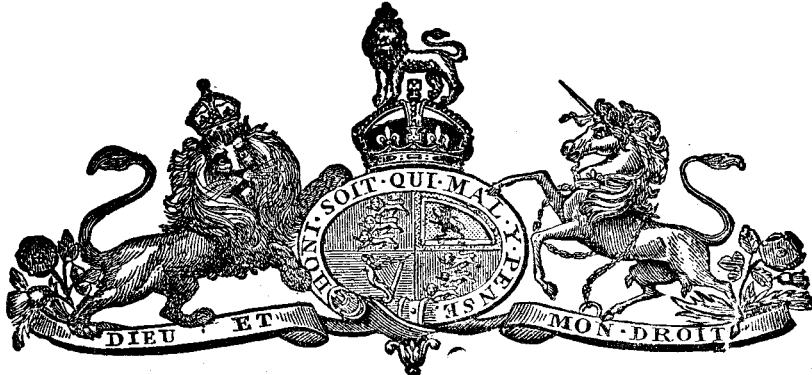


1349

T A S M A N I A .



1935.

ANNO VICESIMO SEXTO  
GEORGII V. REGIS.  
No. 81.

ANALYSIS.

1. Short title.
2. Amendment of 22 Geo. V. No. 23.  
Section 5 (1).  
Section 5 (2).  
Section 9.  
Section 15.  
Section 21.  
Second schedule.
3. Further amendment of 22 Geo. V. No. 23.
4. Amendment of section 41 of 22 Geo. V. No. 23.
5. Repeal of 25 Geo. V. No. 27.

AN ACT to amend the *Deceased Persons' Estates Duties Act 1931*. [20 December, 1935.]

A.D.  
1935.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as the *Deceased Persons' Estates Duties Act 1935*.

Short title.

2 The Principal Act is hereby amended—

- I. By deleting "over which" to "appointment" (at the end of Section 5 subsection (1) of section five thereof) and substituting "of (1) which the deceased at the time of his death was competent to dispose".

Amendment of 22  
Geo. V.  
No. 23.

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*Deceased Persons' Estates Duties.*

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A.D. 1935. Section 5  
— (2).

II. By expunging from subsection (2) of section five thereof—

(a) Paragraphs III. to v. and substituting—

“ III. Which is comprised in any gift at any time made by such person and of which the possession and enjoyment have not been assumed in good faith by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

iv. Which such person, being—

- (a) Absolutely entitled thereto : or  
(b) Competent to dispose thereof—

has caused to be transferred to or vested in himself and any other person, whether by disposition or otherwise, so that, on his death, the beneficial interest therein, or in some part thereof, passes or accrues by survivorship to such other person :

v. Held by such person and any other person as joint tenants or joint owners, to the extent of the beneficial interest therein, or in any part thereof, passing or accruing by survivorship, on the death of such person, to such other person, and in proportion to the amount, if any, paid or the property, if any, contributed by the person so dying towards the purchase, investment, or settlement whereby such joint tenancy or joint ownership was created :

vi. Which passes under any voluntary settlement (including any disposition in favour of a volunteer, whether a party or not to the deed or instrument, if any), made by such person at any time in any manner otherwise than by testamentary disposition whereby any interest in the property comprised therein, or the proceeds of sale thereof, for life, or any other period determinable by reference to death, is either expressly or by implication reserved to such person, or whereby he reserves to himself the right by the exercise of any power to restore or retake the absolute interest in such property :”—

and renumbering the present paragraph vi. as vii. :

(c) Paragraphs vii. to ix. and substituting :—

“ viii. Which passes under any conveyance, transfer, assignment, or appointment made by such

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person within three years before his death in consideration of an annual or other periodical payments to be made to or for such person, and terminating at his death, and less by one-third than the annuity which the person so dying could reasonably expect to purchase for the amount of the assessed value of the estate, if realty, or the market value, if personalty, (such value to be taken at the time of the conveyance or other form of disposition aforesaid, and a proper deduction or allowance to be made for any consideration in addition to such annual or other periodical payments), to the extent of which the aggregate amount of such payments and such other consideration, if any, is less than such value as aforesaid :

- ix. Which such person has at some time within three years before his death conveyed, transferred, assigned, or appointed, or agreed to convey, transfer, assign, or appoint for any consideration, other than marriage, which is less by one-third than the *bona fide* saleable value at the time aforesaid of such property, to the extent to which such value exceeds such consideration ” :—

and deleting “ any ” in the first line of paragraph x., and inserting thereafter the following new paragraphs xi. and xii. :—

- xi. Any annuity or interest purchased or provided by such person, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, and in proportion to the amount, if any, provided or contributed by such person for the purchase or provision of such annuity or interest :

- xii The reasonable market value at the death of such person of any property of which he was competent to dispose by will comprised in any contract entered into by him at any time for the sale or other disposal of such property, for any consideration less than such reasonable market value, and to be performed at his death or at any period determinable by reference to his death : ”—

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and by inserting after subsection (2) of section five thereof the following new subsection (3) :—

“(3) For the purposes of this Act, a person is competent to dispose of property if he has such an estate or interest in, or such general power over, such property, as would, if he were *sui juris*, enable him to dispose of the property ; and the expression ‘ general power ’ includes every power or authority enabling the donee or other holder thereof to appoint or dispose of the property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself ; or exercisable by a tenant for life under the *Settled Land Act 1884* or as a mortgagee.” :

Section 9. III. By inserting at the end of paragraph ii. of subsection (1) of section nine thereof the words “ if incurred in good faith for full consideration in money or money’s worth wholly for the deceased’s own use and benefit.” :

Section 15. IV. By inserting at the beginning of section fifteen thereof the following new subsection (1) :—

“(1) As respects any property which is, by virtue of subsection (2) of section five, deemed to be part of the estate of a deceased person—

i. Any person taking or deriving any beneficial interest therein otherwise than as a purchaser in good faith for full consideration in money or money’s worth : and

ii. To the extent of the property actually received or disposed of by him, every trustee, guardian, committee or other person in whom any such property or the management thereof is at any time vested for or on behalf of any such person as aforesaid —

shall be responsible for the duty payable in respect thereof as part of the estate of the deceased person, and may be assessed accordingly : Provided that nothing herein contained shall render a person responsible for the duty who acts merely as the bailiff or agent of another person in the management of property.”—

and renumbering the present subsections (1) to (5) as (2) to (6) :

Section 21. V. As to section twenty-one thereof—

(a) By inserting “ or other person ” (after “ trustee ” in the fourth line of (1)) : and

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(b) By expunging subsection (2) and substituting therefor—

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“(2) For the purposes of this section—

- i. All such duties as aforesaid shall be adjusted so as to throw the burden thereof upon the respective portions of the estate upon which the same are properly chargeable: and
- ii. For that purpose any such executor, administrator, trustee, or other person may sell, or mortgage with a power of sale, all, or any part of, the estate upon such terms and conditions as he thinks proper.”: and

VI. By expunging paragraph four of the second schedule and substituting therefor—

“4. Where the whole of the nett property within and without this State of a deceased person does not exceed in the aggregate an amount of one thousand pounds, no duty shall be payable in respect of any portion thereof which passes to—

- i. The widow or widower:
- ii. The widow or widower and children: or
- iii. The children—

of such person; and, where the whole of such property as aforesaid exceeds in the aggregate one thousand pounds, but does not exceed two thousand pounds, duty in respect of so much of the property as passes as aforesaid shall be payable only in respect of the excess thereof over one thousand pounds, and shall be at one-half the rate prescribed in respect of the aggregate value of the estate by Part III. hereof.”—

and by inserting (after “debts” in the heading to Part III. of the said schedule) “but without any other deduction.”

**3** The Principal Act is hereby further amended in the manner and to the extent indicated in the schedule.

**4** Section forty-one of the Principal Act is hereby amended by deleting the word “thirty-five” and substituting therefor the word “thirty-six.”

**5** The *Deceased Persons' Estates Duties Act 1934* is hereby repealed.

Further amendment of 22 Geo. V. No. 23.

Amendment of section 41 of 22 Geo. V. No. 23.

Repeal of 25 Geo. V. No. 27.

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**THE SCHEDULE.**


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**AMENDMENT OF PRINCIPAL ACT (22 Geo. V. No. 23).**


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Part or Section Amended.	How Amended—
	By expunging or deleting the words, as the case may be—
Section 3 .....	“of Tasmania”; and the definitions of “Schedule” and “Section”
Section 4 .....	“Section Five” and substituting “this Act”
Section 7 .....	“the Registration” to “1906” and substituting “Part IV. of the <i>Education Act 1932</i> ” (in (2) III.)
Section 8 .....	“forfeit” to “exceeding” and substituting “be liable to such penalty as the Commissioner may impose, but such penalty shall not exceed”; “as” to “impose”; “the Probate” to “1893” and substituting “Part VI. of the <i>Administration and Probate Act 1935</i> ”
Section 30 (8) .....	“and the” to “conclusive”
Section 40 .....	“under and”; and “prescribing” to “provisions”
Schedules .....	“Schedules” and “(1)” and substituting “The First Schedule”; “(2)” and substituting “The Second Schedule” and correcting citation of schedules accordingly throughout; and substituting “Division” for “Paragraph” wherever occurring in Parts I. and II. of the second schedule.