



# Stamp Act 1891

## 1891 CHAPTER 39

### PART II

#### REGULATIONS APPLICABLE TO PARTICULAR INSTRUMENTS

##### *Mortgages, &c*

#### **86 Meaning of "mortgage"**

- (1) For the purposes of this Act the expression "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be;

And includes—

- (a) Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever: and
- (b) Any deed containing an obligation to infest any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured: and
- (c) Any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts, in full satisfaction thereof, or who exceed five in number: and

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- (d) Any defeasance, letter of reversion, back bond, declaration, or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, Transfer, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security: and
  - (e) Any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, wadset, or any other security or conveyance as aforesaid of any lands, estate, or property comprised in the title deeds, or for pledging or charging the same as a security : and
  - (f) Any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland : and
  - (g) Any deed operating as a mortgage of any stock or marketable security.
- (2) For the purpose of this Act the expression " equitable mortgage " means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever (other than stock or marketable security), or creating a charge on such property.

## 87 Direction as to duty in certain cases

- (1) A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, is to be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.
- (2) A security for the payment of any rentcharge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid.
- (3) A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is not to be charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.
- (4) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the ad valorem duty is to be charged on the surrender or grant, if made out of court, or the memorandum thereof, and on the copy of court roll of the surrender or grant, if made in court.
- (5) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the ad valorem duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of court roll of the surrender or grant, as the case may be, is not to be charged with any higher duty than ten shillings.
- (6) An instrument chargeable with ad valorem duty as a mortgage is not to be charged with any further duty by reason of the equity of redemption in the mortgaged property

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being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

## **88 Security for future advances, how to be charged**

- (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.
- (2) Where such total amount is unlimited, the security is to be available for such an amount only as the ad valorem duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made.
- (3) Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with ad valorem duty.

## **89 Exemption from stamp duty in favour of benefit building societies restricted**

The exemption from stamp duty conferred by the Act of the Session held in the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of benefit building societies, shall not extend to any mortgage made after the thirty-first day of July one thousand eight hundred and sixty-eight, except a mortgage by a member of a benefit building society for securing the repayment to the society of money not exceeding five hundred pounds.