

LEGISLATIVE COUNCIL.

No. S. 173.—The following Bill is published for general information.

M. J. BREEN,
Clerk of Councils.

COUNCIL CHAMBER,
12th June, 1914.

A BILL

ENTITLED

An Ordinance to provide for the levy of Estate Duty payable in respect of the estates of deceased persons.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows :—

- Short title. 1. This Ordinance may be cited as the Estate Duty Ordinance, 1914, and shall come into force on the day of , 1914.
- Repeal. 2. From and after the commencement of this Ordinance the several enactments specified in the Second Schedule are hereby repealed to the extent set out therein.
- Interpretation of terms. 3. In this Ordinance, unless the context otherwise requires,—
- Commissioner. "Commissioner" means the Registrar of the Supreme Court, or such other person as the Governor may, by notification in the *Gazette*, appoint to carry out the provisions of this Ordinance :
- Deceased Person. The Deceased. "Deceased Person" and "The Deceased" mean a person dying after the commencement of this Ordinance :
- Estate Duty. "Estate Duty" means estate duty under this Ordinance :
- Executor. "Executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Ordinance, any person who takes possession of or intermeddles with the property of a deceased person or any portion thereof :
- Incumbrances. "Incumbrances" include mortgages and terminable charges :
- Interest in expectancy. "Interest in expectancy" includes an estate in remainder or reversion and every future interest whether vested or contingent, but does not include a reversion expectant upon the determination of leases :
- Probate. "Probate" includes Letters of Administration :
- Property. "Property" includes movable and immovable property, and the proceeds of sale thereof, and any money or investment for the time being representing the proceeds of sale, and any estate in any property movable or immovable and any debt and any thing in action and any other right or interest in the nature of property whether in possession or not :
- Property passing on the death. "Property passing on the death" includes property passing either immediately on the death or after any interval, and either originally or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death" :
- Prescribed. "Prescribed" means prescribed by Rules made by the Governor-in-Council under this Ordinance :
- Settlement. "Settlement" means any non-testamentary disposition in writing, whether made voluntarily or upon a good or valuable consideration other than a *bonâ fide* pecuniary consideration, whereby any definite and certain property is settled or agreed to be settled in any manner for any purpose whatsoever :

For the purpose of this Ordinance.—

A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power 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 property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable either in a fiduciary capacity under a disposition not made by himself or as mortgagee.

A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required.

Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

4.—(1) In the case of every deceased person there shall, save as hereinafter expressly provided, be levied and paid upon the principal value, ascertained as hereinafter provided, of all property which passes on the death of such person, a stamp duty called "estate duty" at the graduated rates mentioned in the First Schedule. Provided that, where the principal value of an estate comprises a fraction of \$100, such fraction shall, for the purpose of determining the amount of estate duty payable, be reckoned as \$100. Estate duty.

(2.) In the case of any person dying before the commencement of this Ordinance the duties payable under the Stamp Ordinances, 1901 to 1911, shall continue to be payable in all respects as if this Ordinance had not been passed.

5.—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:— What property is deemed to pass on death.

- (a.) property of which the deceased was at the time of his death competent to dispose;
- (b.) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity or as a corporation sole;
- (c.) property taken as a *donatio mortis causa* made by the deceased or taken under a disposition made by him, purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bonâ fide* made twelve months before his death, or taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have 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 by contract or otherwise;
- (d.) property to which the deceased has been absolutely entitled, and which he has caused to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise (including also any purchase or investment effected by the deceased either by himself alone, or in concert, or by arrangement with any other person), so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person;

- (e.) property passing under any past or future settlement made by the deceased by deed or any other instrument not taking effect as a will, whereby an interest in such 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 such property or the proceeds of sale thereof;
- (f.) any annuity or other interest purchased or provided by the deceased 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.

Trust property.

(2.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

Exceptions for transactions for money consideration, and certain property situate outside the Colony.

6. Estate duty shall not be payable in respect of:—

- (1.) Property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes nor in respect of the determination of any annuity for lives where such purchase was made or such annuity granted for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit. Where any such purchase was made, or annuity granted for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.
- (2.)—(a.) Immovable property situate outside the Colony.
- (b.) Movable property situate in the United Kingdom.
- (c.) Movable property situate in any other British Possession or in any foreign country passing on the death of a person who at the time of his death was not domiciled in the Colony.
- (d.) Movable property situate in any other British Possession or in any foreign country passing on the death of a person who at the time of his death was domiciled in the Colony when the Commissioner is satisfied that estate duty or a duty in the nature of estate duty is payable on account of the said death in respect of such property in such other British Possession or foreign country.

Aggregation of property to form one estate for purpose of estate duty.

7.—(1.) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing shall be aggregated so as to form one estate.

(2.) In determining the rate of estate duty chargeable, the value of all the property of the deceased situate outside the Colony shall be included as well as the value of the property of the deceased situate within the Colony.

Payment of estate duty.

8.—(1.) Estate duty shall be payable as hereinafter mentioned.

(2.) The executor of the deceased shall pay the estate duty in respect of all property of which the deceased was competent to dispose at the date of his death by stamps affixed to the affidavit for the Commissioner and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the estate duty in respect thereof request him to make such payment.

Collection and recovery.

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the affidavit for the Commissioner that such property exists, but that he does not know the amount or value thereof and that he undertakes as soon as the amount and value are ascertained to bring in an account thereof and to pay both the estate duty for which he is or may be liable and any further estate duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

Provision for unknown values.

(4.) Estate duty so far as not paid by the executor shall be paid by stamps affixed to an account setting forth the particulars of the property and delivered to the Commissioner within 6 months after the death, by the person accountable for the estate duty; or within such further time as the Commissioner may allow.

Collection from others than executor.

(5.) Interest at the rate of 4 per cent. per annum on the estate duty shall be paid from the date of the death up to the date of the delivery of the affidavit or account, or the expiration of 6 months after the death, whichever first happens, and shall form part of the estate duty and subject as aforesaid interest at the rate of 8 per cent. per annum for the period during which it remains unpaid shall accrue on the estate duty payable.

Interest payable on estate duty.

(6.) The estate duty which is to be collected upon an affidavit for the Commissioner or on an account, shall be due on the delivery thereof or on the expiration of six months from the death whichever first happens.

Date when duty shall become due.

9.—(1.) In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses incurred in the Colony not exceeding \$1,000 or 2½ per cent. of the ascertained value of the estate whichever is the smaller and for debts and incumbrances but an allowance shall not be made:—

Allowance for debts and funeral expenses.

- (a.) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest; nor
- (b.) for any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor
- (c.) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the Colony (unless contracted to be paid in the Colony or charged on property situate within the Colony) except out of the value of any property of the deceased situate out of the Colony in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of such debts, except to the extent to which it is shown to the satisfaction of the Commissioner, that the property of the deceased situate in the country in which the person to whom such debts are due resides, is insufficient for their payment.

Debts due to persons resident out of the Colony.

(3.) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioner, such property would fetch if sold in the open market at the time of the death of the deceased.

Filing of accounts of property.

10.—(1.) Every person applying for probate shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to an affidavit for the Commissioner in the prescribed form all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all property of which the deceased was competent to dispose at his death but shall not be liable for any duty in excess of the assets which he has received as executor or might but for his own neglect or default have received.

Beneficiaries and trustees accountable for estate duty.

(2.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property and shall within the time required by this Ordinance or such later time as the Commissioner allows deliver to the Commissioner and verify an account for the Commissioner to the best of his knowledge and belief, of the property.

Powers of Commissioner.

(3.) The Commissioner may summon before him any person accountable for estate duty, and any person whom the Commissioner believes to have taken possession of or administered any part of the estate in respect of which estate duty is leviable on the death of the deceased, or of the income of any part of such estate, or any person whom the Commissioner believes to be indebted to the deceased or any person whom the Commissioner believes to be capable of giving information as to such estate, and may examine such person with regard to the premises and may require any such person to produce any documents in his custody or power relating to the estate in respect of which estate duty is leviable on the death of the deceased. And any such person who without any lawful impediment or excuse, to be allowed by the Commissioner, fails to come before the Commissioner, at the time appointed or refuses to answer any question lawfully put him by the Commissioner or fails to produce any such document as aforesaid, shall forfeit the sum of \$500 which shall be a debt due to the Crown and be recoverable in the same way as Crown rents may be recovered and in addition to such forfeiture the Commissioner may apply to the Supreme Court in a summary manner in the matter to which his enquiry relates for an order enforcing compliance with his reasonable requirements.

Penalties for not delivering account, &c.

Persons entitled to deliver without representation not liable.

(4.) Nothing in this section shall be held to render liable any person who is entitled under any Ordinance to deliver or order to be delivered property of a deceased person without representation to his estate having first been obtained nor the person to whom property shall be delivered by or by the order of such person.

Affidavits and accounts to be delivered to the Commissioner.

(5.) All affidavits and accounts required under this section shall be delivered to the Commissioner, who shall, before the affidavit or account is stamped, make such enquiry respecting the contents of, or the particulars verified by such affidavit or account and the value of the various properties included therein as he thinks necessary, and the person making or tendering such affidavit shall be legally bound to attend at the office of the Commissioner, whenever required by him, and to furnish and produce to the Commissioner such explanations and documentary or other evidence as the Commissioner may require.

(6.) The Commissioner, if he thinks fit, may authorise a person to inspect any property and report to him the value thereof for the purposes of this Ordinance, and, if he does so, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable time as the Commissioner considers necessary.

Inspection
of property.

(7.) When the Commissioner requires a valuation to be made by a person named by him the costs of such valuation shall be defrayed by the Commissioner.

Costs of
valuation.

(8.) When the Commissioner has ascertained the amount of estate duty payable on an affidavit or on an account he shall certify the same in writing in the prescribed form and the proper stamps shall forthwith be affixed to the affidavit or account.

Certificate.

(9.) The Commissioner may remit the interest payable on estate duty where the amount of such interest is in his opinion so small as not to repay the expense and labour of calculation and account.

11.—(1.) No probate shall be issued by any Court until the Commissioner shall have certified in writing that the estate duty payable in respect of the estate has been paid or that he has allowed payment thereof to be postponed under sub-section (2) or (3) of this section.

Probate not
to be issued
until estate
duty paid.

(2.) When the affidavit for the Commissioner contains the statement and undertaking specified in section 8 sub-section (3) of this Ordinance, the Commissioner may allow payment of the whole or any part of the estate duty to be postponed until after the issue of probate upon condition that a further and complete affidavit shall be filed and the proper estate duty paid thereon as soon as the full value of the estate has been ascertained and the Commissioner may require the person applying for such probate to enter into a bond with or without sureties in such an amount as he shall think fit to secure the filing of such affidavit as aforesaid and the payment of the proper estate duty thereon within such time as shall be named in such bond. Such bond may be in the prescribed form.

When value
cannot be
ascertained
immediately.

(3.) Where the Commissioner is satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, he may allow payment to be postponed for such period, to such extent and on payment of such interest not exceeding 8 per cent. per annum or any higher interest yielded by the property, and on such terms as the Commissioner may think fit.

Deferred
payment.

12. In every case where an affidavit for the Commissioner or an account in respect of the estate of a deceased person is for the first time lodged with the Commissioner after the lapse of one year from the date of the death of such person, or, in the case of probate having been granted by a Court of Probate situate outside the Colony in respect of the estate of a person dying outside the Colony, where an affidavit for the Commissioner, or an account, is for the first time lodged with the Commissioner after the lapse of one year from the date of the grant of such probate, estate duty shall be charged at 3 times the customary rate, unless the person lodging the affidavit or account can prove to the satisfaction of the Commissioner that he was not within the said period of one year aware of the existence within the Colony of any property of whatsoever nature belonging to the estate of the deceased person, and that he could not within such period with due and reasonable diligence have ascertained the existence of the same.

Increase of
estate duty
when delay
in lodging
affidavit, &c.

13.—(1.) Where it is proved to the satisfaction of the Commissioner that too much estate duty has been paid the excess shall be repaid by him.

Re-payment
of excess.

Further affidavit of account.

(2.) If it shall be at any time discovered that for any reason too little estate duty has been paid the person accountable for estate duty shall within one month of the discovery deliver a further affidavit or further account and shall pay the difference between the estate duty chargeable according to the true value of the estate and the estate duty already paid and shall at the same time pay to the Commissioner interest upon the duty at the rate per annum mentioned in section 8 sub-section (6) from the date of the death or from such subsequent date as the Commissioner may in the circumstances think proper. Such additional estate duty shall be paid by stamps affixed to the original affidavit or account. If any person who ought to deliver a further affidavit or account as in this sub-section mentioned neglects to do so within the prescribed period he shall forfeit the sum of \$1,000 and shall also be liable to pay treble the amount of additional estate duty chargeable and the same shall be a debt due from him to the Crown and be recoverable in the same way as Crown rents may be recovered.

Payment of additional duty.

No claim for return of excess or for additional duty except when particulars incorrectly stated in affidavit.

(3.) In case there has been an appeal under section 17 from a certificate of the Commissioner made under section 10 sub-section (8) of this Ordinance, no claim shall be made for the return of excess estate duty or for the payment of additional estate duty except on the ground that the particulars of the property passing on the death of the deceased, or the general expenses, debts or incumbrances for which allowance was made, were not correctly stated in the affidavit or account.

Interest in expectancy.

(4.) When an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the estate duty, either with the estate duty in respect of the rest of the estate or when the interest falls into possession, and if the estate duty is not paid with the estate duty in respect of the rest of the estate, then :—

- (a.) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased to be ascertained and determined in respect of an interest expectant on the determination of any life interest in any property, annuity or annual sum for life, by reference to the table contained in the Third Schedule ; and
- (b.) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

Value of interests ceasing on death.

(5.) The value of the benefit accruing or arising from the ceasing of an interest ceasing on the death of the deceased shall be ascertained and determined by reference to the table contained in the Third Schedule.

Charge of estate duty on property.

14.—(1.) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which estate duty is leviable ; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

Re-imburement of executor.

(2.) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property.

Raising estate duty by sale, mortgage or terminable charge.

(3.) A person authorized or required to pay the estate duty in respect of any property shall, for the purpose of paying the estate duty or raising the amount of the estate duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such estate duty and any interest and expenses properly paid or incurred by him in respect thereof by the sale or mortgage or a terminable charge on that property or any part thereof.

(4.) A person having a limited interest in any property who pays the estate duty in respect of that property shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him. Payment by limited owner.

(5.) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts. Payment of duty out of "capital money".

15.—(1.) In the case of property which does not pass to the executor as such an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorized or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provision to the contrary. Apportionment of estate duty.

(2.) Any dispute as to the proportion of estate duty to be borne by any property or person may be determined upon application by way of summons in the Supreme Court. Disputes.

(3.) Any party from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioner. Parties bound by accounts as settled.

16. The Governor-in-Council may remit the payment of any estate duty or may order a refund by treasury warrant of the whole or any portion of any estate duty which may have been paid to the Commissioner, for the remission or refund of which any equitable claim is proved to his satisfaction. Remission and refunding of estate duty on certain grounds.

17.—(1.) Any person aggrieved by the decision of the Commissioner with respect of the amount of estate duty payable on an affidavit or account or with respect to the repayment of any excess duty or to any claim for additional duty by the Commissioner and whether he is aggrieved on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security for, as hereinafter mentioned, the duty claimed by the Commissioner or such portion of it as is then payable by him, appeal to the Supreme Court within 3 months from the date of the decision and the amount of the duty shall be determined by the Supreme Court and if the duty is less than that paid to the Commissioner the excess shall be repaid. Appeal to Supreme Court on payment of or giving security for duty claimed.

(2.) No appeal shall be allowed from any order, direction, determination or decision of the Supreme Court under any appeal under this section except with the leave of the Supreme Court or of the Full Court. No appeal from decision of Supreme Court without leave.

(3.) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioner to pay on any excess of duty repaid by him interest at such rate per cent. per annum and for such period as appears to the Court just. Costs of appeals.
Interest on excess repaid.

(4.) Provided that the Supreme Court if satisfied that it would impose hardship to require the appellant as a condition of the appeal to pay the whole, or, as the case may be, any part of the duty claimed by the Commissioner or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty or of such part only of the duty as to the Court seems reasonable and on security to the satisfaction of the Court being given for the duty or so much of the duty as is not so paid, but in such case the Court may order interest at such rate per cent. per annum as appears to the Court just to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

Schedule of property to be annexed to Probate.

18.—(1.) A schedule of the property of a deceased person in respect of which estate duty has been paid shall be annexed to the Probate granted to his executor. Any person who shall, subsequent to the date of a Probate, in any way deal with any property of the deceased not set out in the said schedule upon which estate duty is payable shall forfeit the sum of \$500, which sum shall be a debt due to the Crown and be recoverable in the same way as Crown rents may be recovered.

Penalty.

(2.) Whenever a further affidavit is delivered under section 13 sub-section (2) the Probate in respect of which such affidavit is delivered shall be lodged with the Commissioner who shall insert in the schedule particulars of the additional property set out in the said affidavit.

Penalties for inter-meddling, &c.

19.—(1.) No person shall take possession of or in any way administer any part of an estate of a deceased person in respect of which estate duty is leviable or of the income of any part of such estate without delivering an affidavit for the Commissioner or an account (as the case may be) within 6 months after the decease or within 2 months after the termination of any action or proceeding respecting the Will or the right to Letters of Administration, if there be any such which is not ended within 4 months after such decease.

(2.) From and after the decease of any person no person shall, except for the purpose of the burial of the deceased and for the due maintenance of his family, take possession of or in any way administer any part of his estate without having first notified the Commissioner of the death of the deceased and of the extent of his estate so far as he is aware of the same.

(3.) Any person contravening any of the provisions of this section shall forfeit \$2,000, which sum shall be a debt due to the Crown and be recoverable in the same way as Crown rents may be recovered.

Disclosure of interest of deceased person in shop, bank, &c.

20.—(1.) Where a deceased person had, at the date of his death, any interest, whether as partner, depositor, or creditor in any shop, bank or other business undertaking within the Colony, not being a company as defined by the Companies Ordinance, 1911, or a company, association or partnership formed under or in pursuance of some other Ordinance, or Act, or of a Charter of Incorporation, or of Letters Patent, the person having the management of such shop, bank or other business undertaking shall, within one month from the date on which he first received information of the death of such deceased person, notify the Commissioner of such death and of the extent of the interest of the deceased in the said shop, bank or other business undertaking, and in default of such notification as aforesaid the owner, or if more than one, each of the joint owners of the shop, bank or other business undertaking shall forfeit the sum of \$500, which sum shall be a debt due to the Crown and be recoverable in the same way as Crown rents may be recovered.

(2.) In any proceedings for the recovery of the penalty prescribed by sub-section (1) the onus of proving that he has not rendered himself liable to the penalty shall be upon the person from whom it is sought to recover it.

Executor's accounts.

21. At any time or times after the expiration of 6 months from the date of the Probate it shall be lawful for the Commissioner, by notice in writing sent to an executor at his last known address, to require him to lodge with the Commissioner an account of his administration of the estate of the deceased, and the executor shall, within 2 months from the date of the receipt of such notice, lodge the said account with the Commissioner and shall verify the same to his satisfaction within the further period of one month, and in default the executor shall, on summary conviction, be personally liable to a fine not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months, unless he can prove to the satisfaction of the Magistrate that his default was due to circumstances not under his control.

Power to reduce penalty.

22. The Commissioner, or, in any proceeding for the recovery of any penalty to which any person is liable under this Ordinance, the Court, shall have power to reduce any penalty to which any person is liable under this Ordinance.

23.—(1.) Subject to the provisions of this Ordinance, the Governor-in-Council may make such rules, prescribe such forms and generally do such things as he thinks expedient for regulating the practice under this Ordinance.

Power to Governor-in-Council to make rules and prescribe forms.

(2.) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Ordinance.

(3.) Any rules made in pursuance of this section shall be forthwith published in the *Gazette*.

THE FIRST SCHEDULE.

Where the Principal Value of the Estate		Estate Duty shall be payable at the rate per cent. of	
Exceeds	\$ 500 and does not exceed	\$ 5,000	\$ 1
"	5,000	10,000	2
"	10,000	50,000	3
"	50,000	100,000	4
"	100,000	200,000	5
"	200,000	400,000	6
"	400,000	700,000	7
"	700,000	1,000,000	8
"	1,000,000	1,500,000	9
"	1,500,000	2,000,000	10
"	2,000,000	4,000,000	11
"	4,000,000	6,000,000	12
"	6,000,000	8,000,000	13
"	8,000,000	10,000,000	14
"	10,000,000	15

THE SECOND SCHEDULE.

The Probates Ordinance, 1897.

Section 2 the definition of the words "Estate" or "Property".

Section 19 by striking out the figures "50" in the 3rd line thereof and the substitution of the figures "250".

Section 24 by substituting for the words "all moneys" in the second line thereof the words "the gross value of all property of whatsoever nature".

Section 67 (2) by the substitution of the word "estate" for the word "probate" in the third line thereof.

Section 67 (5) by the substitution of the word "estate" for the word "probate" in the first line thereof.

The Stamp Ordinance, 1901.

Sections 22, 23, 24, 25, 26 and 27.

The First Schedule, article 43.

THE THIRD SCHEDULE.

Tables of the values of annuities to be used for the calculation of estate duty on an interest in a property, an annuity or annual sum of money for life. The values of an annuity of \$100 per annum held on a single life.

Years of Age.	Value.	Years of Age.	Value.	Years of Age.	Value.
Birth	\$ 946	32	\$ 809	64	\$ 426
1	953	33	802	65	410
2	958	34	795	66	395
3	963	35	787	67	380
4	964	36	779	68	366
5	963	37	770	69	352
6	960	38	762	70	338
7	956	39	753	71	325
8	951	40	743	72	311
9	945	41	734	73	298
10	939	42	723	74	284
11	932	43	713	75	270
12	924	44	701	76	255
13	916	45	689	77	238
14	908	46	677	78	222
15	900	47	664	79	206
16	891	48	650	80	190
17	883	49	635	81	175
18	876	50	621	82	160
19	870	51	606	83	146
20	864	52	592	84	131
21	859	53	578	85	117
22	856	54	565	86	103
23	853	55	551	87	92
24	850	56	536	88	82
25	847	57	525	89	74
26	843	58	512	90	66
27	838	59	499	91	61
28	833	60	486	92	53
29	828	61	471	93	46
30	822	62	457	94	39
31	816	63	441	95	32

Objects and Reasons.

The object of this Bill is to endeavour to place upon a more regular and satisfactory footing than at present obtains the law and the administrative arrangements relative to the payment and collection of the Probate Duty leviable upon the estates of deceased persons.

The general idea underlying the levy of Probate Duty is that the State is entitled to participate to some small extent in the property which passes on the death of an individual to his legal personal representatives. The proportion of an estate which is in this way diverted to revenue varies as a rule directly with the value of the property of which the deceased person died possessed.

In order to arrive accurately at a determination of the value of a deceased person's property for the purpose of ascertaining the rate at which Probate Duty should be assessed and the total amount payable, it is necessary to provide administrative machinery adequate for this purpose.

The first step towards the attainment of this object is as a rule legislation prohibiting under penalty any person from administering or dealing with the estate of a deceased person until Probate of the deceased's will or Letters of Administration of the deceased's estate has been duly obtained.

The second step generally consists similarly in legislation giving powers to some authority and providing that authority with machinery with which he is enabled to discover with some tolerable degree of certainty the value of estates upon which Probate Duty is leviable; whilst the third and last step is as a rule effected by legislation prescribing the methods by which the duty assessed may be paid and collected.

The existing law, contained in Ordinance No. 2 of 1897 and Ordinance No. 16 of 1901, Sections 22 to 27, is somewhat vague and unsatisfactory. At present the collection of Probate Duty, which is a purely revenue matter, is conjoined with the legal operations necessary for the appointment by the Court of an executor or administrator of the will or estate respectively of a deceased person. This procedure is not found to work well in practice and causes difficulty in cases where there are concerned certain classes of property which pass on death (such as a policy of insurance taken out for the benefit of a child) in which the deceased's executor or administrator has no interest and of which he cannot obtain possession.

This Bill, which is modelled on the Straits Settlements law governing the payment of Estate Duty, specifies the person liable to pay duty in each case and makes the assessment of estate duty a separate matter to be undertaken on oath and to be completed together with its payment before any steps can be taken to obtain the necessary Probate or Letters of Administration.

The Bill introduces the system in force in the United Kingdom of aggregating the value of all the property of a deceased person *wherever situate* for the purpose of determining the rate at which estate duty shall be paid.

Subject to some important exceptions, it also follows the English law in making the duty payable on all property of a deceased person situate *outside* as well as within the Colony; the exceptions relating to property, in respect of which duty is paid in the place in which it *is* situate or which is of such a nature that it would be inequitable to make it subject locally to the payment of estate duty.

The Bill further introduces a new scale of rates of Estate Duty modelled on the scale in force in the United Kingdom. The principal effects of the proposed new scale are that large estates pay at an increased and small estates at a reduced rate. The local limit of exemption is thus raised from \$250 to \$500; estates between \$1,000 and \$5,000 in value pay only 1 per cent. instead of 2 per cent.; estates between \$10,000 and \$50,000 and between \$100,000 and \$200,000 remain at the same rate as at present; all other estates pay at an increased rate.

Another fault in the existing local law is that the definitions of "property" are not exhaustive whilst there exists no effective machinery for enforcing a full disclosure of the property of a deceased person. The Bill therefore defines "property" in detail and provides the Commissioner with suitable means for obtaining all the necessary information.

The Bill further contains rigorous provisions imposing upon various classes of persons against whom under the present law it would be impossible to proceed the obligation of seeing, so far as they are concerned, that the law shall be carried out; the principle involved being that it is the duty of persons cognizant of property, a portion of which belongs to the revenue of the Colony, to assist Government in ensuring that its revenue shall not be defrauded. In this connection the Bill also provides that a Schedule of property shall be attached to every Probate or Letters of Administration and throws an obligation on any person who deals with the property of a deceased

person after the grant of Probate or Letters of Administration, of making certain that all the property with which such person in fact deals is actually included in the Schedule attached to the Grant.

- Section 1 is formal.
- „ 2 repeals the existing law relating to Probate Duty.
- „ 3 defines the meaning of certain terms used in the Bill.
- „ 4 provides for the levy of estate duty substituting this term for the existing “Probate Duty”.
- „ 5 sets out the property which is deemed to pass on death.
- „ 6 exempts from the payment of estate duty transactions for money consideration and also 4 classes of property estate duty upon which should not equitably be claimed as accruing to the revenue of the Colony.
- „ 7 introduces a new scale of rates of estate duty and provides for the aggregation of the value of all a deceased person's property wherever situate for the purpose of determining the rate at which estate duty shall be charged.
- „ 8 sets out the manner in which estate duty is to be paid and contains the new provision that interest at 4% per annum shall be payable upon estate duty from the date of death to the date of payment, if such is made within 6 months. A similar provision exists in England.
- „ 9 introduces the new allowance of an exemption for funeral expenses, which have not up to the present time been allowed to be deducted. This provision is taken from the Straits Settlements law.
- „ 10 prescribes the method of filing accounts and paying estate duty. It gives the Commissioner special powers to summon persons before him, under penalty, in case of default, in order to enable him to obtain a full disclosure of the property of a deceased person. It also gives him power to inspect properties and obtain valuations thereof.
- „ 11 provides that no Probate shall issue until after estate duty has been paid. Similar provision to that in the existing law is made for cases in which the value of an estate cannot be ascertained immediately; and a new clause is inserted giving power to the Commissioner to allow the postponement of payment of estate duty in cases where the exaction of immediate payment would be a hardship. This clause is also taken from the Straits Settlements law.
- „ 12 and 13 re-enact in slightly altered form similar provisions in the existing law with the addition of clauses providing for the calculation of estate duty on the values of interests in expectancy and interests ceasing on death.
- „ 14 introduces the new principle that estate duty shall be a charge on the property in respect of which it is leviable. It also gives power to raise, by means of sale, mortgage or terminable charge, the amount payable for estate duty. This principle is again taken from the Straits Settlements law.

- Section 15 provides for the apportionment of the estate duty between the parties liable; with liberty to apply to the Court in case of dispute.
- „ 16 gives power to the Governor-in-Council to remit the payment of estate duty on equitable grounds.
- „ 17 contains new provisions giving any person aggrieved by the decision of the Commissioner a right of appeal to the Supreme Court.
- „ 18 introduces an important innovation calculated to prevent the non-disclosure of property. A Schedule of the property of a deceased person must be annexed to the Probate and it is the duty of any person before dealing with the property of a deceased person to satisfy himself that the property with which he proposes to deal is included in this Schedule: A penalty of \$500 is prescribed for non-compliance with the provisions of this section.
- „ 19 sub-section (1) re-enacts the existing law. Sub-section (2) is new and is inserted with a view to prevent the concealment of the property of a deceased person by making it obligatory for persons concerned to inform the Commissioner of the existence of such property at the earliest possible moment after such deceased person's death.
- „ 20 throws the onus of disclosing the property of a deceased person, in certain cases, on the person having knowledge of such property. The cases are those in which deceased persons have had interest in any private shop, bank or business undertaking. The Commissioner has little opportunity of discovering such an interest unless it is disclosed; evasion has been, it is thought, very prevalent in the past. It is hoped to minimise this evasion by imposing upon the manager of such shop, bank or business the duty of making a disclosure.
- „ 21 is an innovation and provides for the filing of adequate accounts by an Executor should he be called upon so to do by the Commissioner. In the past the only manner in which an executor could be compelled to file any accounts was by means of an application made to the Court by a party interested. This procedure was cumbrous and very rarely used.
- „ 22 gives the Commissioner power to reduce any penalty incurred under the Bill.

The First Schedule sets out the rates at which Estate Duty shall be charged. These rates are modelled on those in force in England.

The Second Schedule repeals certain portions of the existing law which, with one exception, are dealt with by this Bill. This exception is the amendment of section 19 of the Probate Ordinance, 1897. At present the Official Administrator can only deal summarily with estates not exceeding \$50 in value. This limit has been found in practice to be too low and by this amendment it is raised to \$250.

The Third Schedule contains tables of the values of annuities for use in the calculation of estate duty on life interests. The tables are taken from the law in force in Fiji.

JOHN A. BUCKNILL,
Attorney General.