 of the Registration Act. 1953 PLR (Lahore) 210.

Ss. 76-77—Refusal of registration under section 76. Remedy by suit lies under section 77. Azimuddin Bhuyan (1968) 20 DLR 355,

Suit under 77—Scope is confined to refusal to register—Genuineness of the document is not to be considered. Jaman Mahton Vs. Amrit Mahton AIR (33) 1946 Pat. 62.

S. 77.—Alterations made in document after execution.—On whom onus of proof lies. Held that if the document in question appears to have been signed by the relevant executants then the initial onus that might lay upon the plaintiff should be deemed to have been shifted on to the defendant as soon as the latter admit that they had signed the document. Pear Jan Mia (1962) 14 DLR 227.

—S. 77

Suit for registration of document whose registration is refused—scope of inquiry by civil court—Refusal to pass decree does not affect the contract of sale.

Goyzuddin (1962) 14 DLR 148.

Section 77 does not bar suit for specific performance of sale based on unregistered contract (1962) 14 DLR 148. —Ibid.

The clause "person claiming under the document" means the person named in the deed in favour of whom the document was executed and does not include the real owner of a benami deed. Rokeya Khatun (1970) 22 DLR 766.

Registrar's order dismissing an application under section 73 is no bar to a suit under section 77 when the plaintiff had no intention of abandoning his application. (1955) 7 DLR 235.

Suit falls under this section when execution of the document is admitted—question whether document is valid or forged etc. is not within the scope of a suit under this section. (1956) 8 DLR 648.

Suit under S. 77 not filed—Suit for specific performance of contract of sale on the basis of unregistered document is not barred.

Goyzuddin (1962) 14 DLR 148.

Person claiming to be the real owner of a benami deed—Incompetant to present the deed for registration as well as to file a suit under section 77 of the Registrations Act, 1908. Rokeya Khatun (1970) 22 DLR 766.

Secs. 77 & 82.—Criminal proceedings under section 82 and civil suit under section 77 points involved in both are common—Criminal proceedings to be stayed pending the disposal of civil suit. (1957) 9 DLR 693.

Section 77.—Limitation to suits.

Provisions of S. 14 L. Act does not apply as the Registration Act is a complete Code. 30c. 532: 7 C.W.N, 550, 24 C.W.N. 4, F. B., 24 C.W.N. 29.

Provision of S. 5 of the L. Act. applies to a suit under the sec. 77 so when the period of 30 days expires on a holiday the suit may be instituted on the reopening day. 16 C.W.N. 20, 8C. 910, 28A. 48, 23A. 277, such suit is not time barred under the provisions of the General Clauses Act. 16 C.W.N. 721.

The document must be presented within 30 days of the date of order. 1 Pat. 146: 1922 P. 408, 33C. 1020, if presentation is made after 30 days registration may be refused. 1950 Nag. 165: 5 DLR Nag. 135.

The document must be presented within 30 days of the appellate decree 1935 Pat. 497: I.C. 395.

Substitution of heir—Computation of date of institution of suit. 38 C. W.N. 900: 1934 Cal. 833 stay order by the appellate court.

An appellate court can direct stay of registration ordered by decree in suit under the section. 85 I.C. 192: 1925 Mad. 401 47 M.L.J. 735.

PART XIII

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES

78. FEES TO BE FIXED BY GOVERNMENT.—[76]* * * The [Government] shall perpare a [77]table of fees payable—

(a) for the registration of documents ;

(b) for searching registers ;

(c) for making or granting copies of reasons, entries or documents, before, on or after registration ;

and of extra or additional fees payable—

(d) for every registration under section 30 ;

(e) for the issue of commissions ;

(f) for filing translations ;

(g) for attending at private residences ;

(h) for the safe custody and return of document ; and

(i) for such other matters as appear to the [Government] necessary to effect the purposes of this Act.

79. PUBLICATION OF FEES.—A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and [78][Bengali] shall be exposed to public view in every registration office.

80. FEES PAYABLE ON PRESENTATION.—All fees for the registration of documents under this Act shall be payable on the presentation of documents.

PART XIV

OF PENALTIES

81. PENALTY FOR INCORRECTLY ENDORSING, COPYING, TRANSLATING OR REGISTERING DOCUMENTS WITH INTENT TO INJURE.—Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes

to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury, as defined in the Penal Code, (XLV of 1860) to any person, shall be punishable with imprisonment for a term which may extend to seven years or with fine, or with both.

Ss. 81-83 :—Offence committed before District Sub-Registrar or a Sub-Registrar.

The offences committed before District Sub-Registrar or a Sub Registrar are specially made punishable under Ss. 81, 82 and 83 of the Registration Act No sanction under section 195 Cr. P C. for prosecution in respect of an offence committed before such an officer and falling within clause (b) and (c) of sub-section 1 of section 195 Cr. P.C., can be given by him but in respect of offence within clause (a) of section (1) of section 195, Cr. P.C. he can lodge a complaint only as a public servant. (1953) 5 DLR 454.

82. PENALTY FOR MAKING FALSE, STATEMENTS, DELIVERING FALSE COPIES OR TRANSLATIONS, FALSE PERSONATION, AND ABETMENT.—Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, any proceeding or enquiry under this Act ; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document or a false copy of a map or plan ; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission statement or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act ; or

(d) abets anything made punishable by this Act ;

shall be punishable with imprisonment for a term which may extend to seven years, or with fine or with both.

—Prior permission of Inspector-General of Registration or Registrar or Sub-Registrar mandatory before charging a person.

When the accused were also charged u/s. 82 of the Registration Act, it was imperative to obtain prior permission of the Inspector General of Registration or the Registrar or the Sub-Registrar as the case may be, as contemplated u/s. 83 of the Registration Act.

Abdul Gaffar Munshi Vs, The State. (1983)35 DLR 76

Ss. 82 & 83

SS. 82 (c), 82 (a).—Conviction may be altered by High Court from under S. 82. (a) to S. 82 (c) Muhammad Bashir Vs. The State. PLD 1959 (WP) Lahore 307 PLR 1959 (2) WP 1436.

S. 82 (c). —Registration of false document—offender placing money or table of Registration officer but making no statement not guillty under the provision.

Muhammad Bashir Vs. The State PLD 1959 (Lahore) 307; PLR 1959 (2) 1436.

Ss. 82 and 83 (1).

Section 83 (1) of the Registration Act is no bar for lodging or initiating complaint by private person under section 82 of the said Act. Barujan Bibi (1969) 21 DLR 881.

83. REGISTERING OFFICER MAY COMMENCE PROSECUTIONS—**(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, [79]* * * the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.**

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

Sec. 83.—Prosecution for an offence.

Section 83 deals only with the prosecution of an offence under the Act which comes to the knowledge of a registating officer in his official capacity who can institute any prosecution under the Act. (1955) 7 DLR 254.

The section has no application to cases in which the offences are committed under the Act but do not come to the knowledge of the registating officer and, therefore, in cases of this nature a private person can start prosecution without permission of the Authority referred to in the section. Ibid.

—Prosecution by a private party not barred.

Section 83 of the Registration Act does not bar a prosecution by private person and permission is not necessary for the institution of a prosecution by a private individual for offence under section 82 of the said Act. Shaikh Rehanuddin (1973) 25 DLR 75.

—Prosecution under section 83—who may lodge—private person may do so.

Muhammad Bashir Vs. The State. PLD 1959 (WP) Lahore 307.

Section 83 of the Act is not a prohibitory section, either in terms or in intention. It is only an inabling section and it deals only with the prosecution of an offence under the Act which comes to the knowledge of a

registering officer in his official capacity who can institute any prosecution under the Act when he should see it fit. The section has no application to cease in which the offences are committed under the Act but do not come to the knowledge of the registering officer and therefore in cases of this nature a private person can start prosecution without permission of the authority referred to in the section. Shushil Kumar Paik Vs. The Crown (1955) 7 DLR 254.

S-83.82 prosecution under S. 82 permission under S. 83 nor a condition precedent. Hasan Muhammad PLD 1959 (W.P) Lahore, 781.

84. REGISTERING OFFICERS TO BE DEEMED PUBLIC SERVANTS.— **(1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Penal Code (XLV of 1860).**

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Penal Code, (XLV of 1860) the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

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PART XV

MISCELLANEOUS

85. DESTRUCTION OF UNCLAIMED DOCUMENTS—**Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.**

86. REGISTERING OFFICER NOT LIABLE FOR THING *bono fide* DONE OR REFUSED IN HIS OFFICIAL CAPACITY.—**No registering officer shall be liable to any suit claim or demand by reason of anything in good faith done or refused in his official capacity.**

87. NOTHING SO DONE INVALIDATED BY DEFECT IN APPOINTMENT OR PROCEDURE— [80][(1)] **Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.**

[81](2) **Any defect in or the want of authority of a person to present a document shall not by itself, render invalid the registration of the document or the transaction effected by it.]**

S. 87.

Execution admitted before Registrar by wrong person—Registration not void. Kobbad Ali Vs. Abdul Rashid. (1961) 13 DLR 326; PLD 1961 Dacca 638

Irregular Registration on presentation by assign—Irregularity cured by the section (1957) 9 DLR 678; PLR 1958 Dacca 401.

Execution admitted before Registrar by wrong persons. Registration not void and does not affect the jurisdiction of the Court. Kobbod Ali (1961) 13 DLR 326; PLD 1961 Dacca 683.

Even it is contended that there was any defect or irregularity in the execution of the document by an assign, such a defect or irregularity can be said to have been cured under section 87 of the Registration Act. (1957) 9 DLR 678, PLR (Dac) 401.

S. 87.—Nothing is invalidated by defect in appointment or procedure.

If the defect is one of jurisdiction and not of procedure then it is not curable. 1638 Nag. 550 ; 181 I.C. 24, 1931 P.C. 52 ; 35 C.W.N. 354 33 Bom. LR 434 131 I.C. 321 P.C.

Prosecution by a person not competent to do so is a defect not curable. 51 C.W.N. 675.

Registration of a mortgage bond is not invalidated by the fact of its being within on a stamp of the wrong kind, the case being governed by S.87. 5 Rang. 666. 23 C.W.N. 534.

To apply S. 87 it is important to distinguish between defects in the procedure of the Register and lack of jurisdiction. Where, therefore a document not duly stamped is admitted for registration, the mistake is an error in procedure and is cured by S. 87. 1929 P.C 279 (21. A 210 P.C., All 465 All. 465 P.C., 23A, 233 P.C. 23 C.W.N. 534 applied.

88. REGISTRATION OF DOCUMENTS EXECUTED BY GOVERNMENT OFFICERS OR CERTAIN PUBLIC FUNCTIONARIES.— **(1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of [82][Bangladesh], or for any Official Trustee or Official Assignee, or for the [83]*, Reciever or Registrar of [84][the Supreme Court], to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.**

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, [83]*, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. COPIES OF CERTAIN ORDERS, CERTIFICATES AND INSTRUMENTS TO BE SENT TO REGISTERING OFFICERS AND FILED.—(1) Every officer granting a loan under the Land Improvement Loans Act, 1883, (XIX of 1883) shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908, (V of 1908) shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) [85][Every officer and every Co-operative Society granting any such loan as is referred to in clause (x) of sub-section (2) of section 17] shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No.1.

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

Exemptions from Act

90. EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT—**(1) Nothing contained in this Act [86]shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely:—**

(a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlements; or

(b) documents and maps issued, rceeived or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which from part of the record such survey; or

(c) document which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records; or

(d) sanads inam title-deed and other document purporting to be or to evidence grants or assignments by Government of land or of any interest in land; or

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

S. 90. —Exemption of documents of Government concern.

A lease of crown lands granted by the secretary of state on behalf of the crowns is exempt from registration. 1927 Pat. 319 1951. Cal. 361.

91. INSPECTION AND COPIES OF SUCH DOCUMENTS— **Subject to such rules and the previous payment of such fees as the [Government] prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and subject as aforesaid, copies, of such documents shall be given to all persons applying for such copies.**

92. [*Burmese registration rules confirmed*]. *Rep. by A. O.*, 1937.

93. [*Repeals.*] *Rep. by the Repeating Act*, 1938 (*I af* 1938), *s.* 2 *and Schedule*.

THE SCHEDULE.—[*REPEAL OF ENACTMENTS.*] *Rep. by the Repealing Act.* 1938 (*I of* 1938), *s.* 2 *and Schedule.*

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These are all amendments in the Registration Act and in place of putting them at the bottom of different pages where they occur in the book, they are all put here together.

Amendments

1. For Statement of Objects and Reasons, see Gazette of India. 1908 Pt. V. p. 325; for Repout of Select Committee, see ibid.. 1908. Pt. V, p. 387; and for Proceedings in Council, see ibid., 1908, Pt. VI, pp. 148. 154 and 182.

This Act had been declared to be in force in Baluchistan by s. 3 of the British Baiuchistan Laws Regulation. 1913 (2 of 1913).

It has been extended to the Leased Areas of Baluchistan, see the Leased Areas (Laws) Order, 1950 (G.G.O.) 3 of 1950; and applied in the Federated Areas of Baluchistan, see Gazette of India. 1937. Pt. I, p. 1499.

It has been extended to the Baluchistan States Union by the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G.G.O.) 4 of 1953 as amended.

It has been extended to the Khairpur State by the Khairpur (Federal Laws) (Extension) Order. 1953 (G.G.O.) 5 of 1953. as amended.

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

It has been amended in Sind by the Transfer of Property and the Indian Registration (Sind Amdt.) Act, 1939 (Sind 14 of 1939) and the Indian Registration (Amdt.) Act. 1946 (Sind 7 of 1946).

It has been amended in the Punjab by the Indian Registration (Punjab Amdt.) Act. 1941 (Punjab 8 of 1941); and in Bengal by the Bengal Touts Act, 1942 (Ben. 5 of 1942).

This Act shall be deemed to have been amended in its application to the District of Sylhet, see Assam Money Lenders' (amdt.) Act, 1943 (Assam Act (6 of 1943), s. 1 (4).

It has also been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.-W.F.P., and has been extended to the Excluded Area of Upper Tanawal other than Phulera by the N.-WF.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950 and declared to be in force in that area with effect from the 1st June, 1951, see N.-W.F.P. Gazette. Ext., dated the Ist June, 1951.

2. The word "Indian" omitted by A. O.. 1949.

3. Subs, by Act 53 of 1974.

4. Subs. by ibid.

5. The words "with the previous sanction of the G.G. in C." omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and First Sch.

6. The words, comma and brackets "and, in the case of a native of [Pakistan] his caste (if any)" omitted by Ordinance 21 of 1960. s. 3 and 2nd Sch. (with effect from the 14th October, 1955). The word in crotchet was subs. by A. O., 1949, for "India—

7. Clause (2a) ins. by the Registration Act (Amdt.) Ordinace. 1961 (32 of 1961), s. 2.

8. Subs. by Registration (Amdt,) Ordinance, 1962 (45 of 1962), s. 2, for the original clause.

9. Subs. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 2. for original clause.

10. Subs. by Act 53 of 1974.

10A. Subs. by ibid.

11. For Notifn. in respect of Sind, directing that the Province of Sind shall be divided into nine (9) Registration Districts. see Sind Govt. Gazette, 1954, Pt. I, p. 137.

For Notifn. of Registration Districts consisting of the sub-districts, see Sind Govt. Gazette, 1954, Pt. I, p. 513.

12. Subs. by A. O., 1937, for "local official Gazette".

13. S. 6 has been amended in its application to the Province of Sind by the Indian Registration (Amdt.) Act, 1946 (Sind Act 7 of 1946), s. 2.

14. The proviso to s. 6, ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, omitted by A. O., 1937.

15. For an instance of such amalgamation, see Dhâka Gazette, 1951, Pt. I, p. 62.

16. The proviso to sub-section (I) of s. 8, ins. by the Indian Registration (Bombay Amdt.) Act, 1929 (Bom. 5 of 1929), s. 2, omitted by A. O., 1937.

17. The words "other than the Registrar of a district including a Presidencytown" omitted by A. O., 1949.

18. Sub-section (2) omitted, ibid.

19. Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I. for "the L. G. fills up the vacancy".

20. The words "All appointments made by the Inspector-General under-section 6 and", ins. ibid., were omitted by A. O., 1937.

21. Sub-section (3) of s. 13 and sub-section (1) of s. 14 relating to the suspension, removal, dismissal and remuneration of persons appointed under the Act were omitted by A. O., 1937. These conditions of service are now regulated by rules under s. 241 (2) of the G. of I. Act, 1935.

22. Subs. by Act 53 of 1974.

23. Omitted by ibid.

24. *Explanation* added by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 3.

25. Ins. ibid.

26. Clause (e) ins. by the Transfer of Property (Amdt.) Supplementary Act, 1929 (21 of 1929), s. 10.

27. Subs. ibid., for "local official Gazette".

28. Subs. by the Transfer of Property (Amdt.) Supplementary Act, 1929 (21 of 1929), s. 10, for "and any award."

29. The word "Government" was first subs. by A. O., 1937, and then amended by A. O., 1961, Art. 2 (with effect from the 23rd March 1956), to read as above.

30. Subs. by the Registration Act (Amdt.) Ordinanee, 1961 (32 of 1961) s. 3, for the original clause.

31. Subs. by Act 53 of 1974.

32. The words "when the receipt does not purport to extinguish the mortgage" omltted by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 3.

33. Subs. ibid., for the full-stop.

34. Clause (xiii) added, ibid.

35. *Explanation* ins. by the Indian Registration (Amdt.) Act, 1927 (2 of 1927), s. 2.

36. Subs. by Ordinance 45 of 1962, s. 4, for the original section 18 as amended by the Indian Registration (Sind Amdt.) Act, 1939 (Sind Act 14 of 1939), and the Indian Registration (Amdt.) Act, 1940 (33 of 1940), s. 2.

37. For rule made by the Government of Bengal under s. 22, see Calcutta Gazette, 1911, Pt. I, p. 78.

38. S. 23A ins. by the Indian Registration (Amdt.) Act, 1917 (15 of 1917), section 2.

39. Subs. by Act 53 of 1974.

40. This section has been amended in its application to the Province of Sind by the Transfer of Property and the Indian Registration (Sind Amdt.) Act, 1939 (Sind 14 of 1939).

41. Renumbered by the Registration (Amdt.) Ordinance, 1962 (45 of 1962) s. 4.

42. The original words "and (d), and section 18, clauses (a), (b) and (c)" have successively been amended by the Indian Registration (Amdt.) Act, 1940 (33 of 1940), s. 3 and Ordinance 45 of 1962, s. 5, to read as above.

43. Sub. section (2) added by Ordinance 45 of 1962, s. 5.

44. Subs. by the Repealing and Amending Act. 1940 (32 of 1940), s. 3 and Second Sch., for "other than a document referred to in section 28, and a copy of a decree or order,"

45. Subs. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 6, for the Original sub-section (2) as amended by A. O., 1949, the Registration (Amdt.) Act, 1950 (69 of 1950), s. 2, the Registration (Amdt.) Act, 1957 (I of 1958), s. 2 and the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955).

46. Subs. by Ordinance 45 of 1962, ss. 6 and 7, for "In ordinary cases the registration or deposit of documents under this Act shall".

47. The words and figures "section 31 and" omitted ibid., s. 8.

48. The words "at the proper registration-office" omitted, ibid.

49. The words "His Majesty or of" omitted ibid with effect from the 23rd March, 1956).

50. Provisio ins. by the Indian Registration (Amdt.) Act, 1926 (13 of 1926), s. 2.

51. Subs. ibid., for "local official Gazette".

52. Subs. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 9, for "OF THE DEPOSIT OF WILLS".

53. Re-numbered, ibid., s. 10.

54. Sub-section (2) added ibid.

55. Added by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 11.

56. Subs. ibid, for the original sub-section (2).

57. Subs. by Act 53 of 1974.

58. Section 46A, ins. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 12.

59. Omitted by Act 53 of 1974.

60. Ins. by the Transfer of Property (Amdt.) Supplementary Act, 1929 (21 of 1929), s. 10.

61. Subs. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 13, for the original section 49, as amended by Act 21 of 1929, s. 10.

62. Subs. by Ordinance 45 of 1962, s. 14, for "and clauses (a) and (b) of section 18".

63. Subs. ibid., for the full-stop.

64. Provisos added, Ibid.

65. Omitted by Act 53 of 1974.

66. Sub-section (5) added ibid.

67. Sub-section (7) added by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 16.

68. Subs. by Act 53 of 1974.

69. For rules under this section, see the different local R and O.

For the East Pakistan Registration Rules 1958, see Dhaka Gazette, 1958, Pt. I, pp. 1003-1078.

70. The words "and also for the destruction of such books, papers and documents as need no longer be kept" omitted by the Destruction of Records Act, 1917 (5 of 1917), s. 6 and Sch.

71. For Part XIA: Of the Copying of Documents by means of Photography. ins. for Bombay Presidency, see the Indian Registration (Bombay Amendment) Act, 1930 (17 of 1930), s. 3. The proviso to s. 70B of that Part was omitted by A. O., 1937.

72. New Part XIA ins. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 17.

73. Omitted by Act 53 of 1974.

74. Subs. by the Registration (Amdt.) Ordinance, 1962 (45 of 1962), s. 18, for full-stop.

75. Proviso added, ibid.

76. The words "Subject to the control of the G. G. in C." omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and First Sch.

77. For table of fees issued by the Provincial Governments, see local R. and O.

For table of fees as amended from time to time in respect of Province of East Bengal, see notification No. 1015 Regn, dated the 21st December, 1948 published in the Dhaka Gazette, Extraordinary, dated the 23rd December, 1948, Pt I. (See also E. Ben. Ordinance, 13 of 1948, s. 2 (a).

78. Subs. by Act 53 of 1974.

79. The words "the Branch Inspector General of Sindh" omitted by A.O. 1937.

80. Renumbered by the Registration (Amdt.) Ordinance 1962 (45 of 1962), s. 19.

81. Sub-section (2) added ibid.

82. Subs. by Act 53 of 1974.

83. The words "Shrift" omitted, by A. O. 1949

84. Subc. by Act 53 of 1974.

85. Subs. by the Registration Act. (Amdt.) Ordinance, 1961 (32 of 1961) s. 4, for "Every officer granting a loan under the Agriculturists Ioans Act, 1884"

86. Omitted by Act 53 of 1974.

87. Omitted by ibid.

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