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Public (1896) Department.

ORDINARY PRINTED.

G.O., No. 768-69

DATED 24th July 1896.

INDEXED.

[Despatch Abstract]

LOANS BY TRUSTEES UNDER MARRIAGE SETTLEMENTS.

be requested to consider,
Directing that the Government of India and, if necessary,
to refer to the Secretary of State for final decision, the question of
the applicability of the prohibition in section 2 of Bengal Regulation
XXVIII of 1793 to covenanted as well as uncovenanted officers lending
trust money as trustees under marriage settlements.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

Read—the following paper:—

From L. M. THORNTON, Esq., Deputy Secretary to the Government of India, Home Department (Public), to the Chief Secretary to the Government of Madras, dated Calcutta, the 6th February 1896, No. 258.

I am directed to acknowledge the receipt of your letter No. 888, dated the 25th October 1895, inquiring whether the rule laid down in the concluding portion of paragraph 2 of the Resolution of this department, No. 2 R—87—103, dated the 16th January 1890, applies to the case of public servants who are trustees under marriage settlements and who as such trustees and without any profit or advantage to themselves lend to Europeans or Eurasians the trust-money committed to their charge on the security of house or landed estate, the property of such Europeans or Eurasians.

2. In reply, I am to say that the resolution cited extended to all uncovenanted officers the prohibition in section 2 of Bengal Regulation XXXVIII of 1793 against lending money to any proprietor or farmer of land, or dependent talukdar, or under-farmer or ryot, or their surties. The Government of India think that the prohibition in the regulation would apply to a covenanted officer lending trust-money as trustee under a marriage settlement. Uncovenanted officers, therefore, are equally debarred from lending in this capacity to persons of the classes specified in the regulation.

ORDER—No. 768, Public, dated 24th July 1896.

The following letter will be despatched to the Government of India.

(True Extract.)

J. F. PRICE,
Chief Secretary.

LETTER—to the Secretary to the Government of India, Home Department (Public), No. 769, Public, dated Ootacamund, 24th July 1896.

I am directed to acknowledge the receipt of Mr. Thornton's letter, No. 258, dated 6th February 1896, stating that, in the opinion of the Government of India, the prohibition in section 2 of Bengal Regulation XXXVIII of 1793 applies to covenanted as well as uncovenanted officers lending trust-money as trustees under marriage settlements, and, in reply, to request that the question may be reconsidered in the light of the following observations, and referred, if necessary, to the Right Honourable the Secretary of State for final decision.

2. I am to observe that although Madras Regulation XIX of 1802, section 2 of which is still in force, reproduced *verbatim* section 2 of Bengal Regulation XXXVIII of 1793, the former of these, as the preamble shows, was intended to preclude the

FURTHER PAPERS.

No.	Department.	Date.	G.O.	No.	Dep.
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3655

1896.

1251
25-11-96

 செப்பனிருப்பவர் அபயர்
 செப்பனிருவதற்காக எடுத்த
 கொள்ளப்பட்ட நாள்
 செப்பனிரு முடிந்த நாள்
 சர்ப்பாட்சு குராய்ச்சி
 மு. பா. ச. தலைமையர்
 கையொப்பம்

servants of Government from dealings in the way of lending money to native landed proprietors or cultivators of the soil and not to prohibit such transactions as loans, say, to a European at Simla on the security of house property there. Such a case as this was never contemplated when the Regulation was passed, for the object of it was, in the opinion of His Excellency the Governor in Council, solely to forbid covenanted officers having money dealings with native proprietors and ryots and not to prohibit transactions of the nature of those referred to above. This seems clear if the repealed sections of the Regulation are considered as well as the unrepealed section.

3. If, however, the Government of India considers that this construction does not apply, I am to say that this Government regards legislation which might have suited the condition of affairs in India a century ago as unnecessarily stringent and restrictive for the present day.

J. F. PRICE,
Chief Secretary.

Govt. of {1896} Madras.
PUBLIC.

Issued

Recd.

Encl.

G.O., &c., Nos. 768, 769,
24th July 1896.

JULY.

**Loans by Trustees under Marriage
Settlements.**

Directing that the Government of India be requested to reconsider, and, if necessary, to refer to the Secretary of State, for final decision, the question of the applicability of the prohibition in section 2 of Bengal Regulation XXXVIII of 1793 to covenanted as well as uncovenanted officers lending trust-money as trustees under marriage settlements.

11. 11

Apr 4 5

My dear Sirs.

I too am a holder
of a Marriage Settlement (not
Morgan) and as such I have
lent money on mortgage, though
to Europeans only. I do not
have no interest in the matter beyond
that of trustee. There are I believe
no doubt, organs of the movement
in the service which are

Yours faithfully

Not to be opened in the office.

CONFIDENTIAL

1914

the same: everything has been done
by the lawyers who have received
the interest and all that I have
done has been to signify my
assent to the document as regards any
particular investment & keep a
separate account at the Bank
through which the money passed,
it being paid at once to the
In when received.

It never struck me that this
was against the Rules & I was
Trustee in 1881 / but now that
you put matters before me, I
am not sure that it is not. Looking
the letter, it would apparently
be, but surely the rules were
never intended to preclude - as
they practically would if strictly taken.

perhaps any money in the same form
becoming a Trustee.

The question is open to doubt and I think
that such should be asked. It seems
likely I will get an opinion from Mr. Stanley
Hogson & Mr. Stirling of course on
our case. They are my lawyers as
Trustees.

Yours very sincerely
Richard Hill

My dear Price
I think the best
will be for you to circulate
this letter & my letter to
it is a reply to H.R. the Gov.
the Honble Mr. James. who
consider what has been
done -

5/9/95

Yours

W. CHIEF SECY
5 SEP 1
GOVERNMENT

Sept 2 1895

My dear Price

I am sorry to hear of
bottom you are as to the
of a certain holding mortgage
land in India. The other
day I asked the question in
view to finding an investment
for some small savings. how the
question has arisen in this way -
My son in law MacDonald has
written to me about an arrange-
ment in connection with my
daughter's marriage settlement
which I am a trustee - He has
let the business which he has

at Simla & which is already
under mortgage & myself &
my co-trustee (a Mr. Brown
formerly in the P.W. Dept. & now retired & living at home)
don't know if the trustees
will have part of the purchase
money on mortgage & if they
will object to the portion of
the purchase money which is
to be paid in cash being in-
vested on the mortgage of other
house property up there. Mac-
donald's letter (recd. on
Sunday) has drawn my attention
to the fact that, as a trustee &
in conjunction with another man, I am

actually holding house property
on mortgage. I have been doing
so since 1886. The cases are
these: — When my daughter
married, Macdonald bound
himself ^{contractually} to pay the trustees a certain
sum for her benefit (or less it
was that he would himself to have
the money by will — I forgot which &
haven't the marriage settlement, which
is with the J.D. Sanderson & Co. in
Calcutta, to refer to) and accordingly
in making the payment I mortgaged
above in land in Allahabad —
I mentioned that house was sold
& above he had in Chota Simla
— & above he had instead — That house
was mortgaged instead — That house
was sold & the house in
Jaipur was sold & the house in
Simla he has been living in &
has just now sold was mortgaged
instead — all along, therefore, since
1886, I have been holding a mortgage
as a ~~co~~ trustee, though within
my own Pres. Co. Whether this is
against the rules, I am not

[illegible]

"I think that the only practical
 solution is to let the Government
 take over the management of the
 railways."

The case constitutes evidence of a letter
a kind "in any way subject" to the
payment of law revenue direct to
Government."

I have on the security of an hotel
for a number and to Europeans or
business only / tent money.

The first part of the paper is devoted to the study of the properties of the function $f(x)$ defined by the equation $f(x) = \int_0^x f(t) dt$. It is shown that $f(x)$ is a continuous function and that it satisfies the differential equation $f'(x) = f(x)$. The second part of the paper is devoted to the study of the properties of the function $g(x)$ defined by the equation $g(x) = \int_0^x g(t) dt$. It is shown that $g(x)$ is a continuous function and that it satisfies the differential equation $g'(x) = g(x)$.

[illegible]

From

L. M. Thomson, Esq.,

Deputy Secretary to the Government of India.

To

The Chief Secretary to the Government of Madras.

Calcutta, the 6th February 1896.

Home Department.

(Public)

Sir,

I am directed to acknowledge the receipt of your letter No. 838, dated the 25th October 1895, enquiring whether the rule laid down in the concluding portion of para. 2 of the Resolution of this Department No. 87-103, dated the 16th January 1890 applies to the case of public servants who are trustees under Marriage Settlements and who as such trustees and without any profit or advantage to themselves lend to Europeans or Eurasians the trust money committed to their charge on the security of house or landed estate, or property of such Europeans or Eurasians.

2. In reply I am to say that the Resolution cited extended to all uncovenanted officers the prohibition in section 2 of Bengal Regulation XXXVIII of 1793 against lending money to any proprietor or farmer of land, or dependent talukdar, or under-farmer or ryot, or their sureties. The Government of India think that the prohibition in the Regulation would apply to a covenanted officer lending trust money as Trustee under a Marriage Settlement. Uncovenanted officers, therefore, are equally debarred from lending in this capacity to persons of the classes specified in the Regulation.

I have the honour to be,
Sir,
Your most obedient Servant,

L. M. Thomson

FOR ORDERS.

in general terms
24/9/95
29/2/96

553

Pub

[17]

10/1/1901

From

To

10/1/1901

I really can't understand what
 the J. of I. is after. In the 1st
 place, the Reg. it refers FOR ORDERS.
 to does not apply to this
 Pres. at all. In the second,
 it refers to "any proprietor or farmer of land,
 or dependent talookdar, or
 under-farmer or ryot, or
 from whom a right is claimed
 as the owner of a
 house at (say) Simla - these
 restrictive rules as to the
 are perfectly absurd
 & an anachronism - I think
 India must be made
 to make a step to the J. of I.

Mr. G. I have asked if Simla
 under Marjag Settlements could
 lend money to Europeans or
 Eurasians on the account of
 houses or lands belonging to them.
 I think not, but such
 Simla cannot lend money to
 any proprietor or farmer of land,
 or dependent talookdar, or
 under-farmer or ryot, or their
 surakhs. This is a particular

Simla

It would be as well to let Officer know
 of this ruling. There are no doubt some
 who are Simla and a such has
 looked into transactions of the class
 which Simla is not to come within
 the

It is not a matter of whether
 Europeans or Eurasians own
 houses - say at Simla, as the
 Mr. Blair suggests - and was
 intended as belonging to the prohibited
 classes. I have not yet
 asked again, as the matter is of
 importance.

Yes - go up again. All the time a
 European or Eurasian owning land at
 Simla or only comes under the definition
 of "any proprietor or farmer of land"
 But the rule is absolutely clear
 against the public talookdar

10/1/1901

Submitted to

Reading of in only
 public account
 are trustees under
 settlements

[Faint, mostly illegible handwritten text, possibly a list or ledger entries.]



THE MINT

C. No.

FOR ORDERS

Pleasantry in the
 the matter
 6/11
 24/11/11

Remains to be
 ...
 ...
 ...
 ...
 ...
 ...

Reading of money
amounts who have
under marriage settlement

FOR ORDER

~~H. E. THE GOVERNOR.~~

THE HON'BLE MR. H. W. BLISS, O.

~~THE HON'BLE MR. J. GROBE.~~

7177 718

a case, as this ~~was~~ never contem-
 plated when the Regn. was passed, ^{for} and
 the object of it was, in the opinion of
 the Governor in Council, solely to
 forbid covenanted officers having money
 dealings with native proprietors and
 not to prohibit transactions
 of the nature of those referred to above.

If, however, the Govt. of India
 considers that this construction does
 not apply, I am to say that this Govt.
 regards legislation which might have
 altered the condition of affairs in
 India a century ago ^{as unnecessarily} ~~far too~~ stringent
 and restrictive for ~~that of matters at~~
 the present day and is of opinion that
~~changes between Brit. officers and other Europeans~~
~~anachronism such as this should be~~
~~removed, especially in~~
~~cases in which the former have no bene-~~
~~ficial interest, but merely represent other~~
~~persons whose~~
~~interests are not related~~
~~to them.~~

16/6/86

Loans by Trustees under ~~Maff.~~

Settlement

(FROM ORDERS)

H.M. ~~2-2-1886~~

C. No.

FOR ORDERS.

Handwritten:
 for approval. I send the ~~above~~
 the ~~above~~ with a ~~few~~ ^{few} ~~more~~ ^{more} ~~to~~
 there is a very poor case and I
 do not see how a better one can be
 made of it.
 The Office (1886) has sent me also
 a Draft which I submit to the ~~above~~
 it shows the work to be done in
 the ~~above~~ ^{above} ~~case~~ ^{case} ~~of~~
 the ~~above~~ ^{above} ~~case~~ ^{case} ~~of~~

FOR ORDERS

H. M. de Ciro.

See
also file 1000.

17/1/96

Remembered to
send you the
note of the
H.M. the
H.M. the

38/6/96

ack

in linked file
1000

June 21 1896

My dear Price

It has just occurred
to me that when Reg XIX
of 1802 was passed, British
Subjects ^(being all Europeans) were prohibited from
holding land in India at
all (query: by Reg XVIII of
1802) - If so, it is clear
that Reg XIX of 1802 cannot
apply to Govt Officers lending
to Europeans on mortgage,
as this is not a loan.

June 30th 6

My dear Bliss

I return yours
of the 21st but for reference send
with it a note by the Office
and afraid that the case is
made all better.

Yours very sincerely
C. D. Johnson

End of report -
The whole

[illegible]

Note
Regulations XVIII & XIX
of 1802 were repealed by A
II of 1869, the Madras Re-
pealing Act.

XVIII of 1802 prohibited British
 Subjects (excepting King's Officers
 serving under the Hereditary Gr.
 of George & the Civil Covenanters
 Servants of the Company & other
 Civil Officers) from residing at
 a greater distance from Fort
 St. George than ten miles &c.
 It was also framed to enable
 British Subjects to recover any
 demands &c. &c. &c. under the
 Regulation for such persons.

Act of 1802 prohibited

- (1) Covenanted Civil Servants of the Company, employed in the name of "Ajinka", or the collection of public revenue from lending money to Zemindars, independent Talukdars, or other actual proprietors of land or dependent Talukdars or farmers of land holding farms immediately offshoot in the under farms or rights of the several descriptions of proprietary farmers of land also mentioned in their respective countries.
- (2) Europeans of any description for holding possession of lands that may be mortgaged to them or purchasing or buying lands for creating houses or building for carrying on manufactures or other business or for the farming the lands or otherwise or the purchase of the lands or any part of them.



Referred to the
Hon. Mr. Newell
with ref. to the
the
study of the
all students

It is proposed to
add the following to para
2 of the draft -

"I am further to add that although it is not expressly stated that the general tenor of Regulation XIX of 1802 is such as to show that §2 can only apply to transactions with natives".

The H.M.'s attention is
solicited to the
if H.E. the Governor on the
draft letter

49
10/2/96

The second part of the paper
and third appears to show
that the work covered by
the second part is however extended
in case that the third, otherwise

Loans by Public Serv
being Trustees.

Hon. Mr. H. W. Munro

Resubmitted to the Hon. Mr.

Justice as he has not

indicated his suggestion

to the Hon. Justice

with the table

I regret the mission, ^{had}
now supplied

15/7/96

Dr

7/7/96

10-12-7-9

10-20-7-9

e 1677

1896

MADRAS.

DEPARTMENT.

READ—the following paper

From L. M. THOMAS
Home Department
Madras, dated 1st

I am directed to
October 1895, in
paragraph 2 of the
January 1890, apply
settlements and who
selves lend to
the security of

2. In reply, I am
officers the prohibition
lending money to any
farmer or any other
tion in the regulation
trustee under a
debarred from
regulation.

Order—No. 753, Public
The following letter

Secretary to the Government of India,
Chief Secretary to the Government of
1896, No. 258.

of your letter No. 888, dated the 25th
id down in the concluding portion of
ment, No. 2 R—87-103, dated the 16th
agents who are trustees under marriage
and any profit or advantage to them-
self money committed to their charge on
party of such Europeans or Eurasians.
ten cited extended to all uncovenanted
Regulation XXXVIII of 1793 against
land, or dependent talukdar, or under
ment of India think that the prohibi-
tion officer lending trust money as
wanted officers, therefore, are equally
persons of the classes specified in the

1896.
to the Government of India.
(Encl.)

Chief Secretary.

NOTE FOR THE H. L. O.

Please see the slip attached
and print revised copies. I have
destroyed all copies that are in the
city office. Please see that
copies in the Madison office are
disposed of in the same way.

Very respectfully,
John D. ...

S. H. ...
...
...

LETTER No. 769, D. 24th July 1896

To The Secy. to the Govt. of India,
Home Dept. (Public).

Sir,

I am directed to acknowledge the receipt of Mr. Thornton's letter No. 258, d/ 6th February 1896, stating that, in the opinion of the Govt. of India, the prohibition in sec. 2 of Bengal Regulation XXXVIII of 1793 applies to covenanted as well as uncovenanted officers lending trust money as trustees under marriage settlements, and in reply, to request that the question may be reconsidered in the light of the following observations, and referred, if necessary, to the Rt. Hon. the Secy. of State for final decision.

2. I am to observe that although Madras Regn XIX of 1802, sec. 2 of which is still in force, reproduced verbatim sec. 2 of Bengal Regn. XXXVIII of 1793, the former of these, as the preamble shows, was intended to preclude the servants of Govt. from dealings in the way of lending money to native landed proprietors or cultivators of the soil and not to prohibit such transactions as loans. This seems clear if the repealed

section

Translators under

Note for the H. M.

With reference to the note on the accompanying copy of 80.768-69/Huba, 24.7.96 the H. M.'s attention is solicited to the original draft flagged A. in regard to para 2 of which H.E.A. Governor noted that the passage after the word loan should be omitted. The H. M. assented to this. "3" in H.E.'s note is evidently meant to be "2" and "say" should be "loans". If the passage after "say" in para 3 were omitted the remnant would have no meaning.

The words after loan in the revised draft B are those which the H. M. himself added. vid note flagged C.

It seems that H.E.'s note word was "day" & not say I am misled by the rest but I am sure in this

from orders - he didn't. He said after in para 3 - "with the word 'loans'" simple nonsense H.M. He had better already it was of course wrong - draft now put up for rect.

8/8/96

return this to or send back

24/7/96

29 28

Telegram to

Similar

Home.

Nº 459. + Please cancel 769

Public 24. ultimo + Revised letter
follows:-

Letter to

Shree to the Govt of India

Home Dept. Secy. 1

Sir,

30th Dec 1896

I am directed to acknowledge the receipt of Mr. Thornton's letter N^o 258 d^{td} 1st February 1896, stating that, in the opinion of the Govt of India, the prohibition in Section 2 of Bengal Regulation XXXVIII of 1793 applies to covenanted as well as uncovenanted officers lending trust money as trustees under marriage settlements, and in reply, to request that the question may be reconsidered in the light of the following observations, and referred, if necessary, to the Right Hon^{ble} the Secy of State for final decision.

2. I am to observe that although Madras Regulation XIX of 1802, Section 2 of which is still in force, reproduced verbatim Section 2 of Bengal Regn XXXVIII of 1793, the former of these as the preamble shows

11/
27^o

which might have
limited the condition
of affairs in India
a century ago as
unnecessarily stringent
and restrictive for
the present day.

22
7/8/56

