M.R.O. 14—5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	1151	Press ~~Mis.~~
648-50 Dated	29-4-	1868.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 29th April 1868.

Read the following papers :—

No. 648. Proceedings of the Board of Revenue, dated 30th March 1868, No. 2,325.

Read the following letter from the Superintendent of Stamps, to the Secretary to the Board of Revenue, dated Madras, 13th February 1868, No. 255 :—

1. I have the honor to forward, for submission to the Board, the annexed copy of a letter from Mr. R. Newbigging, Secretary to the Madras Building Society, giving cover to a printed form of Deed which he states has been prepared for adoption by the Society in effecting mortgages of landed property for loans advanced to shareholders.

2. Within the last few days I have received several of these printed forms to be impressed with stamps of one Rupee each, without reference to the amount borrowed and lent, and as the paper in each case was a mere printed form sent to me *before* execution, I could not demur to the desired stamp being put upon it, which I have accordingly done, intimating at the same time to the parties, however, that it was done at their own risk.

3. With all respect for the opinions of the professional men who are said to have settled the form of the Deed, I am not satisfied that the mortgage transactions of the Society can be treated as falling under Article 13 of Schedule A of the Stamp Act. I submit that those transactions clearly fall under Article 46, and that, as the law now stands, the Mortgage Deeds taken by the Society require the same stamps as Bonds. I beg particular attention to the last part of the last mentioned Article which runs thus—

"Also any Deed or Contract accompanied with a deposit of title deeds to any property, where the same may be made as security for payment of money due or lent at the time."

The Deeds executed by the shareholders borrowing money from the Fund appear to me to answer precisely to the above description, and the essential character of the transactions, it will be remembered, is that of a mortgage which the Article in question is intended expressly to reach.

4. On the other hand, Article 13 is evidently intended to apply only to a particular class of transactions, and to afford special accommodation to Merchants obtaining loans from Bankers for short periods upon the deposit of Government paper or other securities. I presume it will not be contended that the loans given by the Building Society are all of this character; that is, that the loans are *bonâ fide* by Bankers for short periods and that they will in any case be repaid, or are even intended to be repaid within one month, as stated in the form of the Bond. That such is not the case may be concluded, not only from the [illegible] of the Fund, but also from the [illegible] concluding part of the principal itself.

5. No doubt the working of Article 13 is comprehensive, and [illegible] the Deed is so framed as to bring it within the strict letter of that Article; but looking at Article 46 at the same time, and construing the one by the other, and looking at the [illegible] of the Building Society, and the character of its monetary transactions, I cannot help thinking that the attempt to bring [illegible] se

under Article 13 is a misapplication of the Law to the detriment of the revenue derivable from the duty on Mortgage Bonds. If the Building Society are right in their view of the case, it is difficult to see why any and every mortgage on which money is lent or borrowed should not be brought likewise under the exceptionally light stamp duty imposed by Article 13, and why Article 46 at all finds a place in the Schedule.

6. Since writing the above, it has occurred to me to refer to the debates which took place in the Imperial Legislative Council when Acts No. XXXVI of 1860, and No. X of 1862 were passed, to see if any light would be thrown on the intention of the Legislature in enacting Article 13 as distinct from the Bond and Mortgage Articles. Those debates are contained at pages 587 and 1,010 of the accompanying printed Proceedings* of the Indian Legislative Council for the months of June 1860, and August 1861, and I beg the Board's perusal of the same.

* To be returned, or forwarded direct to the Government Office, whence they have been obtained.

7. Should the Board see reason, under the foregoing circumstances, to share my doubts as to the propriety of the proceeding of the Building Society, I request that legal opinion may be obtained on the point, and that, if necessary, opportunity may be taken of the impending revision of Schedule A. to so amend Articles 13 and 46 as to prevent a misapplication of the former to the sacrifice of the duty leviable under the latter.

From Mr. R. J. NEWBIGGING, Secretary to the Madras Building Society, Branch, to the Superintendent of Stamps, dated Madras, 3rd February 1868.

1. I beg to forward copy of the "Equitable Mortgage" Form to be adopted by the Madras Building Society, Branch, in effecting mortgages of landed property on account of loans advanced to shareholders.

2. The form has been prepared by Messrs. Brockman, Prichard, and Barclay, Solicitors, and settled by Mr. John Miller, Barrister-at-Law, and being of the same character as the "Bond or agreement for a loan made upon the deposit of title-deeds," provided under Stamp Act No. X., Schedule A, paragraph 13, is to be executed on a stamp of the value of one Rupee.

3. Copy of the form has been forwarded to the Board of Revenue.

Enclosure No. 2.—Copy of Equitable Mortgage Form.

Enclosure No. 3.—Rules of the Land Mortgage and Building Society.

Enclosures Nos. 4 and 5.—Proceedings of the Legislative Council of India, for June 1860 and August 1861.

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1. Submitted for the orders of Government, with the Board's recommendation that the opinion of the Advocate General be obtained as to the character of the printed Form in question, and, that, if necessary, an amendment of the law be sought for.

2. The Board concur with the Superintendent of Stamps in his view of the matter. They consider that Article 13 was framed for cases very different from that contemplated in the above Form. That Article was intended for *bonâ fide* loans for short periods, whereas the transactions of the Building Society are dependent on mortgages, and on such are the loans granted. The provision at the close of the Form would also appear to divest the transaction of the character of a loan for a short period.

Referred to the Government Solicitor, for the opinion of the Advocate General.

(Signed) W. HUDLESTON,
Secretary to Government.

4th April 1868.

No. 649. From the Government Solicitor, to the Secretary to Government, Revenue Department, Fort St. George, dated Madras, 9th April 1868, No. 215.

Dated 4th April 1868, and made on Proceedings of the Board of Revenue of the 30th of March 1868, No. 2,325.

1. I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion relative to the operation of the Stamp Act No. X of 1862, on a form of Equitable Mortgage adopted by the Madras Building Society.

2. I have submitted the papers for the consideration of the Advocate General, and I now forward a copy of his opinion.

3. I likewise return the order and enclosures above noted.

OPINION.

1. I have carefully perused the form of "Equitable Mortgage" adopted by the Madras Building Society.

2. I am of opinion that it comes under Article 13 of Schedule A, and not under Article 46.

3. The instrument is not a *deed*, and therefore does not fall within the first clause of that Article. If it comes under Article 46 at all, it must be under the second clause, which comprehends a contract (*i. e.*, a contract not under seal) as well as a deed. But this second clause is confined to cases where the money in respect to which the instrument is executed, is either actually then due or has been *previously* lent. The words in the first clause are, "money due or to become due thereupon." The words in the latter are "money due, or lent at the time." The Legislature has perhaps not been very happy in this language; but in construing the Act, we must take it for granted that the Legislature, by using different language in the two clauses, intended two different things; and, therefore, "money lent at the time" must, I think, refer to a case not where money is paid contemporaneously with the execution of the instrument, but where the instrument is executed in respect of money already lent but not yet due.

R. D 4c

27-1157

Pro: of the Madras Govt

Under date the 29th Apl. 68

Read the following

papers

Pro: Bd of Revenue

Submitting for orders letter from Supt. of Stamps, & recmd. that opinion of the Advo. Genl. be obtained as to the character of printed form of Equitable mortgage, form to be adopted by the Madras Building Soc.y sought to be stamped under Article 13 Sche: A: of the Stamp Act. —

D. O. 30th March 1868 No 232

From the Govt Solicitor

Forwarding copy of Advo. Genl's opinion relative to the operation of the Stamp Act on a form of Equitable Mortgage adopted by the Madras Building Society

D. O. 2nd April " " 215

Ordered that the Advocate General be requested to draw up a form of Equitable Mortgage to be adopted by the Madras Building Society which shall be exempt from Stamp duty under the Stamp Act

Revision of the Stamp
Law is undertaken. —

E. H.

14 Copies Letter Wd & Revd Dept Wd & Revd
4 ——— Govt Solicitors

Sc

Revenue 1868 Depart.
Pro: of Govt for April
A: 1151

6 Pro: of the Madras Govt
of 29th April 1868

From Govt of India of 25 June to
Rs 2.20/-

A: 648 @ 650