



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE
CONTAINING
BILLS OF THE GOVERNMENT OF INDIA.

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HOME DEPARTMENT (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 9th April 1862, and was referred to a Select Committee, who will make a report thereon after the 12th July next :—

A Bill to provide for the Dissolution of the Subordinate Medical Officers', Widows', and Orphans' Fund, and the Distribution of the Funds belonging thereto.

Whereas, by certain Regulations prepared and adopted by certain members of the Subordinate Medical

Preamble.

Department, a Society was established at Perozepore, in 1852, for raising a Fund called "The Subordinate Medical Officers', Widows', and Orphans' Fund," the interest, dividends, and proceeds of which Fund were directed to be applied in making provision at certain specified rates for the widows and children of the subscribers, and it was directed that such provision should be made solely out of the interest and dividends of the said Fund; and whereas a petition has been presented to His Excellency the Governor General in Council by certain subscribers and members of the said Society, stating that no subscriptions have been contributed to the said Fund since the year 1857, and that in consequence thereof, and of the deaths of several of the subscribers to the said Fund, no steps have or can be taken to make the provision intended by the Regulations of the said Fund, and that no pensions whatever have, since the year 1857, been paid to any of the persons entitled to the benefits of the said Fund, and that, therefore, the expectations of the founders of the Fund have been disappointed, and the objects for which such Fund was established have failed; and praying that an Act may be passed to wind-up the affairs of the said Fund; and whereas no provision is made in the Regulations of such Fund for the dissolution thereof, or the distribution of the funds belonging thereto, and it is expedient to make provision for the same by law; It is enacted as follows :—

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I. On the petition to the Supreme Court of Judicature at Fort William in Bengal, of a majority of the subscribers of the said Subordinate Medical Officers',

On petition, the Supreme Court may order the winding-up of the Fund.

Widows', and Orphans' Fund, or of any ten subscribers of the Society and pensionaries on the said Fund praying for the dissolution of the said Society and the winding-up of the affairs of the said Fund, it shall be lawful for the said Supreme Court to make order for the same on the said petition, as fully as if the petitioners proceeded by information or bill, and as if there were parties defendants, and as fully as if the Regulations of the said Fund provided for the winding-up of the said Fund; and it shall be lawful for the said Court to make order for ascertaining and declaring the rights which attach on the said Fund, and for taking the accounts of the said Fund, and for the apportionment, division, and distribution of the said Fund; and for the ascertainment of the nature and numbers of the different claims on the said Fund, and of the persons having or entitled to make the said claims; and for the payment of the proper costs of the subscribers of the said Society, and of all parties conducting or otherwise concerned in the matter of the said petition and subsequent proceedings for winding-up the said Fund.

II. It shall be lawful for the said Court, in such way

Accountant or Actuary as they may think fit, to obtain the assistance of an Accountant or Actuary the better to enable the Court to determine any matter relating to the division and distribution of the Fund, and to act upon the certificate of such person; and in case it shall be deemed necessary to make any reference to the Master in Equity of the said Court in the matter of such petition, it shall be lawful for the said Court to order that the Master in Equity shall be at liberty in like manner to obtain the assistance of an Accountant or Actuary.

III. In the cases of pensioners or persons entitled

Pensioners may be commuted. to become pensioners who shall consent to commute their pensions, it shall be lawful for the Court to order that the amounts to be paid in commutation, shall be settled, invested, or paid

in such manner as will give the several persons therein interested the full benefit thereof.

IV. In the cases of pensioners or persons entitled to become pensioners, who

Money may be invested, shall refuse to commute their pensions, it shall be lawful for the Court to order a sufficient sum to be set apart out of the said Fund to provide for the due payment of such pensions. The said Court may also sanction and give effect to any arrangement which it may deem just and sufficient for the future payment of any commuted sum or uncommuted pensions, by any Life Insurance Company willing to undertake the payment of such pensions.

V. Guardians of minors, pensioners, and of minors, if any, entitled to become pensioners on the said Fund,

shall have full power and authority to consent on their behalf to commute the pensions of the minors for a fixed sum; and the said Court shall have full power and authority to give effect to such consent, and to make such order as the said Court may deem just for the application of the said commuted sum for the future benefit of the infant; and if there be no guardian, the mother, during her widowhood, may act as guardian, unless the Court shall otherwise order, and, if necessary, the Court may appoint a guardian for any minor.

VI. In dividing and distributing the said Fund,

Every part of the Fund shall not be awarded by the Court to members or representatives of deceased members, may, if the Court shall think fit, be applied for the benefit of pensioners or persons entitled to become pensioners, whether they shall consent to commute their interests or not.

VII. With a view to expedite the distribution of the surplus of the said Fund

Dividend may be made in anticipation. over and above what may probably be necessary to provide for the pensions, the said Court shall have full power and authority at any time to order payment of a dividend of the said probable surplus to the persons entitled to the same, although the exact surplus and the exact amount of charges may not then be ascertained.

VIII. For the purpose of winding-up the said Fund,

Mode of bringing in claimants, and finally closing the accounts thereof, the like proceedings shall be had for the bringing in of claimants on the said Fund, as in ordinary administration suits for bringing in creditors and other persons; and claimants being pensioners or entitled to be pensioners, who may neglect to come in due course, or within the time limited for that purpose, shall be deemed to have consented to commute their pensions; and a final distribution may be made of the said Fund.

STATEMENT OF OBJECTS AND REASONS.

The explanation given by the late Mr. Ritchie on moving for leave to bring in the Bill on the 5th of March 1862, was thus reported:—

"He stated the Society which it was intended to dissolve was established by the Subordinate Medical Officers of Government in 1852 at Ferozepore, the object being to provide for their Widows and Orphans, and the pensions were to be payable out of the interest on the Capital. But during the mutiny all subscriptions stopped, and the affairs of the Society fell into so much confusion, that it was now necessary to afford relief by winding-up the affairs through the medium of the Supreme Court, in the manner adopted in 1856 in the case of the Bengal Mariners' and General Widows' Fund."

The Bill strictly follows the precedent of the Act XXIV. of 1856 for winding-up the Fund mentioned by Mr. Ritchie, and is adapted to meet a case which appears to be of a very similar description. After the Bill is introduced into the Council, its publication will afford

an opportunity to any subscriber who may not have been previously consulted to consider its provisions.

(Signed) CECIL BEADON.

3rd April 1862.

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th April 1862, and was referred to a Select Committee, who will make a report thereon after the 12th July next:—

A Bill to Amend Act X. of 1859 (to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) so far as it relates to the Territories under the Government of the Lieutenant Governor of the North-Western Provinces.

Whereas it is expedient to amend Act X. of 1859

Preamble.

(to amend the law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) so far as it relates to the Territories under the Government of the Lieutenant Governor of the North-Western Provinces; It is enacted as follows:—

I. In addition to the suits specified in Sections XXIII. and XXIV. of Act X.

Suits cognisable by Collectors in addition to those specified in Sections XXIII and XXIV. of Act X. of 1859.

shall be cognisable by the Collectors of Land Revenue under the provisions of the said Act, and, except in the way of appeal as provided in the said Act, shall not be cognisable in any other Court or by any other Officer, or in any other manner, that is to say:—

1st.—Suits by Lumberdars for arrears of Government Revenue payable through them by the co-sharers whom they represent.

2nd.—Suits by co-sharers in a joint undivided estate for their share of the profits of the estate after payment of the Government Revenue and village expenses, or for a settlement of accounts.

II. Suits instituted under the preceding Section

shall be instituted within three years from the date when the arrear of Revenue, or the amount of profits claimed, shall have become due, or if the suit be for an arrear of Revenue or for profits due at the passing of this Act, it shall be instituted within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire. If the suit be for a settlement of accounts, the suit shall be brought within one year after the expiration of the year to which the accounts relate, or, in the case of any claims for such settlement now existing, within one year from the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire.

III. In any suit falling under Section I. of this Act in which the Collector shall

award a sum of money on account either of an arrear of Government Revenue or of profits, if the Collector shall consider that the sale of the share of the estate belonging to the party against whom the award is made is objectionable, and that satisfaction of the award may be made by a temporary alienation of such share, it shall be competent to the Collector to make provision for the satisfaction of the award, by transferring the share of the estate of the judgment-debtor to any of the other co-sharers for such period and on such terms as he may think proper, or he may make such other arrangement for the satis-

faction of the award as the circumstances of the case will admit of, instead of proceeding to a sale of such hare.

IV. Orders passed by a Collector under the last preceding Section shall be subject to revision by the Commissioner of the Division, but shall not be open to appeal to the Civil Court.

V. From the date of the passing of this Act, Section LXXXVI. of the said Act X. of 1859 shall cease to have effect in the Territories under the Government of the Lieutenant Governor of the North-Western Provinces, and the following Section is enacted in lieu thereof:—

“Process of execution may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both person and property. Such process may be issued on the oral application of the judgment-creditor, his agent, or mooktear, made at the time the decree is passed, or thereafter upon the written application of the judgment-creditor, his agent, or mooktear. Process of execution against the person or movable property of a debtor shall be in the form (E or F) contained in the Schedule to the said Act X. of 1859, or to the like effect.”

VI. Section CXII. of the said Act X. of 1859 shall be read as if the words “or where the rent of a puttee is not collected by a lumberdar, through the putteedar who is entitled to collect the rent” were added at the end of such Section.

VII. Doubts having been entertained as to whether the decisions passed by a Zillah Judge in regular appeal under Act X. of 1859 are open to special appeal, it is hereby declared that it was the intention of the said Act that such decisions should be open to special appeal to the Sudder Court in the same manner, and subject to the same rules, as the decisions of Zillah Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure.

VIII. If any person shall be arrested under Section CXLV. of the said Act X. of 1859, he shall be brought before the Collector with all convenient speed, and the Collector shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the party arrested to give security for his person whenever the same may be required. In default of such security, the party arrested may be committed to the Civil Jail until the case is tried.

IX. This Act shall be read and taken, in the Territories under the Government of the Lieutenant Governor of the North-Western Provinces, as part of the said Act X. of 1859.

Construction of Act.

Governor of the North-Western Provinces, as part of the said Act X. of 1859.

STATEMENT OF OBJECTS AND REASONS.

Act X. of 1859, which this Bill proposes to amend, confers original jurisdiction on the Revenue Courts in Bengal in all cases of dispute arising between landlord and tenant and between landlord and agent; but there is another class of cases of a somewhat analogous character which, as the Act is now framed, are not embraced by it. I allude to disputes arising in joint undivided estates between the lumberdar, who is the recognised representative of the other sharers in such estates, and, as such, pays the dues of Government and the co-sharers whom he represents, whether on account of the portion of Government revenue payable by such co-sharers, or any of them, or relating to the adjustment and distribution amongst the several sharers of the profits of the estate after payment of the Government revenue and the village expenses. The reasons which induced the

Legislature to vest the Revenue Courts in Bengal with jurisdiction in the cases brought within their cognisance as Courts of first instance by the Act of 1859, seem to apply with nearly equal force to cases such as those just mentioned. The omission to include such cases in the Act was, I have reason to believe, simply an inadvertence. The omission was discovered by the Board of Revenue for the North-Western Provinces before Act X. of 1859 became law, but it was not brought to my notice until after the passing of the Act, and there were particular reasons at the time which appeared to render it unadvisable to apply to the Legislature for an immediate alteration of the law. The first Section of the Bill is intended to supply the omission.

Section 112 of Act X. of 1859, which applies to distraint, provide first that no sharer in a joint undivided estate, shall exercise the powers of distraint except through a manager authorised to collect the rents of the estate on behalf of all the sharers; and secondly, that in putteedare estates in the North-Western Provinces, distraint shall be made only through a lumberdar. The object of these restrictions is obviously to prevent two or more processes of distraint being taken out against the same crop by different shareholders possessing, not a separate, but only a joint interest in the land on which the crop is growing or was grown, and there can be no doubt that the restrictions are very proper. But the Board of Revenue for the North-Western Provinces have pointed out that while it would not be expedient to vest the powers of distraint in all putteedars, its limitation to lumberdars only is, in some instances, productive of inconvenience; that although the lumberdars are invariably responsible for the revenue which is paid through them, there are putteedare estates in the North-Western Provinces containing puttees of which the rents are not collected by a lumberdar, but by putteedars, who are responsible to the lumberdar for their quota of the revenue and of the village expenses; that it would seem equitable that the power of distraint should be conferred on those who are entitled to collect the rent, and that, to this end, it would be sufficient to add to Section 112 the following words:—viz., “or where the rent of a puttee is not collected by a lumberdar through the putteedar who is entitled to collect the rent.” I concur with the Board, and in the sixth Section of the Bill I propose to amend the existing law in the manner recommended by them.

The seventh Section is of a declaratory character, and has for its objects to remove doubts which have arisen as to whether it was intended that the decisions passed by Zillah Judges in regular appeal under Sections 160 and 161 of Act X. of 1859, from decisions of the Revenue Courts, should be open to special appeal to the Sudder Court. The point has, I understand, been determined in the affirmative by the Sudder Courts at Calcutta and at Agra, and I think there can be no doubt as to the correctness of their decision. An amendment of Act X. of 1859 being found necessary, it is considered advisable to give the force of law to the ruling of the Courts.

The only other Section of the Bill which I deem it necessary particularly to notice, is the one which proposes to give to the Revenue Courts, when making an award for an arrear of rent or revenue, power to grant immediate execution on the verbal application of the judgment-creditor. This power has lately been given to the Civil Courts in all cases of debt, damage, and the like, to the amount of 500 Rupees, and it is considered that the same power may be properly possessed by the Revenue Courts in suits falling within their cognisance under Act X. of 1859.

Provisions similar to the last two mentioned by me are contained in a Bill to amend Act X. of 1859 now before the Legislative Council of Bengal. That Bill contains other provisions, some of them of a penal character, the extension of which to the North-Western Provinces is, I am happy to think, not called for by anything in the state of that part of the country.

It only remains for me to mention that it is proposed to restrict the Bill in its application to the Territories under the Government of the Lieutenant Governor of the North-Western Provinces.

26th March 1862. (Signed) H. B. HARRINGTON.

M. WYLIE,
Depty. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th April 1862, and was referred to a Select Committee, who will make a report thereon after the 12th July next :—

A Bill to Provide for the Registration of Assurances.

Whereas it is expedient to consolidate and amend the laws relating to the Registration of Assurances ; It is enacted as follows :—

I. Regulation XXXVI. 1793 (for establishing a Registry for Wills and Deeds for the transfer or mortgage of real property), XXVIII. 1795 (for extending to the Province of Benares, Regulation XXXVI. 1793, entitled "A Regulation for establishing a Registry for Wills and Deeds for the transfer or mortgage of real property"), XVII. 1803 (for establishing a Registry for Wills and Deeds for the transfer or mortgage of real property in the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company), Section XVII. Regulation VIII. 1805 (for extending to the conquered Provinces situated within the Doab and on the right bank of the River Jumna, and to the territory ceded to the Honorable the English East India Company in Bundelcund by the Peishwa, such of the Laws and Regulations established for the internal government of the Provinces ceded by the Nawab Vizier to the Honorable the English East India Company, as have not been already extended to those territories, and for revising and amending certain parts of the said Laws and Regulations) so far as it relates to Regulation XVII. 1803, Section XXXII. Regulation XII. 1805 (for the settlement and collection of the Public Revenue in the Zillah of Cuttack, including the Pergunnahs of Puttaspore, Kummardichour, and Bograe, at present included in the Zillah of Midnapore), Regulation XX. 1812 (for modifying some of the provisions contained in the existing Regulations respecting the Registry of Deeds, and for establishing a Register of engagements for the delivery of Indigo), and Regulation IV. 1824 (to provide more effectually for the Office of the Register of Deeds), of the Bengal Code ; Regulations XVII. 1802 (for establishing a Registry for Wills and Deeds for the transfer or mortgage of real property), and XI. 1831 (to provide more effectually for the Office of Register of Deeds), of the Madras Code ; and Regulation IX. 1827 (for establishing a Register of Title-Deeds, and a General Register of Deeds, Obligations, and other Writings in each Zillah subordinate to the Presidency of Bombay), of the Bombay Code ; and Acts XXX. of 1838, I. of 1843 (for amending the law concerning the Registration of written conveyances and other instruments affecting titles and other interests to land), XIX. of 1843 (for amending the law respecting the Registration of certain Deeds), IV. of 1845 (to amend the law regarding the Registration of Deeds), XVIII. of 1847 (for curing the invalidity in the Registration of Deeds arising from the fact of having been registered by persons not duly appointed or on other than Court days), and XI. of 1851 (for the custody of Registers of Deeds in the Presidency of Bengal), shall be repealed from and after the—day of—1862—.

II. The local Government of every Presidency and General Register Office. place shall establish, within the territories subject to such

Government, at such place as to it shall seem fit, an Office to be called the General Register Office, and may appoint an Officer to the charge of such Office, who shall be called the Registrar General of the Presidency or place for which he is appointed, and who shall receive such salary as shall be authorised by the Governor General of India in Council. The local Government may declare and constitute the Board of Revenue, where there is a Board of Revenue, or any other Public Office, to be such General Register Office, and all the provisions of this Act which apply to such Registrar General shall apply to such Board or other Office so declared and constituted.

III. The local Government shall establish in every District an Office to be styled the District Register Office, and also such number of Deputy Register Offices as, in the judgment of the local Government, may be necessary for the purposes of this Act.

IV. The Judge of the District Court, or, in the Presidency of Bombay, the Assistant Judge, where such Assistant Judge exists, shall be the District Registrar of the District in which such Court or Assistant Judge may have jurisdiction ; and the Judges of the Civil Courts subordinate to the Judge of the District, and such other Public Officers as the local Government may select, shall be Deputy Registrars of such District.

V. It shall be lawful for the local Government to appoint such other persons, not being Public Officers, as such local Government shall see fit, to be Deputy Registrars, and, with the sanction of the Governor General of India in Council, to assign to the persons so appointed such salaries as to such local Government may appear necessary.

VI. Such divisions of Districts shall be assigned to the Deputy Registrars appointed under the last two preceding Sections as the local Government shall see fit, and the local Government may from time to time alter the limits of such divisions.

VII. In case of the death, or absence on leave of any Deputy Registrar, it shall be lawful for the District Registrar to appoint any person whom he may think proper to take temporary charge of the Office of such Deputy Registrar, and to register deeds in the same manner as if such person had been appointed to the Office by the local Government. In case of the absence of any District Registrar, or of a vacancy occurring in the office of any District Registrar, the Officer whose duty it is to carry on the Judicial functions of the Officer who by this Act shall act as District Registrar, shall, during such absence or vacancy, be the District Registrar.

VIII. It shall be lawful for the local Government, with the sanction of the Governor General of India in Council, to allow such Establishments to the General Register Office and to the District and Deputy Registrars as may be necessary for the purposes of this Act.

IX. The General Registrar and the several District and Deputy Registrars shall use a seal bearing the following inscription in English and in such other language as the local Government shall direct : "The Seal of the Registrar General" (or of the Registrar or Deputy Registrar of—).

X. The local Government shall provide for the Office of every District and Deputy Registrar such books as may be necessary for the purposes of this Act, and such books shall contain printed forms for the entries to be made therein, and the pages of such books shall be

consecutively numbered in print, and the number of pages in each book shall be certified by the Officer by whom such books shall be supplied. The local Government shall further supply the Office of every District Registrar with a fire-proof box to be used as hereinafter provided.

XI. No Instrument executed after the—day of—186—, which purports or operates to create, transfer, or extinguish any right, title, or interest of the value of One hundred Rupees or upwards in any immovable property, not being a lease for a period not exceeding one year, and no Instrument executed after the said date, which acknowledges the receipt or payment of any consideration on account of the creation, transfer, or extinction of any right, title, or interest of such value as aforesaid in any immovable property (not being such a lease as aforesaid), shall be received in evidence in any civil proceeding in any Court of Justice, or shall be acted on by any Public Officer unless the same be registered within the time prescribed by this Act.

XII. Any of the following Instruments executed after the said—day of—186—, may be registered under this Act:—

Any Instrument which purports or operates to create, transfer, or extinguish any right, title, or interest of less value than One hundred Rupees in any immovable property.

Any Instrument which acknowledges the receipt or payment of any consideration on account of the creation, transfer, or extinction of any right, title, or interest of such value as aforesaid in any such immovable property.

Any lease for a period not exceeding one year.

Any Instrument which purports or operates to create, transfer, or extinguish any right, title, or interest in any moveable property.

XIII. No Instrument of either of the descriptions mentioned in Section XI. which shall be executed after the said—day of—186—, except Instruments executed within three months from that date, shall be accepted for registration, unless presented for that purpose to the proper Officer within three months from the date of the execution thereof; and no Instrument of any of the descriptions mentioned in the last preceding Section otherwise than a Will, Codicil to a Will, or authority to adopt a son, which shall be executed after the said—day of—except as aforesaid, shall be accepted for registration, unless so presented within six weeks from the date of the execution thereof.

XIV. The parties, their heirs, representatives, or assigns to any Instrument of the descriptions mentioned in Sections XI. and XII. of this Act, which shall have been executed before the said—day of—or before the expiration of three months from the time when this Act shall come into operation, may have such Instruments registered in the manner provided by this Act, if such Instrument shall be presented for registration within twelve months from and after the time when this Act shall come into operation. If any party to the Instrument be dead, the heirs, representatives, or assigns of such party shall be permitted to testify the execution of such Instrument on satisfying the District or Deputy Registrar of his or their identity and representative character, as provided in Section XXIV. of this Act.

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XV. Any Will, Codicil to a Will, or authority to adopt a son after the decease of the person giving such authority, may at any time be registered in the manner hereinafter provided by the person making such Will or Codicil or giving such authority.

XVI. Every Instrument to be registered under this Act, not being a Will, Codicil to a Will, or an authority to adopt a son, shall be presented at the Office of the Deputy or District Registrar in which such Instrument is to be registered by all the parties thereto, or by the heirs, representatives, or assigns of such parties, or by the authorised Agents of such parties, or of their heirs, representatives, or assigns under a power of attorney, special or general. But no such power shall be recognised for the purposes of this Act unless it shall have been deposited by the person executing the same in the Office of the District or Deputy Registrar in which such Instrument is presented for registration, or shall have been delivered personally by such person to such Deputy or District Registrar.

XVII. Any Instrument which purports or operates to create, transfer, or extinguish any right, title, or interest in any immovable property, and any Instrument acknowledging the receipt or payment of any consideration on account of the creation, transfer, or extinction of any right, title, or interest in any immovable property, shall, when presented for registration, be registered in the Office of the Deputy Registrar within whose jurisdiction such immovable property is situate; and any Instrument which purports or operates to create, transfer, or extinguish any right, title, or interest in any moveable property shall, when presented for registration, be registered in the Office of the Deputy Registrar within whose jurisdiction such Instrument is executed, or within whose jurisdiction the purchaser of such moveable property, in the case of goods purchased on contract, shall reside; or at any Registry Office at which all the parties to any such Instrument shall desire the same to be registered. Every other Instrument mentioned in Section XII., except as hereinafter provided, shall be registered in the Office of the Deputy Registrar within whose jurisdiction one of the parties bound by such Instrument, or, in case of bonds or obligations, the obligor shall reside. Provided that Instruments in the English language shall be registered only in the Office of a District Registrar.

XVIII. Every Instrument affecting immovable property situate in more than one Division of a District, shall be presented for registration to the District Registrar of such District, who shall forward a copy, endorsed in the manner provided by the last Section, to the Deputy Registrar of each Division of his District in which any part of such property is situate, and such Deputy Registrar shall thereupon register the same as if such Instrument had been presented to him for registration in the first instance.

XIX. When any Instrument affecting immovable property is registered under this Act in a District in which the whole of the property to which the Instrument relates is not situate, it shall be the duty of the District Registrar or Deputy Registrar, as the case may be, of the Office in which such Instrument is registered, to forward to the District Registrar of the District in which any other part of such property is situate, a copy of such Instrument as registered in his Office, endorsed with an attestation stating the date on which it was registered and its number in his Register Book, and the District Registrar of any District receiving such copy so forwarded and endorsed, shall register the same as if it had been presented to him in the first instance, and shall forward a copy endorsed with such attestation

as aforesaid to the Deputy Registrar of each Division of his District in which any part of such property may be situate, and such Deputy Registrar shall register the same as if the Instrument had been presented to him in the first instance.

XX. The fees mentioned in the Schedule to this Act shall be payable for the registration of Instruments under this Act, and no Instrument shall be accepted for registration until the proper fee has been paid.

XXI. All fees received under the provisions of this Act shall be remitted to the Collector's Treasury, or to such other Treasury as the local Government shall direct, under such rules as the local Government shall from time to time issue, and be credited to Government.

XXII. In every General Register Office, and in the Office of every District and Deputy Registrar, four Register books. Books shall be kept, which shall be entitled—

- 1.—Register of absolute transfers of immoveable property;
- 2.—Register of other transfers of immoveable property;
- 3.—Register of Decrees and Orders of Court;
- 4.—General Register;

and in the General Register shall be entered all Instrument not included under Title-deeds, Mortgages, Decrees, Orders, or Leases, and not required to be entered in such other Registers as are hereinafter provided. All entries made in such books shall be numbered in a consecutive numerical series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year. Whenever any Instrument, for the registration of which application may be made, refers to immoveable and moveable property, it shall be entered in Book No. 4 and also in Book Nos. 1, 2, or 3, as the case may be.

XXIII. At the close of each year, two Indices shall be prepared for each Register, one containing the name of every party to the Instrument registered, and the other, in the case of immoveable property, containing the description of the property, its name, and designation, if any, and the name of the place where situated. These names shall be entered in alphabetical order, and shall show the page in the Register where the Instrument is registered.

XXIV. On the parties to any Instrument, their heirs, administrators, or assigns, or the authorised agents of such parties, as provided by Section XVI. of this Act, appearing before the Deputy or District Registrar for the purpose of obtaining the registration of such Instrument, he shall proceed to inquire whether such Instrument was executed or not by all the parties thereto. If all the parties to the Instrument appear personally before him, and are personally known to him, or in case they are not personally known to him, if they satisfy him by such evidence as he deems sufficient, that they are the parties they represent themselves to be, and if they all admit the execution of the Instrument, he shall register the same in the manner hereinafter provided. If an authorised Agent of any party shall attend in the absence of such party, and shall admit the execution of the Instrument by such party, the Deputy or District Registrar shall satisfy himself by such evidence as he shall deem sufficient of the authority of such Agent, and on being satisfied as aforesaid, he shall register such Instrument in the manner hereinafter provided. If all the parties to an Instrument shall not attend, but the heirs, administrators, or assigns of any party shall attend, the Deputy or District Registrar shall satisfy himself by such evidence as he shall deem sufficient of the right of the persons appearing to represent such

party, and of the execution of the Instrument by such party, and if they shall appear by Agent, of the authority of such Agent. The Deputy Registrar shall enter in the Register Book the names in full of all the persons whose evidence he may take to prove such identity; and for obtaining the appearance and for the examination of such persons, he shall have the same powers as are vested in the Civil Courts for obtaining the appearance of witnesses, and for taking evidence by any Law for the time being in force.

XXV. No Instrument shall be accepted for registration, if any interlineation, erasure, or alteration shall appear on such Instrument, unless the parties appearing to register the same shall attest with their signatures such interlineation, erasure, or alteration; and it shall be the duty of the District or Deputy Registrar, at the time of registering such Instrument, to make a note in the Register of such interlineation, erasure, or alteration.

XXVI. Every Instrument admitted to registration shall be entered in its appropriate book according to the order of its presentation, and shall be numbered accordingly. The entry made in the Register shall show the year, month, day, and hour of presentment, the character of the Instrument presented for registration, the names of the parties to the Instrument in full, and when the Instrument shall have been presented by the agents, or by the heirs, representatives, or assigns of any party, the names of such agents, heirs, representatives, or assigns, and the names in full of any person whose evidence may have been taken under Section XXXIV. of this Act, after which the Instrument shall be transcribed in full. To every entry made as is above prescribed, the signature of every party to the Instrument shall be taken, or the signature of his Agent, heir, representative, or assign, and of any person who may have testified to the identity of every such party or person, and the District or Deputy Registrar shall affix his own signature to the entry.

XXVII. The Instrument shall then be returned to the party who may have presented the same for registration, with an endorsement inscribed thereon showing the date of registration, the number of the book in which such registry shall have been made, and the page of the book on which such entry shall appear, which endorsement shall be certified by the seal and signature of the District or Deputy Registrar, and the Instrument thus endorsed shall be *primi facie* proof, on the production thereof in any Court of Justice, that such Instrument has been duly registered in the manner provided in this Act. Provided that it shall be competent to the Court to require evidence of such registration, if it shall see sufficient cause for doing so.

XXVIII. Every Instrument affecting immoveable property, and not being a Will, Codicil to a Will, or authority to adopt a son presented for registration, shall be accompanied by a copy, and the District or Deputy Registrar, after satisfying himself by careful examination that the original and copy are in every respect and particular alike, shall, within twenty-four hours after such registration, return the original thereof endorsed, as provided in Section XXVII. of this Act, to such of the persons who presented the same as shall be entitled thereto and shall require the return thereof.

XXIX. A copy of every original Instrument affecting immoveable property registered in the Office of any Deputy Registrar shall, within three days, be forwarded with an endorsement attesting the date on which it was registered and its number on the Register Book of such Registrar, to the District Registrar, and a copy of every such Instrument registered in the Office of any District Registrar,

Copy of every original deed to be sent to General Registrar Office.

whether originally or by transmission from the Office of a Deputy Registrar, shall within one week be forwarded with an endorsement attesting the date on which it was registered and its number in the Register Book of such District Registrar to the General Register Office.

XXX. For every copy required to be forwarded under the last preceding Section, or under Section

XIX. of this Act, the same fee shall be paid as for the registration of the original Instrument.

XXXI. On the receipt in the General Register Office of any transcript of any entry made in any Register by any District Registrar, the same shall be entered in the Book Nos. 1, 2, 3, or 4, as the case may be.

XXXII. When a Decree or Order affecting any Instrument relating to immoveable property which shall have been registered under this Act, shall be passed by any Civil Court, and shall transfer, limit, or extinguish the right, title, or interest of any person in such immoveable property, and such Instrument is before the Court passing the Decree or Order, such Court shall cause a memorandum of such Decree or Order to be sent to the District or Deputy Registrar in whose Office such Instrument shall have been registered.

XXXIII. When any Civil Court shall by a Decree or Order declare any Instrument relating to immoveable property which shall have been registered under this Act, or any Will, Codicil, or authority to adopt, which shall have been registered under the provisions of this Act, to be invalid, or a forgery, such Civil Court shall cause a memorandum of such Decree or Order to be sent to the Office of the District Registrar or Deputy Registrar in whose Office such Instrument, Will, Codicil, or authority to adopt shall have been registered.

XXXIV. Whenever any memorandum under either of the two last preceding Sections is received by any District or Deputy Registrar, a transcript thereof shall immediately be made in the margin of that part of the book in which there is any Register of the immoveable property, Will, Codicil, or authority to adopt, affected by such memorandum.

XXXV. Any person wishing to register a Will, a Codicil to a Will, or any Instrument giving authority to the widow of such person to adopt a son after his decease, may deliver such Will, or Codicil, or such Instrument in a sealed cover, superscribed with the name of the depositor and the nature of the Instrument, to the District Registrar within whose jurisdiction such person may reside, who shall, if such person be not personally known to him, satisfy himself of the identity of such person in the manner provided in Section XXIV. of this Act.

XXXVI. On receipt of such sealed cover superscribed as is above provided, and on being so satisfied as aforesaid, the District Registrar shall enter the same in the Register of the Deposits of Wills, Codicils, and Instruments giving authority to adopt, transcribing therein the superscription on such sealed cover and noting in the Register and on the cover the year, month, day, and hour of such receipt, together with the name of the depositor and the names of the persons testifying to the identity of such depositor, and shall then place such sealed cover in a strong fire-proof box to be supplied by Government for that purpose.

XXXVII. Whenever, on the death of any depositor of any sealed packet, application may be made to any District Registrar to open

such packet, such District Registrar, after satisfying himself that such depositor is dead, shall, in the presence of the person making such application, open such sealed packet, and shall enter a copy thereof, to be made at the expense of the applicants, in the Register of Wills, Codicils, and Instruments giving authority to adopt. The District Registrar shall thereupon re-deposit the original Will, Codicil, or Instrument until required to produce the same in a Court of Justice.

XXXVIII. Every District Registrar shall, in addition to the books prescribed in Section XXII. of this Act, keep two books, to be entitled—

Register of deposits of Wills, and Codicils to Wills and Instruments giving authority to adopt.

Register of Wills, Codicils, and Instruments giving authority to adopt.

XXXIX. An appeal shall lie from any proceeding of any Deputy Registrar under this Act if presented to the District Registrar within thirty days after the performance of the Act appealed against, and the District Registrar shall have authority to call before him the parties to the Instrument in connection with the registration of which such appeal has been made, the persons who gave evidence before the Deputy Registrar, and any other person whose evidence, in the opinion of such District Registrar, may be necessary to a right understanding of the matter in appeal. For procuring the attendance of parties and witnesses, the District Registrar may exercise any or all the powers given to any Judge for procuring the attendance of witnesses by any law now in force or that may hereafter be enacted.

XL. No appeal shall lie from any proceeding or decision of a District Registrar under this Act.

XLI. The Registers in the General Register Offices, and in the Offices of the District and Deputy Registrars, shall be at all times open to inspection by any person applying to inspect the same, and certified copies of any entry in such Registers shall be given to all persons applying for such copies. A fee of Eight annas shall be paid by any person applying to inspect any Register before such Register is opened to his inspection, and a fee of One rupee over and above the charge of making the transcript shall be paid by every person requiring a copy of any entry in any such Register. The charge to be made for making copies of entries in the Register shall be regulated from time to time by the General Register Office.

XLII. A registered Instrument shall operate from the time from which it would have commenced to operate if no registration had been required or made, and not from the time of its registration.

XLIII. Priority of title shall be given to Instruments affecting immoveable property in the date of their presentation for registration; and when two or more Instruments shall have been presented for registration at the same time, they shall take precedence according to the date of their execution. But as delay may occur in the negotiation of a sale or other contract, and by reason of the absence of parties the written transfer of property may be delayed, any person may, after the operation of this Act shall have commenced, execute and register a caveat. When such caveat shall have been presented, it shall operate to prevent the registration of any Instrument against which it is presented, having any effect within the period of six months from the date of the entry of such caveat. Any Instrument registered by or on behalf of the person by whom the caveat shall be entered, shall be entitled to the same preference and advantage as if such Instrument had been registered at the time when such caveat was entered. The same fee shall be paid

Time from which Instruments shall operate.

Priority of title.

on the registration of every caveat, as would be chargeable on the registration of the Instrument to which such caveat may refer.

XLIV. Every caveat entered as provided in the last preceding Section, shall be copied in the Register and entered in the Index to the Register, as though it were the complete Instrument for the protection of which it may have been entered.

XLV. Nothing in this Act shall be held to require the registration of any Instrument to which Government, or any Board, Commission, Court, or Public Officer may in a public capacity be a party.

XLVI. No action on an Instrument which shall have been executed after the passing of this Act, and which, though it might have been registered in the manner provided by this Act, shall not have been so registered, shall be entertained, unless such action, if it relate to immoveable property, shall be brought within two years, or, if it be relative to moveable property, within six months from the date when the cause of action arose. Provided that nothing in this Section shall authorise any Court to receive any unregistered deed, the registration of which to make it admissible in evidence is required by this Act. This Section shall not apply to Wills, Codicils, or Instruments giving authority to adopt.

XLVII. If any person shall wilfully make any false statement in any deposition made by him before any Officer acting execution of this Act, in any proceeding or inquiry under the provisions of this Act, he shall be deemed guilty of the offence of giving false evidence as defined in Section 191 of Act XLV. of 1860 (the Indian Penal Code).

XLVIII. The Registrar General shall have power from time to time to frame Rules for the guidance of the District and Deputy Registrars not inconsistent with the terms of this Act. The Rules so framed shall be submitted to the local Government, and after they shall have been approved by the local Government, they shall be published in the Official Gazette, and shall have the same force as if they were inserted in this Act.

XLIX. The registration of all Instruments under this Act shall be made only at the Public Office or Court of the Officer whose duty it shall be to register the same.

L. Except as provided in Section XI. of this Act, the provisions of this Act shall not be in force in any place within the jurisdiction of the Courts established by

Royal Charter.

LI. In the construction of this Act, unless the contrary appear from the context, the words "local Government" shall denote the person or persons authorised by law to administer the Executive Government in any part of British India; the words "year" and "month" shall denote a year or month by the British Calendar; and words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; words importing the masculine gender shall include females.

LII. This Act shall take effect from the day of 1862.

SCHEDULE

OF FEES PAYABLE FOR THE REGISTRATION OF INSTRUMENTS UNDER THIS ACT.

1st Class.

When Registration is required under Section XI. of this Act—

For any absolute transfer of any interest in immoveable property .. Rs. 4
For any other transfer of any immoveable property not being a lease for a period less than one year .. " 3

2nd Class.

When Registration is permitted under Section XII. of this Act—

For any transfer of any interest in immoveable property less in value than 100 Rupees .. Rs. 2
Any lease for a period less than a year .. " 1
Any Instrument relating to moveable property of the value of 100 Rupees or upwards .. " 2
If the value be less .. " 1
Wills, Codicils, and authorities to adopt .. " 4
Decrees of Court and awards of arbitrators .. " 2
Bonds, deeds, and other obligations, if the amount or value of the money or property secured thereby be 100 Rupees or upwards .. " 2
If the amount or value be less .. " 1
Contracts or agreements when the value of goods contracted for, or the penalty for non-performance is more than 100 Rupees .. " 1
When the value or penalty is less than 100 Rupees .. As. 4
When the value or penalty is less than 50 Rupees .. " 1
If the contract be an engagement to cultivate, provide, or derive any article of commerce, in consideration of advances made—
When the advance is 100 Rupees or upwards .. Rs. 1
When less than 100 Rupees, but not below 50 .. As. 4
When below 50 Rupees .. " 1
Any other Instrument .. Rs. 1

STATEMENT OF OBJECTS AND REASONS.

In the preparation of this Bill the provisions of the several projects of law on the subject of Registration which have been from time to time published for general information, and the various communications which have been received concerning those projects, have been consulted.

The expediency of a law to compel Registration of all transfers of land was suggested by the Court of Directors in a Despatch* No. 44. of 1834, dated 10th December.

addressed to the Governor General in Council, shortly after the passing of the Charter Act 3 and 4 William IV. c. 85 in the following terms—"We would also suggest the establishment of Offices for the Registration of all transfers of land or any interest in land, such Registration to be compulsory under such penalties as may appear to you requisite."

Since that time the subject of a Registration law frequently received great consideration in the Legislative Council, either in the form of proposed amendments of the various Regulations already in operation in the several Presidencies, or in the form of a new or consolidated law.

During the years 1841-42, a Draft Act "for consolidating, amending, and extending the law relating to the Registration of Assurances" was prepared by Mr. Amos.

This Draft Act, after having been published and re-published and finally revised with great care, was laid aside, with the exception of one of its provisions, which was passed into law as Act I. of 1843.

In 1849, the Lieutenant Governor of the North-Western Provinces forwarded the draft of a law prepared by the Judges of the Sudder Court, proposing various amendments in the existing Registration Laws of the Bengal Presidency. No steps were taken upon this draft, because it was at that time in contemplation to revise and consolidate the several Regulations and Acts then in force.

In 1852, the subject was again brought forward, and an elaborate and comprehensive scheme was proposed by Sir Charles Jackson, then Officiating as Fourth Ordinary Member of Council, in the shape of a Draft Act "for the Registration of Assurances in the Territories under the Government of the East India Company," which was published for general information.

In 1853, an investigation into the system and practice of Registration of Deeds in the North-Western Provinces, undertaken by Mr. C. B. Thornhill pursuant to instructions from the Lieutenant Governor, resulted in the preparation by that gentleman of a new Registry Law adapted to the requirements of the North-Western Provinces.

In 1855, a petition* was presented to the Legislative Council by Mr. Archibald Grant, the Solicitor to the East India Company, praying that a Draft Act for the Registration of Assurances prepared by him, and which accompanied his petition, might be passed.

Lastly, in 1858, the Judges of the Sudder Court at Madras prepared the draft of a law on this subject.

The several projects of law which have been enumerated, differ considerably from each other in their scope and object. Some of them are confined to a registry of transfers of immovable property, others include also transfers of moveable property, and further extend to Decrees and Orders of Courts, to Wills and authorities to adopt. Registration is in express terms made compulsory by some of these projects; others provide that documents not registered shall not be admissible in evidence in Courts of Justice; while by others certain advantages are conferred on registered documents, but Registration is not made essential to their validity. In the conflict of the many opinions which have been elicited by these several proposals, it is difficult to determine with certainty what are the principles on which a Registration Law for British India should be based, and by what detailed provisions the beneficial operation of such a Law may be secured. The present Bill contains various provisions taken from these several projects of law, and the following are the leading principles on which the measure is framed.

It is clear that even under the present laws Registry Offices have not been established in sufficient numbers to prevent inconvenience and loss of time to persons who desire to register documents. To what extent such Offices ought to be multiplied under the new law must depend in great measure on the extent to which Registration is to be made compulsory. If Registration be made necessary to the admission in evidence of any Instrument affecting the transfer of immovable property above the value of 100 Rupees, and if the limit of time within which an action can be brought on any unregistered Instrument affecting any property, moveable or immovable, be reduced, it is essential that persons making contracts concerning such property should have convenient means to register them. Without the establishment of numerous Registry Offices such a law as is now proposed would not only fail of effect, but would occasion great mischief and hardship.

The Bill authorises the local Governments to appoint District and Deputy Registrars; for the latter Office, not only Mooniffs, Tahseeldars, and other public Officers, but also persons not in the public service may be selected. A considerable multiplication of Registry Offices

will call for the creation of some controlling authority (whether the Revenue Board, as the Bill suggests, or a single Officer) having power to make rules to secure uniformity in the proceedings of so numerous a body of Officers.

In the written communications to which reference has been made, there is a great preponderance of opinion in favour of a compulsory Registration of all documents relating to landed property; but on so important a matter it may be well to proceed tentatively, and the present Bill proposes only so far to make compulsory the Registration of Instruments affecting real property as to declare that no such unregistered Instrument shall be admitted in evidence in any Civil Court of Justice if the right or title transferred shall be of the amount of 100 Rupees. The Registration of leases for short terms, and of Instruments affecting real property of less value than 100 Rupees, will be optional, as will also that of Instruments affecting moveable property, but suits brought on the former class of Instruments if unregistered will under this Bill, be cognisable only if instituted within two years after the cause of action shall have arisen, and on the latter if brought within six months.

The reasons for a compulsory Registration of transactions relating to moveable property are to some extent the same as those advanced in favour of the Registration of transfers of land. It is of great importance, not only to the parties to contracts themselves, but to the public generally and to the due administration of justice, that there should exist some faithful written record of all such dealings as may ultimately become matters of litigation in Civil suits. At present, from the prevalence of forgery and perjury, and also it is to be feared from the degree of success which has been found to attend the use of fabricated evidence, no transaction, however honest in itself, can be deemed absolutely secure and free from the risk of being misrepresented or falsified when brought into a Court of Justice. If the Court is not imposed on by false evidence, the time of the Judges is needlessly occupied.

Adverting to the proposal of a compulsory Registration of all transactions, and having in view especially the prevalence of forged bonds, Mr. Thornhill in his report observes:—"even if the proposed measure should entail some vexation on the proper class of borrowers, it will be infinitely less than the ruin to which they are exposed by the present state of the law, and from which they would hereafter be protected.

"Now, it is only necessary for a Baniya to produce a bond, and bring forward two witnesses to its execution. The evidence is difficult to be refuted, and the defendant is cast. This could not occur if the public Registration of the bond soon after its execution, and by the party most interested, was necessary to its validity.

"But it is not necessary that the Registration of these small bonds should be vexatious, and all objection to the measure would probably be removed by the establishment of a Registry within an easy day's journey of every village."

But it has, on the whole, been thought better to moderate the stringency of the law of Registration on its first introduction, and to leave its extension to some future time, when the people shall have become used to its provisions and sensible of its great advantages.

It is important that the act of Registration should follow closely upon the transaction itself which is to be recorded. The authenticity of the document is thus secured, and all temptation to subsequent forgery and perjury is removed.

In the report just quoted, Mr. Thornhill observes, "that in many of the large mercantile Towns, transactions involving large sums of money are completed without the execution of any written Instrument whatever; the parties trust implicitly each to the good faith of the other, and consequently deem any additional security

superfluous; should any circumstances induce a subsequent want of confidence on the part of the lender, the only mode in which recovery of the debt can be had in a Civil Court is the fabrication of forged Instruments antedated to correspond with the period of the transaction, and supported by the testimony of perjured witnesses.

"To such an extent is this system carried on that the purchase of stamp paper from the Government vendors, to be retailed for such occasions, has become a regular trade."

To check such frauds, a time should be limited within which the document must be registered; the Bill allows three months for this purpose in the case of Instruments affecting real property of the value of 100 Rupees, and six months in all other cases.

Ordinarily the District within which the property or the larger portion of it is situate, should be the place of Registry for immoveable property; but it is also necessary to provide for the case of a transfer made by persons at a distance from the transferred property, as when a purchase is made in one of the Presidency Towns of land situate in a remote province. But in every case, it should be an inflexible rule that every Deed or Instrument affecting lands, wherever such a document may be presented for Registration, should appear in the appropriate register book and indices of the District or place where the land is situate. The multiplication of Registry Offices will prove rather an obstruction than an aid to the investigation of the title of land, if sufficient provision be not made for bringing together in one Office in the District all registered documents concerning the same land.

Documents concerning moveable property may, by the Bill, be registered at any Office most convenient to the contracting parties: if they are not agreed, Registration may be effected at the place where the contract is entered into, or at the place where the purchaser, grantee, &c. resides.

The personal attendance of the parties before the Registrar at the time when the Instrument is presented for Registration will tend to prevent frauds. It may be supposed, that Deputy Registrars will generally, from their own private knowledge, be enabled to identify the parties thus appearing; but if necessary such identity must be otherwise established. Provision is, however, made in the Bill for parties being represented by their duly authorised agents.

A document otherwise valid will, when registered, be preferred to all subsequently registered documents affecting the same land.

Provision is made in the Bill for the optional Registration of Wills, Codicils, and authorities to adopt a son, and as regards Wills it is proposed to adopt the practice followed in England, and to retain the original of all registered Wills, so that they may at any future time be produced in Court if any dispute should arise as to their authenticity.

The fees for Registration, which are entered in a Schedule to the Bill, have been purposely fixed low; it is very important that Registration should be encouraged, and that the amount of fee should, in no case, tempt parties to run the risk of non-registration. It is desirable to afford facilities for a general Registration, and to provide such advantages to registered Instruments at the cost of so low a fee and of so little trouble and inconvenience that Registration may not be unpopular with any class of the community, and be generally resorted to even when left optional by the Law.

(Signed) H. FORBES.

22nd January 1862.

M. WYLIE,

Deputy Secy. to the Govt. of India,
Home Department.