

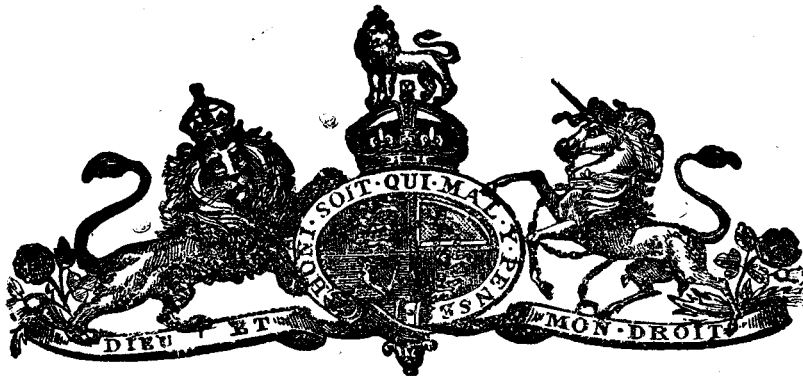
THE DECEASED PERSONS' ESTATES DUTIES ACT, 1915.

ANALYSIS.

1. Short title and commencement.
2. Repeal.
3. Interpretation.
 - "Administration."
 - "Administrator."
 - "Children."
 - "Court."
 - "Duty" or "duties."
 - "Friendly society."
 - "Final balance."
 - "Personal estate."
 - "Probate."
 - "Property."
 - "Public Trustee."
 - "Real estate."
 - "Registrar."
 - "Settlement."
 - "This Act."
 - "Will."
4. Administration of Act.
5. Duties payable by executor or administrator.
6. Property on which duty payable.
7. Duty to be a first charge on real and personal estate.
8. No duties on moneys received from any friendly society.
9. Penalty for unlawfully administering.
10. Executor or administrator to file statement.
11. Property disposed of by way of *donatio mortis causa* liable to duty.
12. Registrar may extend time for filing statement.
13. If statement not filed, or Registrar dissatisfied therewith, &c., the Registrar may assess duty.
14. Supreme Court not to grant probate till duty paid.
15. As to administration during minority or absence from the State.
16. Certain estates liable to duty.
 - Voluntary disposition *inter vivos* made within Three years.
 - Joint transfers.
 - Joint investments.
 - Colourable gifts.
 - Colourable transactions.
 - Property in settlements and instruments on which duty payable.
17. Instruments to be registered.
18. Mode of registering.
19. Certified copy of registered instrument may be produced in lieu of original.
20. Trustee or other person to file statement.
21. Registrar's approval of statement.
22. After approval trustee or other person to pay duty out of property.
23. Registrar may require payment before he finally approves statement.
24. If not registered Registrar may assess duty.
25. Valuation of estate when Registrar or executor or administrator is dissatisfied.
26. Property may be ordered to be sold. Registrar may obtain order for sale of property to pay duty. Court may thereupon order sale. Application of moneys arising from sale. Court may make order as to disposal of surplus moneys.
27. Purchaser not bound to inquire.
28. General jurisdiction of Supreme Court under this Act.
29. When land sold under order, court may make vesting order.
30. Duty to be deducted from beneficial interests under will or instrument.
31. Public Trustee to retain duty upon value of estates administered by him.
32. Executor, administrator, or trustee to adjust duties.
33. Where duties not adjusted, court may make order.
34. Protection to *bona fide* purchaser, &c.
35. How duty ascertained in case of property given to an uncertain person or on an uncertain event.
36. Power to compromise duties.
37. Where too little duty paid.
38. When too much duty paid.
39. Discovery of assets after statement filed.
40. No will to be registered or admissible in evidence until proved.
41. Instrument not admissible in evidence, except in criminal proceedings, until registered.
42. Appeal from Registrar.
43. Registrar to keep book and give receipt for duty.
44. Regulations.
45. Inspection of documents in Lands' Titles Office or Registry of Deeds.
46. If any person makes default in delivering statement, &c., court may order same to be done.
47. Making a false statement, or fraudulent alteration in a statement, a misdemeanour.
48. Penalty for failing or omitting to file statements, accounts, &c.
49. Affidavits.
50. Appropriation.
51. Perjury.
52. Summary procedure.
53. On non-payment of penalties, &c., justices may imprison.
54. Certain bequests, settlements, and deeds of gift exempt from duty. Interpretation.
55. Death duties on property in any part of His Majesty's dominions other than this State.



T A S M A N I A.



1915.

ANNO SEXTO

GEORGII V. REGIS.

No. 66.

AN ACT to consolidate and amend the Law relating to the Duties on the Estates of Deceased Persons, and for other purposes.

A.D.
1915.

[29 January, 1916.]

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, 1915,” and shall come into operation on a day to be fixed by the Governor by proclamation, and so far as the same relates to duties in respect of estates of persons dying, and in respect of estates the subject of any settlement, trust, disposition, conveyance, transfer, vesting, purchase, investment, or gift, shall apply only to estates of persons dying on or after the commencement of this Act, and to estates the subject of any settlement, trust, disposition, conveyance, transfer, vesting, purchase, investment, or gift, made, or caused to be made, before or after the commencement of this Act by any person so dying.

Short title and commencement.

2 The Acts mentioned in Schedule (1) to this Act are hereby repealed from and after the commencement of this Act, except so far as regards the applicability of such Acts to or in respect of the estates

Repeal.

*Deceased Persons' Estates Duties.*

A.D. 1915.

of persons dying before the commencement of this Act, and estates the subject of any settlement or deed of gift, within the meaning of "The Deceased Persons' Estates Duties Act, 1904," made, or caused to be made before the commencement of this Act by any person dying before the commencement of this Act.

Interpretation.

"Administration."
Cf., 4 Ed. VII.
No. 9, s. 4 (Tas.).
56 & 57 Vict.,
No. 567, s. 4
(S.A.).
3 Ed. VII. No.
13, s. 3 (W.A.).

3 In this Act, unless the contrary appears—

"Administration" includes letters of administration of the estate and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes; and also exemplification of letters of administration, with or without the will annexed, and such other evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as in the opinion of the court is sufficient; and also any rule or order of any court or judge, and any deed or document of any kind whatsoever, whereby any person becomes entitled at law to administer, take charge of, or becomes administrator or receiver of any property of a deceased person:

"Administrator."

"Administrator" includes the Public Trustee, and any other person to whom administration, as hereinbefore defined, is granted, or who, by virtue of such administration, becomes entitled to administer, take charge of, or becomes receiver of any property of a deceased person:

"Children."

"Children" includes step-children:

"Court."

"Court" means the Supreme Court of this State, or any judge thereof:

"Duty" or
"Duties."

"Duty" or "Duties" means duty or duties payable under this Act:

"Friendly
society."

"Friendly Society" means any society registered under "The Friendly Societies Act, 1888":

"Final balance."

"Final balance" means the balance appearing upon any statement certified by the Registrar:

"Personal
estate."

"Personal Estate" extends to leasehold estates and other chattels real, and also to all other property whatsoever which, prior to the coming into operation of "The Deceased Persons' Estates Act, 1874," by law devolved upon the executor or administrator, and to any share or interest therein:

38 Vict. No. 1.

"Probate."

"Probate" includes "exemplification of probate," and such other formal evidence of probate purporting to be under the seal of a court of competent jurisdiction, as in the opinion of the court is sufficient:

"Property."

"Property" when used alone includes real and personal property or estate of every description and the proceeds of the sale thereof respectively, and any money or investment for the time being representing the proceeds of sale:

Deceased Persons' Estates Duties.

- “Public Trustee” means the Public Trustee for the time being appointed by or acting under “The Public Trust Office Act, 1912” : A.D. 1915.
 “Public Trustee.”
 3 Geo. V. No. 26.
- “Real Estate” extends to messuages, lands, rents, and hereditaments of freehold or any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein : “Real estate.”
- “Registrar” means the Registrar of the Supreme Court of this State for the time being, and includes any acting or deputy-registrar : “Registrar.”
- “Settlement” means any contract or agreement (whether voluntary or upon any good or valuable consideration other than a *bonâ fide* pecuniary consideration), whereby any property whatsoever is settled or agreed to be settled, or containing any trusts or dispositions to take effect after the death of any person : “Settlement.”
 Act No. 27, 1898,
 s. 3 (N.S.W.).
- “This Act” includes regulations under this Act : “This Act.”
- “Will” extends to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament, or devise of the custody and tuition of any child by virtue of the Imperial Act Twelfth Charles the Second, Chapter Twenty-four, and to any other testamentary disposition. “Will.”

4 This Act shall be administered by the Registrar.Administration
of Act.*Duties on Deceased Persons' Estates.*

5 Every executor and administrator shall pay to the Registrar duty on the final balance of the real and personal estate of the deceased, according to the provisions of Schedule (2) to this Act, in the cases and at the rates directed by that Schedule. Duties payable
by executor or
administrator.

6 For the purposes of this Act the real and personal estate of a deceased person subject to duty comprises—

- i. His real estate in this State (including real estate over which he had a general power of appointment, exercised by his will) :
- ii. His personal estate, wherever the same shall be (including personal estate over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in this State : or
- iii. His personal estate in this State (including personal estate over which he had a general power of appointment, exercised by his will), including all debts, money, and choses in action receivable or recoverable by the executor or administrator in this State, if the deceased was, at the time of his death, domiciled elsewhere than in this State.

Property on
which duty
payable.
Cf., Tas., s. 6.
S.A., s. 7.

Deceased Persons' Estates Duties.

A.D. 1915.

Duty to be a first charge on real and personal estate.

Tas., s. 18.

S.A., s. 8.

W.A., s. 87.

No duties on moneys received from any friendly society.

Tas., s. 7.

Penalty for unlawfully administering.

Tas., s. 8.

Cf., N.S.W.,

No. 27 of 1898, s. 50.

Executor or administrator to file statement.

Tas., s. 9.

S.A., s. 9.

W.A., s. 88.

Property disposed of by way of *donatio mortis causá* liable to duty.

Tas., s. 26.

S.A., s. 10.

W.A., s. 89.

Vic., No. 1060 of 1890, s. 115.

7 The duty payable under this Act shall be deemed a debt of the testator or intestate to His Majesty, and shall be a first charge upon all the real and personal estate of the deceased, and shall be paid by any executor or administrator out of the estate of the deceased after payment of the funeral and testamentary expenses, in priority to all other debts.

8 No duty shall be payable under this Act upon or in respect of any moneys which shall become payable to any person by any Friendly Society upon the death of any member of such society or upon the death of the wife or child of any such member.

9 If any person takes possession of and in any manner administers any part of the real or personal estate of any deceased person without paying the duty or duties payable under this Act in respect of the property of the deceased within Six months after his decease or within Two months after the determination of any suit or dispute respecting the will or the right to letters of administration, if there be any such which shall not be ended within Four months after the death of the deceased, every person so offending shall pay to the Registrar, by way of penalty, a sum not exceeding Ten Pounds per centum on the amount of duty payable under this Act on the probate of the will or letters of administration of the estate and effects of the deceased, and every sum so forfeited may be recovered by action of debt in the Supreme Court in the name of the Attorney-General.

10 For the purpose of ascertaining the amount of duty, every executor and administrator shall, within the prescribed time, file with the Registrar a statement in the prescribed form, verified by affidavit, specifying full particulars of—

- i. The real and personal estate of or to which the deceased person was possessed or entitled at his death, and the value thereof at the time of his death :
- ii. The debts due by the deceased person, and the estimated value thereof :
- iii. The balance remaining after deducting the amount of the debts from the value of the estate of the deceased person : and
- iv. All such further information as the Registrar may require for the purpose of enabling him to ascertain the duty.

If the probate or administration is limited to any particular property, the statement shall be limited to such particular property.

11 All property the subject-matter of a gift by way of a *donatio mortis causá* shall, upon the death of the person making such gift, be deemed to form part of his property for the purpose of estimating the duty payable under this Act, and duty shall be paid upon it as upon any other part of such person's property : and the property the

Deceased Persons Estates Duties.

subject-matter of the *donatio mortis causá* shall vest in the executor or administrator until such duty shall have been paid and shall have been refunded to the executor or administrator. The executor or administrator shall include such property in his statement, and shall pay duty upon its net value

A.D. 1915.

12 The Registrar may extend the time within which the executor or administrator is to file the statement, and after the statement has been filed he may permit the executor or administrator to add to, alter, or vary it. When such statement, with such addition, alteration, or variation (if any), shall have been approved by the Registrar, he shall certify such approval in the prescribed form.

Registrar may extend time for filing statement.

13 If the executor or administrator of the estate of any deceased person shall not file the statement within the prescribed time, or such extended time as the Registrar may allow, or if probate or administration shall not be obtained in respect of the estate of any deceased person within Six months after his death, or if the Registrar shall be dissatisfied with any statement filed in respect of the estate of any deceased person, or any property derived from him, the Registrar may assess the duties in the prescribed manner.

If statement not filed, or Registrar dissatisfied therewith, &c., the Registrar may assess duty.

14 Before the Supreme Court grants to any person probate of the will or letters of administration of the estate and effects of any deceased person the said duty or duties shall be paid to the Registrar.

Supreme Court not to grant probate till duty paid.

Provided always, that if the Registrar shall be satisfied by affidavit or otherwise that an executor or person entitled to letters of administration cannot find money of the deceased sufficient to pay the duty or some part thereof until he has obtained probate or letters of administration, he may, either upon taking from the executor or person so entitled security for the payment of the duty or the unpaid part thereof, or upon such other terms and conditions as he may require, cause the probate or letters of administration to be duly stamped for denoting the duty or part thereof payable thereon, and give credit for the duty or such part thereof for such time as he shall think proper, and may at any time or times thereafter, give such further time for the payment thereof, and upon such terms and conditions as he shall deem expedient. Provided, further, that the probate or letters of administration so to be stamped upon credit as aforesaid shall be deposited with the Registrar, but the same shall nevertheless be produced in evidence by some officer of the Registrar, or be exhibited by him to any person reasonably requiring production thereof, as occasion shall require, at the expense of the executor or administrator.

15 Every executor or administrator appointed during the minority or absence from the State of any person shall file the said statement and pay the duty.

As to administration during minority or absence from the State.
S.A., s. 14.
W.A., s. 93.

Deceased Persons' Estates Duties.

A.D. 1915.

Certain estates
liable to duty.
Cf., No. 27, 1898,
s. 49 (2).
No. 24, 1904, s.
20, 21, and 22.
No. 3, 1914, s. 36.

Voluntary dis-
position *inter*
vivos made within
Three years.

Joint transfers.

Joint invest-
ments.

16—(1) Duties to be levied, collected, and paid according to the provisions of Schedule (2) of this Act in the cases, and at the rates directed by that Schedule shall also be charged and chargeable upon and in respect of—

i. All estate, whether real or personal—

- (a) Which any person, dying on or after the commencement of this Act, has disposed of, whether before or after such commencement, by will or by settlement containing any trust in respect of that estate to take effect after his death, under any authority enabling that person to dispose of the same by will or deed, as the case may be;
- (b) Taken under a voluntary disposition made before or after the commencement of this Act by any person so dying purporting to operate as an immediate conveyance or gift *inter vivos*, whether by way of conveyance, transfer, delivery, declaration of trust, or otherwise, which has not been *bonâ fide* made Three year before the death of such person;
- (c) Which any person so dying, having been absolutely entitled thereto, has, before or after the commencement of this Act, voluntarily caused to be conveyed, transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof, passes or accrues by survivorship on his death to that other person;
- (d) Being a purchase or investment by any person so dying, made either by himself alone or in concert with, or by arrangement with, any other person, before or after the commencement of this Act, with property, or the proceeds of property, to which he was absolutely entitled, in the name of himself and any other person jointly, so that the beneficial interest therein or in some part thereof, passes or accrues by survivorship on his death to that other person;
- (e) Passing under any voluntary settlement made before or after the commencement of this Act by any person so dying, by deed or any other instrument not taking effect as a will, whereby an interest in that property, or the proceeds of sale thereof, for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor, may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in that property or the proceeds

Deceased Persons' Estates Duties.

of sale thereof; and in this subsection the expression "voluntary settlement" includes any trust, whether expressed in writing or otherwise, in favour of a volunteer and, if contained in a deed or other instrument affecting the settlement, whether that deed or instrument was made for valuable consideration or not as between the settlor and any other person;

A.D. 1915.

(f) As to which a person dying after the commencement of this Act, has after such commencement, given a power of appointment, unless it is proved that—

i. The person to whom the power has been given has received the rents, dividends, interest, or other income of such estate *bonâ fide* as his own from the date when such power was given; or

ii. The said person has exercised such power at least Three years before the death of the person who has given the power—

(g) Which any person so dying has, within the Three years next preceding his death, transferred to, or vested in, or caused to be transferred to, or vested in, a private company or some person in trust, for any such company.

In this paragraph and hereafter in this Act, the expression "private company" means a company which by its articles limits the persons to whom its shares may be transferred:

ii. All personal estate (not being chattels real) taken under any gift whenever made by any person so dying of which *bonâ fide* possession and enjoyment has not been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him of whatsoever kind and in any way whatsoever: Colourable gifts.

iii. All real estate (including chattels real) passing under a deed of gift or voluntary conveyance, whenever made by any person dying of which *bonâ fide* possession and enjoyment has not been assumed by the donee or person to whom such conveyance has been made immediately upon the gift or conveyance, and thenceforth retained to the entire exclusion of the donor or the maker of the conveyance or of any benefit to him of whatsoever kind or in any way whatsoever: Colourable transactions.

(2) All such real estate and personal estate shall be deemed to be and form part of the estate of the person so dying.

Deceased Persons' Estates Duties.

A.D. 1915.

Property in settlements and instruments on which duty payable.

Tas. s. 6.

S.A., s. 18.

W.A., s. 97.

(3) For the purposes of this Act, the real and personal estate of any person so dying subject to duty comprises :—

- i. His real estate in this State (including real estate over which he had a general power of appointment, exercised by any instrument) :
- ii. His personal estate, wherever the same shall be (including personal estate over which he had a general power of appointment, exercised by any instrument), if he was at the time of the making of the instrument domiciled in this State : or
- iii. His personal estate in this State (including personal estate over which he had a general power of appointment, exercised by any instrument), including all debts, money, and choses in action receivable or recoverable by him in this State, if he had not, at the time of the making of the instrument, a domicile within this State.

Such duty shall be a First charge upon the property on which it is imposed, but subject to any moneys secured or charged before the making of the instrument upon the property comprised therein.

Instruments to be registered.

Tas. s. 20 (1).

S.A., s. 19.

W.A., s. 98.

Vic., (1890)

s. 112.

17 Every settlement, trust deed, disposition, conveyance, transfer, deed of gift, or other assurance referred to in the immediately preceding section and in this Act referred to as "every such instrument" or as "any such instrument" shall, upon the death of the settlor, donor, or maker thereof be registered within Three months after such death or within such further time as the Registrar may allow, upon the payment of a fine equal to Ten Pounds per centum upon the amount of duty payable under this Act ; and no trusts or dispositions contained in any such instrument shall be valid unless the instrument is so registered.

Mode of registering.

S.A., s. 20.

W.A., s. 99.

18 The registration of every such instrument shall be effected by the trustee, or some person interested thereunder, producing the same to the Registrar, and leaving an attested copy thereof with him, which copy the Registrar shall cause to be examined with the original.

If he shall find the same to be correct he shall indorse and sign a certificate of registration on the original of such instrument, to the effect that the same was produced to him, and that an attested copy was left with him, and specifying the date when the same was so produced, and the attested copy so left with him as aforesaid. The Registrar shall charge upon every such registration a fee of Ten Shillings.

Certified copy of registered instrument may be produced in lieu of original.

W.A., s. 100.

S.A., s. 21,

19 In the case of any instrument registered under "The Real Property Act," or any other statute, a duly certified duplicate or copy may be produced instead of the original for registration under this Act, and a certificate of registration indorsed thereon shall have the same effect as if indorsed on the original.

Deceased Persons' Estates Duties.

20 The trustee of every such instrument, or if there is no such trustee, such other person interested thereunder as the Registrar shall direct so to do, shall, within Three months, or within such further time as the Registrar shall allow, after the duty shall become chargeable on any property accruing thereunder, file with the Registrar a statement in the prescribed form setting forth—

- i. The net present value at the time of the duty becoming chargeable of any property given or accruing to any person under any such instrument :
- ii. The net present value of any property given or accruing under any such instrument to an uncertain person or on an uncertain event, including property over which a special power of appointment is given, such value to be estimated as if such property had been given by way of vested remainder to a certain person :
- iii. All such further information as the Registrar shall demand for the purpose of enabling him to ascertain the duty payable.

After such statement has been filed, the Registrar may permit the trustee or any other person interested under any such instrument, to add to, alter, or vary it.

21 When such statement, with such addition, alteration, or variation (if any) shall have been approved by the Registrar, he shall certify such approval in the prescribed form.

22 After such approval the trustee, or if there is no such trustee, such person interested under any such instrument as shall be required by the Registrar so to do, shall pay out of the property comprised in any such instrument, the duty or duties to be assessed by the Registrar. Such duty or duties shall be payable immediately after the Registrar shall have made the assessment. The Registrar may extend the time for payment.

23 The Registrar may, if he deems it desirable, require payment from the trustee, or such other person as in the last preceding section mentioned, of the duty appearing by the statement to be chargeable before he has certified his approval. The duty shall thereupon immediately become payable, but the amount thereof shall be subject to adjustment by the Registrar when he has certified his approval of the statement.

24 If any such instrument be not registered within the prescribed time, or such further time as the Registrar may allow, or if the statement in Section Twenty mentioned shall not be filed within the prescribed time, or such further time as the Registrar shall allow, or if the Registrar shall be dissatisfied with any such statement, he may assess the duty in respect of any property accruing to any person under any such instrument.

A.D. 1915.

Trustee or other person to file statement.
Cf. Tas., s. 20 (2).
S.A., s. 22.
W.A., s. 101.

Registrar's approval of statement.
S.A., s. 23.
W.A., s. 102.

After approval trustee or other person to pay duty out of property.
S.A., s. 24.
W.A., s. 103.

Registrar may require payment before he finally approves statement.
S.A., s. 25.
W.A., s. 104.

If not registered Registrar may assess duty.
Tas. s. 20 (4).
S.A., s. 26.
W.A., s. 105.

Deceased Persons' Estates Duties

A.D. 1915.

Valuation of estate when Registrar or executor or administrator is dissatisfied. W.A., s. 107. Vic., s. 99.

Valuation.

25—(1) If the Registrar shall be dissatisfied with the value put upon any real estate or personal estate in any statement, he may value such real estate or personal estate, or any part thereof, or appoint a valuator to value the same, and shall communicate the valuation to the executor, administrator, or the trustee of any such instrument.

(2) If there is any difference between the value as set forth in the statement and such valuation, the Registrar may—

- i. Agree with the executor, administrator, or trustee, upon the value to be adopted: or
- ii. Summon before him the executor, administrator, or trustee, or his valuator, and the valuator (if any), so appointed by the Registrar and other persons, and may administer oaths or affirmations, and take evidence either *viva voce* or by affidavit, and require the production of books, papers, accounts, and documents.

(3) The Registrar shall, upon such evidence, determine the value of such real estate or personal estate, and any executor, administrator, or trustee who is dissatisfied therewith, or if there shall not have been any summons issued by the Registrar, who is dissatisfied with the valuation of the Registrar or of the valuator appointed by the Registrar, may, within Twenty-one days after such determination, or the communication of such valuation, whichever may be appealed against, and upon paying or securing to the satisfaction of the Registrar the duty in conformity therewith, appeal to the court against such determination or valuation.

(4) If it is decided by the court that the value upon which such duty has been paid or secured is excessive, the court shall direct the repayment or remission of duty in respect of such excess, together with such costs (if any) as the court deems just.

(5) But, if the valuation of the Registrar, or of his valuator, or the value determined by the Registrar is confirmed, the costs incurred by the Registrar in relation to the appeal shall be ordered by the court to be paid by the appellant.

Sales for Non-payment of Duty.

Property may be ordered to be sold. Tas., s. 21. S.A., s. 28. W.A., s. 108.

Registrar may obtain order for sale of property to pay duty.

Court may thereupon order sale.

26—(1) The executor, administrator, or the trustee of any such instrument, or any person required to pay duty under this Act, may, if he shall require the assistance of the court in that behalf, apply to the court for an order that the whole or a sufficient portion of any property subject to duty may be sold to pay the duty.

(2) If any duty shall not be paid, the Registrar may apply to the court for an order that a sufficient portion of any property subject to the duty may be sold.

(3) The court may thereupon order that the whole or such portion of the said property as it thinks proper may be sold, at such times, for such prices, and in such manner, and subject to such terms and conditions in all respects as it may deem advisable, and may make such order as to the costs of and consequent upon such application, proceedings, and sale as it may deem advisable.

Deceased Persons' Estates Duties.

(4) The moneys arising from such sale shall be applied in the first place towards paying the costs and expenses, if so ordered, of and consequent upon any such application, proceedings, or sale, and in the next place towards the payment of the said duty, and the balance shall, subject to the provisions of the next following subsection, be paid to or held or disposed of by the executor, administrator, or trustee upon the same trusts as the property sold would have been held and disposed of.

A.D. 1915.

Application of moneys arising from sale.

(5) The court may make any order that may seem just as to such surplus moneys, and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

Court may make order as to disposal of surplus moneys.

27 No purchaser from any person required to pay duty under this Act, or from any trustee, in any case where such person or trustee shall make a sale purporting to be made under the last preceding section hereof, and no purchaser at any sale purporting to be made under any order obtained under this Act, shall be bound or concerned to see or inquire whether such trustee or person has power to sell, or as to the necessity of such sale, or whether such order was properly obtained or whether such sale is properly made, nor shall he be affected by notice to the contrary; and the remedy of any person aggrieved by an improper sale shall be in damages only against the person or Registrar effecting the same.

Purchaser not bound to inquire. Tas., s. 22. S.A., s. 29. W.A., s. 109.

28 Upon any application to the Supreme Court under this Act all such persons as would be necessary or proper parties, if such application were made in an action instituted by a creditor for the administration of a testator's or intestate's estate, shall be entitled to notice, and may be heard; but the court may order substituted service or dispense with service upon any such person as it may think fit.

General jurisdiction of Supreme Court under this Act. Tas., s. 23. Vic., s. 113.

For the purpose of any such application the court may appoint guardians or refer any question to the Registrar as it may deem expedient.

The court shall, subject to the provisions of this Act, decide any such application upon the same principles as if the order were to be made in an action instituted by creditors to obtain payment of their debts out of the estate of a deceased person; and the court shall have and may exercise for the purposes of this Act all or any of the powers it now possesses, including the power to make rules of practice.

29 When any real estate or personal estate shall be sold under any order of the court obtained under this Act, the court may make an order vesting such real or personal estate or any part thereof in such person or persons in such manner and for such estate or interest as the court shall think fit. Every such order shall have the same effect as if the executor, administrator, trustee, Registrar, or other person obtaining such order had been seized or possessed of or entitled to such real and personal estate for the estate or interest vested in such person or

When land sold under order, Court may make vesting order. Tas., s. 24. S.A., s. 30. W.A. s 110.

Deceased Persons' Estates Duties.

A.D. 1915

persons by the vesting order, and had been freed from all disability, and had duly executed all proper conveyances and memoranda of transfer, assignments, and assurances of such real and personal estate for such estate or interest. The court may direct any conveyance or transfer of any real estate to be executed by such person as the court shall direct.

Adjustment of Duty.

Duty to be deducted from beneficial interests under will or instrument.
Tas., s. 16.
W.A., s. 111
Vic., s. 103.

30 Subject to any special provision by a testator for the payment of the duty imposed by this Act, every executor or administrator with the will annexed shall deduct from each and every devise, bequest or legacy, and in every case of intestacy an administrator shall deduct from each distributive share an amount equal to the duty upon the same respectively, calculated at the same rate as is payable on the estate.

Subject to any special provision by a settlor or donor or maker of any such instrument for the payment of duty, the beneficial interests under a settlement or deed of gift or any such instrument as by this Act is required to be registered shall contribute proportionally to the duty payable on the estate of the settlor at the same rate as is payable on the estate.

In each case regard shall be had to the relationship of the beneficiary to the testator, intestate, settlor, or donor, as the case may be.

Public Trustee to retain duty upon value of estates administered by him.

31 The Public Trustee shall retain in his hands, out of the proceeds received by him of all estates committed to his management and administration as Public Trustee, the same duty that such estates would be liable to in case letters of administration thereof were granted.

Executor, administrator, or trustee to adjust duties.
Tas., s. 28.
S.A., s. 31.
W.A., s. 112.

32—(1) Subject to the provisions of this Act and to any specific direction appearing in any will, or any such instrument to the contrary, every executor, administrator, or trustee shall adjust any duties, and the incidence of any duties payable or paid by him, so as to throw the burden thereof upon the respective properties on which the same shall be ultimately chargeable.

(2) For the purpose of carrying such adjustment into effect, or for the purpose of raising money for the payment of any duty, the executor, administrator, or trustee may sell, or mortgage with a power of sale, all or any part of the real or personal estate chargeable with duty, upon such terms and conditions in all respects as in his discretion may seem proper.

(3) The executor, administrator, or trustee may also, for the purpose aforesaid, by any instrument in writing, impose any charge upon any property in favour of any person, whether then ascertained or not, entitled contingently or otherwise to any other property.

Such charge as to land not under the provisions of "The Real Property Act" may be in such form, and may contain a power of sale, and may be upon such terms and conditions as the executor, administrator, or trustee may think proper.

Deceased Persons' Estates Duties.

As to land under the provisions of "The Real Property Act," such charge may be effected by memorandum of encumbrance under such Act, upon such terms and conditions as the executor, administrator, or trustee may think proper; but notwithstanding the provisions of "The Real Property Act," no covenant by the encumbrancer shall be implied in any such encumbrance. A.D. 1915.

(4) The powers and discretions conferred by this section shall be subject to the control and direction of the court as in cases of ordinary trusts, and the court may also, on application by summons or otherwise, make any order which it may deem advisable for the purpose of adjusting the duties and the incidence of the duties payable under this Act.

33 Where, by reason of there being no trustee of any such instrument, or because of the neglect of any executor, administrator, or trustee, or for any other reason, no adjustment of duties shall be made within a reasonable time, the court may, upon the application of any person interested, by summons or otherwise, make such order as to the adjustment of duties and the incidence of duties, and as to the costs of such application and adjustment, and for sale or charge or incumbrance of any part of the real or personal estate concerned, for the purpose of such adjustment and for payment of such costs as shall be just. Where duties not adjusted, court may make order.
Tas., s. 29.
S.A., s. 32.
W.A., s. 113.

34 The title of a *bonâ fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty imposed by this Act. Protection to *bonâ fide* purchaser, &c.
S.A., s. 33.
W.A., s. 114.

35—(1) In the case of any property given or accruing under a will, or any such instrument to an uncertain person, or on an uncertain event, duty shall be paid on the net present value of such property, as if the same had been given by way of vested remainder to a certain person, and such duty shall be assessed on the highest scale applicable on any vesting possible under the will, or any such instrument. How duty ascertained in case of property given to an uncertain person or on an uncertain event.
Tas., s. 30.
S.A., s. 34.
W.A., s. 115.

(2) Upon such property or any part thereof becoming actually vested in any person or persons who, if he or they had taken the same by way of vested remainder at the time when the duty became payable, would have been chargeable with a smaller duty than that actually paid, the Registrar, upon being satisfied that such is the case, shall order that the difference between the smaller duty aforesaid and the duty actually paid shall be paid to such person or persons, and upon such order the State Treasurer shall pay the same out of the Consolidated Revenue.

36 Where, in the opinion of the Registrar, any property shall be of such a nature, or so disposed of or circumstanced, that the value thereof is not fairly ascertainable under this Act or the regulations, or where, from the complication of circumstances affecting the value of any property, or the assessment or recovery of the duty thereon, he shall think it expedient to exercise the power conferred on him by this section, he may compound the duty on such property upon such terms Power to compromise duties.
Tas., s. 31.
S.A., s. 35.
W.A., s. 116.

Deceased Persons' Estates Duties.

A.D. 1915.

—

Where too little
duty paid.
Cf., Tas., s. 11.
S.A., s. 36.
W.A., s. 117.

When too much
duty paid.
Cf., Tas., s. 13.
S.A., s. 37.
W.A., s. 118.

Discovery of
assets after
statement filed.
Tas., s. 15.

No will to be
registered or
admissible in
evidence until
proved.
Tas., s. 33 (1).
S.A., s. 38.
W.A., s. 127.

Instrument not
admissible in
evidence, except
in criminal
proceedings,
until registered.
Tas., s. 33 (2), (3).
S.A., s. 39, 40.
W.A., s. 128.

Appeal from
Registrar.
Tas., s. 32.
S.A., s. 41.
W.A., s. 119.

as he shall think fit, and may give a discharge to the executor, administrator, or trustee, or any other person interested in the property, upon payment of the duty according to such composition.

37 If, after any duty imposed by this Act has been paid, it shall be discovered that too little duty has been paid, the person by whom such duty has been paid shall pay such additional duty to the Registrar, and the amount so payable shall be a debt of such person to His Majesty.

38 If, within Three years after any duty has been paid under this Act, it shall be found that too much duty has been paid in consequence of debts of the testator or intestate being discovered which were not included in the statement, the Registrar, upon being satisfied of the existence of such debts, shall order that the amount overpaid shall be returned to the person entitled to receive the same; and upon any such order the State Treasurer shall pay the amount specified in such order to the person named therein, out of the Consolidated Revenue.

39 In case after filing any statement an executor or administrator or trustee receives or discovers any property of the deceased not included in such statement, he shall forthwith give notice thereof to the Registrar and pay duty thereon; and in case he fails to give notice thereof within Six months after such receipt or discovery, he shall forfeit and pay a penalty of not less than Twenty-five Pounds and not exceeding One hundred Pounds, and also a further penalty at the rate of Ten Pounds per centum on the amount of the duty on the value of the property so received or discovered, and such penalties may be recovered and enforced in a summary way or by action of debt in the Supreme Court in the name of the Attorney-General, and with costs in either case.

40 No will or codicil of any person dying after the commencement of this Act shall be registered, or be admissible or receivable in evidence, except in criminal proceedings or upon application for probate or administration, until probate or administration in respect of the estate comprised therein shall have been issued or obtained.

41—(1) Any such instrument requiring registration under this Act shall not be admissible or receivable in evidence, except in criminal proceedings, until the same has been registered and the certificate of registration has been endorsed thereon.

(2) A certificate of registration endorsed on any such instrument, and purporting to be signed by the Registrar, shall be *prima facie* evidence that such instrument has been duly registered under this Act.

42 There shall be an appeal by any person interested to the court, in the prescribed manner, from or against any assessment, order, direction, decision, or act of the Registrar, and the court may make such order upon such appeal as shall seem just. Except for the purposes of such appeal, every assessment, order, direction, decision, requirement, or act of the Registrar under this Act shall be conclusive against all persons affected thereby.

Deceased Persons Estates Duties.

43 Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the Registrar for this purpose, and he shall give a receipt in the prescribed form. The Registrar shall from time to time deliver to any person interested in any property affected by such duty, on application to him, for any reasonable purpose, a certificate of such payment, or that no duty is payable in respect of such property, in the prescribed form.

A.D. 1945.

Registrar to
keep book and
give receipt for
duty.S.A., s. 42.
W.A., s. 120.

44 The Governor may from time to time make, alter, and revoke any regulations for the following purposes, or any of them, that is to say:—

Regulations.
Cf., Tas., s. 34.
S.A., s. 43.
W.A., s. 135.

- i. Prescribing tables and rules for fixing values of any property:
- ii. Prescribing forms and contents of statements, and modes of adjustment of duties and the incidence of duties under this Act, and providing for verification of statements by oath, affirmation, or declaration:
- iii. For the compulsory examination under oath or declaration of persons for obtaining information to aid in carrying out the objects of this Act:
- iv. Generally for carrying out the objects and purposes of this Act—whether or not similar to the foregoing—or to meet any particular case that may arise:
- v. Imposing a penalty not exceeding Fifty Pounds for a breach of any regulation.

45 Where the inspection of any certificates of title, purchase grants, deeds, or other documents in the Lands' Titles Office or Registry of Deeds is required by the Registrar for the purposes of this Act, the Recorder of Titles or Registrar of Deeds shall produce such deeds or documents to the Registrar, or any person appointed by him in writing to make such inspection.

Inspection of
documents in
Lands' Titles
Office or Registry
of Deeds.
Tas., s. 37.
S.A., s. 45.
W.A., s. 121.

46 If any person makes default in delivering any statement or account, or in adjusting any duties or the incidence of any duties, or in the performance of any duty imposed upon him by this Act, the court may, on the application of the Registrar or any other person affected thereby, order such person to deliver such statement or account, adjust such duties or the incidence of such duties, or perform such duty.

If any person
makes default in
delivering state-
ment, &c., court
may order same
to be done.
S.A., s. 46.
W.A., s. 122.

47 If any person shall make, or assist in making, any false or fraudulent statement, or any fraudulent alteration in any statement required to be made by this Act or the regulations thereunder, with intent to evade the payment of duty under this Act, or to lessen the amount thereof, such person shall be guilty of a misdemeanour, and shall be liable to imprisonment for any period not exceeding Three years and to a fine not exceeding One hundred Pounds.

Making a false
statement, or
fraudulent altera-
tion in a state-
ment, a misde-
meanour.
S.A., s. 47.
W.A., s. 123.

Deceased Persons' Estates Duties.

A.D. 1915.

Penalty for failing
or omitting to file
statements,
accounts, &c.
S.A., s. 48.
W.A., s. 124.

48 Any person who—

- I. Fails or neglects to file or amend any statement required to be filed or amended by him under this Act : or
 - II. Fails or neglects to pay any duty payable by him under this Act : or
 - III. Fails or neglects to register any settlement, deed of gift, or instrument requiring registration under this Act—
- shall for each offence be liable to a penalty not exceeding Five hundred Pounds.

Affidavits.

49 All affidavits or declarations to be made under this Act or the regulations shall be sworn or made before any notary public or commissioner of the Supreme Court.

Appropriation.
Tas., s. 37.
Cf., S.A., s. 49.

50 All amounts of duty paid to the Registrar, and all sums of money so retained by the Public Trustee as aforesaid, and all penalties imposed by this Act, shall be paid to the State Treasurer and form part of the Consolidated Revenue.

Perjury.
S.A., s. 50.

51 Any person who shall knowingly and wilfully make a false oath or declaration under this Act, or under the regulations, shall be guilty of perjury.

Summary
procedure.

52—(1) All informations for offences against the provisions of this Act, and all penalties and fines imposed by or made payable under the provisions of this Act, may be heard, determined, recovered, and enforced in a summary way by and before a police magistrate or any Two or more justices.

(2) The proceedings on such informations, and all proceedings under this Act, before a police magistrate or justices, shall be regulated by "The Magistrates Summary Procedure Act" and any amendments thereof, or any other Act for the time being in force regulating summary proceedings before justices.

On non-payment
of penalties, &c.,
justices may
imprison.

53 In every case of the imposition of a fine or pecuniary penalty under this Act, and of the non-payment thereof, a police magistrate or any Two or more justices may commit the person making default in payment to any prison in the said State for any time not exceeding Six calendar months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof.

Certain bequests,
settlements, and
deeds of gift
exempt from duty.

54—(1) Notwithstanding anything contained in this Act, no duty whatsoever shall be payable thereunder in respect of any public charitable bequest or public charitable settlement or public charitable gift, and whether any public institution in whose favour the bequest, settlement, or gift is made is or is not in existence at the time of the making of the bequest, settlement, or gift.

Deceased Persons' Estates Duties.

(2) In this section the term "public charitable bequest," or "public charitable settlement," or "public charitable gift," means devise, bequest, or legacy, or settlement, or gift of real estate or personal estate of whatever description to or for—

A D. 1915.
Interpretation.

- I. Any free public library, or any free public museum, or any public institution for the promotion of science and art (including working men's colleges and schools of mines), or any public university, or any public hospital, or convalescent-home, or any public institution dispensing charity, relief or aid, or any public benevolent asylum or society, or any public dispensary, or any public institution for the improvement of the blind, deaf or dumb, or any ministering children's league or children's aid society, or any women's refuge, or any miners' benevolent fund, or any public institution or society to which the Governor, by proclamation, declares that the provisions of this section shall apply, provided that such public library or museum or other public institution is situate within this State: or
- II. The support or promotion of any of the religious bodies enumerated in the Schedule (2) of "The Marriage Act, 1895," and for the purchase of sites for, and the erection and maintenance of, places of public worship used or to be used by any such religious body; or
- III. Any public school registered under "The Registration of Teachers and Schools Act, 1906."

55 Where the Registrar is satisfied that in any part of His Majesty's dominions other than this State, duty—not being duty payable under any Commonwealth Act—is payable by reason of a death occurring after the commencement of this Act in respect of any property situate therein and passing on such death, he shall allow a sum equal to the amount of that duty to be deducted from any duty payable under this Act in respect of that property on the same death. In this section "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitations.

Death duties on property in any part of His Majesty's Dominions other than this State. Cf., 9 Ed. VII. No. 8 (Tas.) and 57 and 58 Vict., Ch. 30, s. 22 (Eng.).

SCHEDULE.**(1)**

Date.	Title.	Extent of Repeal.
4 Ed. VII. No. 9	The Deceased Person's Estates Duties Act, 1904	The whole
9 Ed. VII. No. 8	The Death Duties (Deductions) Act, 1909	The whole

Deceased Persons' Estates Duties.

A.D. 1915.

(2)

PART I.

1. Subject to the discrimination made in Part II. of this schedule in regard to the classes of persons liable to pay duty mentioned in that part, the rate per centum at which duty shall be payable and chargeable on the estate of any person dying after the commencement of this Act, or on any estate, the subject of any settlement, trust, disposition, conveyance, transfer, vesting, purchase, investment, or gift made or caused to be made by any person so dying shall be uniform.

2. For the purpose of determining such rate in the case of each class mentioned in Part II. of this Schedule such estates shall be aggregated, and such rate shall be the rate prescribed by Part II. of this schedule in respect of an estate whose value is the total value of the estates so aggregated.

3. For the purpose of determining the rate per centum at which duty shall be payable and chargeable on the estate of any testator, or intestate, dying after the commencement of this Act, who was at the time of his death domiciled elsewhere than in this State, in the case of each class mentioned in Part II. of this schedule, the real estate and personal estate within this State and the personal estate without this State of the testator, or intestate, shall be aggregated, and such rate shall be the rate prescribed by Part II. of this schedule in respect of an estate whose value is the total value of the estates so aggregated.

PART II.

Class I.—Where the person taking the property is a widow, widower, descendant, or ancestor of the deceased person, or of the settlor, or donor, or of any person making any such instrument, the duty in respect of the property so taken shall be charged at the rates for aggregated estates set forth in the scale to Part III. of this schedule.

Class II.—Where the person taking the property is a brother or sister, or descendant of a brother or sister or any person in any other degree—not beyond the Third degree—of collateral consanguinity to the deceased person, settlor, or donor or to any person making any such instrument, the duty in respect of the property so taken shall be charged at Twice the rates for aggregated estates set forth in the scale to Part III. of this schedule.

Class III.—Where the person taking the property is an illegitimate child of the deceased person, or of the settlor or donor, or of any person making any such instrument, the duty in respect of the property so taken shall be charged at the same rate as if such child were legitimate.

Class IV.—Where the person taking the property is a person in any degree beyond the Third degree of consanguinity to the deceased person or to the settlor or donor or to any person making any such instrument, or is a stranger-in-blood, the duty in respect of the property so taken shall be charged at the rate of Ten Pounds per centum.

PART III.

RATES OF DUTY.

Scale.

Where the Total Value of such Aggregated Estates, after deducting all Debts—		Duty in respect of every Part shall be Payable at the Rate Per Centum of—
	£	
Exceeds	500 and does not exceed	1000
Exceeds	1000 and does not exceed	2000
Exceeds	2000 and does not exceed	5000
Exceeds	5000 and does not exceed	20,000
Exceeds	20,000 and does not exceed	100,000
Exceeds	100,000	...
	£	
		Two Pounds
		Two Pounds Ten Shillings
		Three Pounds
		Four Pounds
		Five Pounds
		Ten Pounds