

LEGISLATIVE COUNCIL.

No. S. 43.—The following Bill was read a first time at a meeting of the Council held on the 5th February, 1931 :—

[No. 28 :—24. 31.—10.]

C.S.O. 3154/26.

C.S.O. 3 in 1270/27.

A BILL

INTITULED

An Ordinance to amend the law relating to Estate Duty.

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

Short title. Ordinance No. 16 of 1915. 1. This Ordinance may be cited as the Estate Duty Amendment Ordinance, 1931 ; and the Estate Duty Ordinance, 1915, hereinafter called the principal Ordinance, and this Ordinance, may be cited together as the Estate Duty Ordinances, 1915 and 1931.

Amendment of Ordinance No. 16 of 1915, s. 2. 2. Section 2 of the principal Ordinance is amended by the repeal of the last three lines thereof and by the substitution thereof of the following words :—

“person dying or who shall have died on or after the first day of January, 1915 ; and it shall also apply in the case of every deceased person who shall have died before that date if representation to his estate has not been applied for before the second day of May, 1921”.

Amendment of Ordinance No. 16 of 1915, s. 3 (1). 3.—(1) Sub-section (1) of section 3 of the principal Ordinance is amended as follows :—

(a) The letter (a), (b), (c), (d), (e), (f), (g), (h) or (i), as the case may be, at the commencement of each definition is deleted.

(b) The definition of “Commissioner” is deleted and the following definitions are inserted at the commencement thereof :—

“Account” means an account of the particulars and value of the estate of a deceased person in such form as may be prescribed by the Governor in Council and verified by affidavit.

“Affidavit for the Commissioner” means an affidavit in such form as may be prescribed by the Governor in Council verifying the particulars and value of the estate of a deceased person.

“Commissioner” means the Treasurer or such other person as the Governor may appoint as Commissioner for the purpose of this Ordinance, and includes any person appointed by the Governor to be Deputy Commissioner of Estate Duty.

“Estate” includes all property passing or deemed to pass on the death of any person which is liable to estate duty.

(c) The definitions of “Property” and “Prescribed” are deleted and the following definitions are substituted immediately before the definition of “Property passing on the death” :—

“Prescribed” unless otherwise stated means prescribed by the Governor in Council under this Ordinance.

“Property” includes movable and immovable property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale.

(2) The following paragraph is added at the end of sub-section (1) of section 5 of the principal Ordinance :— Amendment of Ordinance No. 16 of 1915, s. 5.

25 & 26 Vict. c. 22, s. 39. (g) debts and sums of money due and owing from persons in the Colony to any deceased person at the time of his death on obligation or other specialty, to the same extent as if they were owing to the deceased upon simple contract, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

(3) The word “and” is deleted at the end of paragraph (e) and inserted at the end of paragraph (f) of sub-section (1) of section 5 of the principal Ordinance. Amendment of Ordinance No. 16 of 1915, s. 5.

4. The following new paragraph is inserted in section 6 of the principal Ordinance immediately after paragraph (4) thereof :— Amendment of Ordinance No. 16 of 1915, s. 6.

(5) Any share or other interest of a deceased member of a China company, as defined by the Companies Ordinances, 1911 and 1925 or by any Ordinance which may amend or be substituted for the same, in such company.

5. Section 8 of the principal Ordinance is amended as follows :— Amendment of Ordinance No. 16 of 1915, s. 8.

(a) The words “by stamps affixed to the affidavit for the Commissioner” in the third and fourth lines of sub-section (2) are deleted and the following words are substituted therefor :—

“on delivering the affidavit for the Commissioner by stamps affixed thereon”

(b) The following words are inserted at the end of sub-section (4) “Such duty shall be paid on delivering the account.”

(c) The words “and shall form part of the estate duty,” in the fifth line of sub-section (6) are deleted.

6. Section 9 of the principal Ordinance is amended as follows :— Amendment of Ordinance No. 16 of 1915, s. 9.

(a) Sub-section (3) is repealed and the following section is substituted therefor :—

(3) No allowance shall be made for debts due from the deceased unless contracted to be paid in the Colony, or charged on property situate within the Colony.

(b) The following sub-sections are inserted immediately after sub-section (4) :—

Interest in expectancy. (5) 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 duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

57 & 58 Vict. c. 30, s. 7 (6).

(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 ; 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.

Benefit arising from cesser of an interest.
57 & 58
Vict. c. 30,
s. 7 (7).

(6) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall,

- (a) if the interest extended to the whole income of the property, be the principal value of that property; and
- (b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

Ascertainment of value for estate duty.
57 & 58
Vict. c. 30,
s. 7 (8).

(7) The value of any property for the purpose of estate duty shall be ascertained by the Commissioner in such manner and by such means as he thinks fit, and, if he authorises any person to inspect any property and to report to him the value thereof for the purposes of this Ordinance, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioner considers necessary.

Commissioner to pay costs of valuation by his nominee.
57 & 58
Vict. c. 30,
s. 7 (9).

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

Repeal of Ordinance No. 16 of 1915, s. 10, and substitution of new section.

7. Section 10 of the principal Ordinance is repealed and the following section is substituted therefor:—

Recovery of estate duty, etc.
Ordinance No. 6 of 1875.

10.—(1) The Commissioner shall have, in respect of proceedings for the recovery of estate duty and of interest thereon and of any fine, penalty or forfeiture provided by this Ordinance, all the powers that are given to the Treasurer by the Crown Remedies Ordinance, 1875, in respect of rent, assessment for rates, fees and forfeitures payable to the Crown; and the certificate required by the Crown Remedies Ordinance, 1875, shall in the case of any such proceedings be signed by the Commissioner and shall be in such form as the Governor in Council shall prescribe: Provided that nothing in this section shall affect any other remedy for the recovery of any such duty, interest, fine, penalty or forfeiture as aforesaid.

Service. Exchequer Rules, 1860. r.3.

(2) In any proceedings for the recovery of any such duty, interest, fine, penalty or forfeiture in respect of any property passing on the death of any person on or after the first day of January, 1916, it shall not be necessary to issue concurrent writs, informations or other process. Service of the writ, information or other process shall, where practicable, be personal; but the order of a judge may be obtained, under special circumstances, to dispense with

personal service and giving directions as to substituted service or as to notice of the proceedings and time for appearance whether by posting copies to addresses within or without the jurisdiction or otherwise as in the circumstances may seem just.

Power to appoint receiver.
57 & 58
Vict. c. 30,
s. 8 (13).

(3) In any such proceedings the court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof and to order a sale of the property. The provisions of section 589 of the Code of Civil Procedure shall apply in the case of any order made under this sub-section.

Delivery of accounts of property.
57 & 58
Vict. c. 30,
s. 8 (3).

(4) Every executor shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to an affidavit for the Commissioner all the property in respect of which estate duty is payable upon the death of the deceased, and also (unless exempted in writing by the Commissioner) any property of which the deceased was a trustee for another person, and shall be accountable for the estate duty in respect of all property, 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.
57 & 58
Vict. c. 30,
s. 8 (4).

(5) 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 an appropriate account specifying the property in question to the best of his knowledge and belief: Provided that nothing in this section shall render a person accountable for duty who acts merely as agent for another person in the management of property.

Powers of inquiry.
57 & 58
Vict. c. 30,
s. 8 (5).

(6) 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, and any person whom the Commissioner believes to be indebted to the deceased, and any person whom the Commissioner believes to be capable of giving information as to such estate, and may examine such person and may require any such person to produce any documents in his custody or power the inspection whereof may tend to secure the payment of any duty under this Ordinance or the proof or discovery of any fraud or omission in relation to any such duty. Any such person shall at all reasonable times permit any person thereunto authorised by the Commissioner to inspect all such documents as aforesaid and to make such notes copies or extracts thereof or therefrom as he may deem necessary without fee or reward. The Commissioner may also require any such person to deliver to him and verify on oath a statement in writing of such particulars.

Protection of *bona fide* purchaser without notice. (7) Nothing in this section shall render a *bona fide* purchaser for valuable consideration without notice liable to or accountable for estate duty.

57 & 58
Vict. c. 30,
s. 8 (18).

Affidavits and accounts to be delivered to the Commissioner. (8) All affidavits and accounts required under this section shall be delivered to the Commissioner, who shall make such inquiry respecting the contents of, or the particulars verified by, such affidavit or accounts and the value of the various properties included therein as he thinks necessary, and the person making or tendering any such affidavit shall attend at the office of the Commissioner, whenever required by him, and shall furnish and produce such explanations and documentary or other evidence as the Commissioner may require.

Final ascertainment of amount of estate duty. (9) When the Commissioner has ascertained the amount of estate duty payable in respect of any accounts delivered to him in pursuance of this Ordinance he shall notify the accountable person of his decision by means of a certificate in the prescribed form. If such amount exceeds the amount of estate duty already paid in respect of the said accounts the accountable person shall forthwith pay the excess to the Commissioner.

Repayment of excess duty. (10) In every case in which the Commissioner is satisfied that too much estate duty has been paid, the excess shall be repaid by him.

57 & 58
Vict. c. 30,
s. 8 (12).

Duty to disclose liability to further estate duty. (11) Where the accountable person discovers that for any reason too little estate duty has been paid he shall forthwith deliver to the Commissioner a further account, verified by oath, and shall at the same time pay the difference between the estate duty chargeable according to the true value of the estate and the estate duty already paid.

Power to require disclosure of liability to further estate duty. (12) Where the Commissioner discovers that any property which ought to have been disclosed by affidavit or account has not been so disclosed he shall notify the accountable person and call upon him to disclose such property and pay the estate duty thereon, and the accountable person shall, within one month of the giving of such notice by the Commissioner deliver an original or a further account, as the case may require, disclosing such property, and shall at the same time pay the estate duty thereon.

Power to remit interest on estate duty. (13) 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.

Penalties for breach of foregoing provisions. (14) Every person who shall have been called upon after the lapse of one year from the death for an original account, or at any time for a further account, under sub-section (12) and every person who without lawful authority or reasonable excuse fails to comply with any of the provisions of this section shall be liable to pay to the Commissioner, in addition to the estate duty (if any), a penalty of one thousand dollars, or a penalty equal to the amount of the estate duty (if any) at the rate set out in the Schedule remaining unpaid for which he is accountable, according as the Commissioner elects.

57 & 58
Vict. c. 30,
s. 8 (6).

8. Section 12 of the principal Ordinance is repealed and the following section is substituted therefor :—

Repeal of Ordinance No. 16 of 1915, s. 12, and substitution of new section.

Increase of estate duty when delay in lodging affidavit.

12.—(1) In every case where any account is delivered after the lapse of twelve months from the death the estate duty shall be charged at three times the rates set out in the Schedule; unless the person accountable for the estate duty proves to the satisfaction of the Commissioner that he has used all reasonable diligence to ascertain the estate of the deceased and could not reasonably have ascertained it earlier, and having ascertained it has used all reasonable diligence to deliver an account and to pay the estate duty thereon: Provided that in any case in which, before the delivery of the account, a grant of probate or of letters of administration had been obtained from a court of probate outside the Colony, the period shall be eighteen months from the death instead of one year.

(2) For the purposes of this section no account shall be deemed to have been delivered until the duty which reasonably appears to be payable in respect thereof has been paid, unless the Commissioner shall have allowed payment of the estate duty in respect of the said account to be postponed.

9. Section 13 of the principal Ordinance is repealed and the following section is substituted therefor :—

Repeal of Ordinance No. 16 of 1915, s. 13, and substitution of new section.

Duty of Executor as to unregistered shares.

13.—(1) Every executor shall within one year after obtaining probate or letters of administration to the estate of a deceased person cause all shares of which such deceased person was at the date of his death the beneficial, but not the registered owner, to be transferred on the registers of the appropriate companies into his own name as such executor.

Penalty.

(2) Every executor who without reasonable excuse omits to get any such shares as aforesaid registered within the time limit aforesaid shall be liable to pay to the Commissioner in addition to the estate duty (if any) a penalty of one thousand dollars, or a penalty equal to the amount of the estate duty (if any) at the rate set out in the Schedule.

10. Section 16 of the principal Ordinance is amended by the deletion of the words "by treasury warrant" in the second line thereof.

Amendment of Ordinance No. 16 of 1915, s. 16.

11. Section 18 of the principal Ordinance is repealed and the following section is substituted therefor :—

Repeal of Ordinance No. 16 of 1915, s. 18, and substitution of new section.

Schedule of property to be annexed to probate.

18.—(1) A schedule under the hand of the Commissioner of all the property passing on the death of a deceased person upon which estate duty has been paid or is payable on the death, and of all the property of a deceased person which, being trust property, is exempt from duty on the death shall be annexed to the probate or letters of administration, and any person who, without lawful authority or reasonable excuse, in any way deals with any estate of the deceased or any property held by the deceased in trust, which is not set out in such schedule shall be liable to a penalty of one thousand dollars, or to a penalty equal to three times the amount of the estate duty at the rate set out in the Schedule to this Ordinance payable upon the estate so dealt with, at the election of the Commissioner.

(2) Whenever a further affidavit is delivered, the probate or letters of administration 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.

Repeal of Ordinance No. 16 of 1915, s. 19, and substitution of new section.

12. Section 19 of the principal Ordinance is repealed and the following section is substituted therefor :—

Penalties for intermeddling.

19.—(1) Every person who, being neither the executor appointed by the will of the deceased nor (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, without lawful authority or excuse or without first delivering to the Commissioner accounts of the estate of the deceased as required by section 10 of this Ordinance, takes possession of or in any way administers any part of the estate of a deceased person, or any part of the income of any part of such estate, shall be liable to a penalty of one thousand dollars and shall also be liable to a further penalty equal to three times the amount of the estate duty at the rate set out in the Schedule payable upon the whole estate of the deceased.

(2) Every person who, being the executor appointed by the will of the deceased or (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, takes possession of or in any way administers any part of the estate of a deceased person, or any part of the income of any part of such estate, within six months of the death of the deceased, and fails within the said period of six months to deliver to the Commissioner accounts of the estate of the deceased as required by section 10 of this Ordinance, shall be liable to a penalty of one thousand dollars, and shall also be liable to a further penalty equal to three times the amount of the estate duty at the rate set out in the Schedule payable upon the whole estate of the deceased.

(3) Every person who, being the executor appointed by the will of the deceased or (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, takes possession of or in any way administers any part of the estate of a deceased person, or any part of the income of any part of such estate, after the expiration of six months from the death of the deceased, without first delivering to the Commissioner accounts of the estate of the deceased as required by section 10 of this Ordinance, shall be liable to a penalty of one thousand dollars and shall also be liable to a further penalty equal to three times the amount of estate duty at the rate set out in the Schedule payable on the whole estate of the deceased.

(4) The Commissioner shall have power to allow in writing the use of any specified part of the estate of a deceased person, or of any specified part of the income of any such estate, for the purpose of the burial of the deceased or for the purpose of the maintenance of the former dependants of the deceased, notwithstanding the non-delivery of the accounts required by section 10 of this Ordinance, or for the purpose of preparing such accounts, and such authorised use of the estate or income as the case may be shall not render the person in question liable to any of the penalties provided by this section.

(5) The recovery of any penalty provided in this section shall be without prejudice to the liability of the accountable person to the payment of estate duty on the estate of the deceased: Provided however that the amount

of the estate duty and the penalty shall not in any case exceed four times the rate set out in the Schedule.

(6) For the purposes of this section no account shall be deemed to have been delivered until the duty which reasonably appears to be payable in respect thereof has been paid, unless the Commissioner shall have allowed payment of the estate duty in respect of the said account to be postponed.

13. Section 20 of the principal Ordinance is amended as follows :— Amendment of Ordinance No. 16 of 1915, s. 20.

- (a) The words "a penalty" are substituted for the words "the sum" in the fifteenth line of sub-section (1).
- (b) Sub-section (2) is repealed.
- (c) The word "penalty" is substituted for the word "sum" in the second line of sub-section (3), and the words "a debt" in the third line of sub-section (3) are deleted.

14. Section 22 of the principal Ordinance is repealed, and the following section is substituted therefor :— Repeal of Ordinance No. 16 of 1915, s. 22, and substitution of new section.

Power to reduce penalty and duty. 22. The Commissioner may in his discretion remit or reduce any penalty and he may reduce any duty chargeable under this Ordinance, provided that such duty is not reduced below the rate set out in the Schedule.

15. The following sections are inserted in the principal Ordinance immediately after section 23 :— Insertion of new ss. 24, 25, 26, 27 and 28 in Ordinance No. 16 of 1915.

Presumption as to shares standing in the name of the deceased. 24.—(1) If the registered owner of any share on a share register which is by law required to be kept within the Colony dies, such share shall for the purposes of this Ordinance be deemed to be part of the estate of the deceased, unless the legal personal representative of the deceased proves to the satisfaction of the Commissioner that such share did not form part of the estate of the deceased at his death.

Appeal. (2) An appeal to the Supreme Court, as under section 17 of this Ordinance, shall lie from any decision of the Commissioner under sub-section (1) of this section.

Relief in the case of certain settlements. 57 & 58 Vict. c. 30, s. 5 (2). 4 and 5 Geo. 5, c. 10, s. 14. 25.—(1) If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property.

(2) For the purposes of this section, the term settlement means any deed, will, agreement for a settlement, or other instrument, or any number of instruments, whether made before or after or partly before and partly after the commencement of this Ordinance, under or by virtue of which instrument or instruments any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement.

Relief in respect of quick succession where property consists of leasehold property or a business. 4 & 5 Geo. 5, c. 10, s. 15.

26. Where the Commissioner is satisfied that estate duty has become payable on any property consisting of leasehold property or a business (not being a business carried on by a company), or any interest in leasehold property or such a business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Ordinance) in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent ;

Where the second death occurs within two years of the first death, by forty per cent ;

Where the second death occurs within three years of the first death, by thirty per cent ;

Where the second death occurs within four years of the first death, by twenty per cent ;

Where the second death occurs within five years of the first death, by ten per cent.

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Reduction of full amount of duty where the margin above the limit of value is small. 4 and 5 Geo. 5, c. 10, s. 13 (1).

27. The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

Relief in the case of certain interests which do not fall into possession. 57 & 58 Vict. c. 30, s. 5 (3).

28.—(1) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(2) For the purposes of this section, the term settlement means any deed, will, agreement for a settlement, or other instrument, or any number of instruments, whether made before or after or partly before and partly after the commencement of this Ordinance, under or by virtue of which instrument or instruments any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement.

16.—(1) The Schedules to the principal Ordinance are repealed, and the Schedule to this Ordinance is substituted therefor: Provided that where an interest in expectancy in any property has, before the commencement of this Ordinance, been *bona fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section of this Ordinance has not been passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Repeal of Ordinance No. 16 of 1915, Schedules and substitution of new Schedule. g & 10 Geo. 5, c. 32, s. 29.

(2) Section 4 of the principal Ordinance is amended by the deletion of the word "second" before the word "Schedule" in the sixth line thereof.

Amendment of Ordinance No. 16 of 1915, s. 4.

SCHEDULE. [ss. 4, 10, 12, 13, 18, 19 and 22.]

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	25,000	3
25,000	50,000	4
50,000	100,000	5
100,000	200,000	6
200,000	400,000	7
400,000	600,000	8
600,000	800,000	9
800,000	1,000,000	10
1,000,000	2,000,000	11
2,000,000		12

Objects and Reasons.

1. The object of this Ordinance is to amend the Estate Duty Ordinance, Ordinance No. 16 of 1915, in various ways suggested by the practical working of the Ordinance. Some of the amendments now proposed are intended to bring the Ordinance into closer agreement with the Finance Act, 1894, 57 & 58 Viet. c. 30. Others are designed to prevent evasion of estate duty.

2. When the principal Ordinance, which came into force on the 1st January, 1916, was enacted it contained a provision that in the case of persons dying before the commencement of the Ordinance the probate duty formerly payable under the Stamp Ordinance, 1901, should continue to be payable instead of the new estate duty. When the Stamp Ordinance, 1901, was replaced by the Stamp Ordinance, 1921, the above temporary and limited provision was still further limited by a provision that estate duty and not probate duty should be payable in the case of any estate to which representation was applied for after the

commencement of the new Stamp Ordinance, whatever the date of the death of the deceased. In the revision of the Ordinances in 1924, the effect of the latter provision was incorporated in section 2 of the Estate Duty Ordinance in such a way, through an oversight, as to make the latter Ordinance applicable only to cases where application for representation is made after the 1st May, 1921. But Estate Duty is a matter which attaches on the death of a person, wholly irrespective of representation being taken out to his estate. Section 2 therefore amends section 2 of the principal Ordinance by making the Ordinance applicable to all deaths after 1st January, 1916, and also to deaths before that date if representation has not been applied for before the 2nd May, 1921.

3. Section 3 (1) of this Ordinance amends section 3 (1) of the principal Ordinance by defining the expressions "Account", "Affidavit for the Commissioner" and "Estate" and by substituting revised definitions for the definitions of "Commissioner", "Prescribed" and "Property". In the definition of the term "Commissioner" a reference to the Treasurer is inserted in place of the former reference to the Registrar of the Supreme Court, because the Treasurer was substituted for the Registrar as Commissioner by order of the Governor published in the Gazette of the 11th January, 1921. The definition of the term "Commissioner" is also altered so as to include any Deputy Commissioner of Estate Duty. This is done in order to give such Deputy Commissioner the powers of the Commissioner.

Section 3 (2) amends section 5 of the principal Ordinance, which deals with property passing on death, by adding a paragraph in respect of specialty debts derived from section 39 of the Revenue Act, 1862.

4. Section 6 of the principal Ordinance contains a list of properties in respect of which estate duty is not payable. After the principal Ordinance was passed, though before it came into operation an addition had been made by legislation (Ordinance No. 31 of 1915, s. 7) to the classes of property not chargeable with estate duty, *i.e.*, shares in China companies. Section 4 of this Ordinance now adds that class to the list in section 6 of the principal Ordinance.

5. Section 5 of this Ordinance amends section 8 of the principal Ordinance so as to make it correspond more closely with the language of section 6 (2) and (4) of the Finance Act, 1894, because it is considered desirable to make it clear that duty is to be paid on delivery of the affidavit and account. Section 8 (6) is amended by the deletion of words which were deleted in 1896 from section 6 (6) of the Act.

6. Section 9 (3) of the principal Ordinance is considered to be defective. It provides that "No allowance shall be made 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". In the new sub-section (3) substituted by section 6 of this Ordinance the words "to persons resident out of the Colony" are omitted to avoid deductions on account of debts charged on property situated outside the Colony and which are not liable to Hong Kong estate duty.

7. Paragraph (b) of section 6 of this Ordinance adds four sub-sections to section 9 of the principal Ordinance, *i.e.*, sub-sections (5), (6), (7) and (8).

8. The new sub-section (5) is intended to replace section 13 (4) of the principal Ordinance, where the subject matter of the sub-section is not so relevantly placed. That sub-section, however, will now appear in section 9 of the principal Ordinance in a different form. It was based on section 7 (6) of the Finance Act, 1894, but it was adapted in a form which has proved to be mistaken and which has given rise to difficulty and even to litigation. It will now appear as section 9 (5) of the principal Ordinance in the exact words of the sub-section in the English Act.

9. The new sub-section (6) of section 9 will replace the former section 13 (5) of the principal Ordinance. That sub-section, again, has proved unworkable in practice. The new section 9 (6) is taken verbatim from section 7 (7) of the Finance Act, 1894. The wording of the sub-section is awkward and rather artificial, but it has received judicial interpretation in England and the meaning now appears to be clear: see for example, *A. G. v. Coole* (1921) 3 K. B. 607. It has therefore been decided to adhere to the wording of the English sub-section, a practice which is generally desirable.

10. The new sub-section (7) of section 9 of the principal Ordinance replaces section 10 (6) of that Ordinance. It is practically a copy of section 7 (8) of the Finance Act, 1894. The new sub-section (8) replaces the former section 10 (7), and is practically a copy of section 7 (9) of the Finance Act, 1894.

11. The above four new sub-sections seem to be most appropriately placed in section 9 of the principal Ordinance which deals with the question of the value of the estate for estate duty purposes generally.

12. Section 7 of this Ordinance repeals section 10 of the principal Ordinance and substitutes a new section. The new section consists partly of the present provisions of the old section, partly of those provisions altered, and partly of new matter.

13. The new section 10 (1) applies the simple procedure of the Crown Remedies Ordinance, 1875, Ordinance No. 6 of 1875, to the recovery of estate duty, interest on estate duty, and any fines, penalties or forfeitures provided by the Ordinance. This procedure is already by the particular provisions of sections 18 (1), 19 (3) and 20 (2), applied to the recovery of penalties, and is by section 13 (2) applied to the recovery of the treble duty payable on a late further affidavit. These particular provisions are being repealed by the present Ordinance.

14. The new section 10 (2) enables a judge in special circumstances to make an order dispensing with personal service of process and to give directions as to substituted service or as to notice of proceedings by posting copies of the process to addresses within or without the jurisdiction of the Court. The sub-section is founded partly on rule 3 of the Exchequer Rules, 1860, and crystallizes to some extent the old jurisdiction of the Court of Chancery (illustrated by the case of *Hobhouse v. Courtney* 10 L.J.N.S. Ch. 377 and the cases cited therein) which was transferred to the Supreme Court of the Colony by Ordinance No. 3 of 1873. The case of *Western Suburban etc., Society v. Ruckledge*, 1905 II Ch. 472, affords an example of an order for service by posting a letter to an address abroad. The provisions of sections 37 and 38 of the Crown Suits Act, 1865, dealing with revenue cases against persons resident out of the jurisdiction of the Exchequer are not in force in the Colony.

15. The new section 10 (3) gives power to the court to appoint a receiver, or order a sale, in the case of any proceeding for the recovery of estate duty. This sub-section is taken from section 8 (13) of the Finance Act, 1894.

16. The new section 10 (4) replaces the old section 10 (1), and is made to correspond more closely with section 8 (3) of the Finance Act, 1894.

17. The new section 10 (5) replaces the old section 10 (2), except that the proviso exempting *bona fide* purchasers for value without notice is transferred to a separate sub-section by itself, *i.e.*, sub-section (7), and its place is taken by a proviso relieving persons who act merely as agents in the management of property. This new provision is taken from the corresponding sub-section in the Finance Act, 1894, *i.e.*, section 8 (4).

18. The new section 10 (6) replaces the old section 10 (3), which is extended by the deletion of the words "with regard to the premises" and "relating to the estate in respect of which estate duty is leviable on the death of the deceased" and the substitution for the latter of the words "the inspectionreward" which are taken from section 59 (1) of the Fijian Death and Gift Duties Ordinance No. 10 of 1920. The Commissioner is given power also to require verification on oath of statements made to him by persons summoned before him, and the penalty is transferred to a general sub-section, *i.e.*, sub-section (14).

19. The new section 10 (7) has already been referred to above. It is merely transferred from another part of the section.

20. The new section 10 (8) replaces with slight alteration the old section 8 (5)

21. The old section 10 (4) disappears as it is considered unnecessary.

22. The old sections 10 (6) and 10 (7) have been transferred to a more appropriate place in section 9 of the principal Ordinance by section 6 of this Ordinance.

23. The new section 10 (9) replaces the old section 10 (8) with slight verbal differences. It also provides that if the amount of duty ascertained by the Commissioner exceeds the amount already paid the accountable person shall forthwith pay the balance.

24. The new sub-sections (1) (11) and (12) of section 10 revise and replace the old sub-sections (1) and (2) of section 13 and deal separately with the cases of non disclosure discovered respectively by the accountable person and by the Commissioner.

25. The new section 10 (13) replaces the old section 10 (9).

26. The new section 10 (14) is a general penalty sub-section applying to the whole section. It is based on section 8 (6) of the Finance Act, 1894, except that it provides for a penalty of \$1,000 or a penalty equal to the amount of duty at the rate set out in the Schedule instead of £100 or a sum equal to double the amount of the duty.

27. Section 12 of the principal Ordinance provides for the payment of estate duty at three times "the customary rate" where an affidavit or account is "for the first time" lodged after a year from the death, or (in the case of a person dying outside the Colony) after a year "from the date of the grant" of administration outside the Colony, unless the person lodging the affidavit or account can prove that "within the said period of one year" he was not aware of the existence of estate of the deceased within the Colony and could not "within such period" with reasonable diligence have ascertained its existence. The section is unsatisfactory.

28. Section 8 of this Ordinance substitutes a new section 12 which contains the following features:—

- (a) The treble rate is applied to all late accounts, unless the accountable person can prove that he used all reasonable diligence to ascertain the estate and to deliver an account upon its discovery.
- (b) In the case of "rescaling" the period of delay allowed is 18 months from death.
- (c) The rates in the Schedule are specifically referred to.

- (d) It is provided that for the purposes of the section no account is to be deemed to have been delivered until the apparent duty has been paid, unless the Commissioner has allowed payment to be postponed.

29. Section 9 of this Ordinance repeals section 13 of the principal Ordinance. The various sub-sections of that section are being dealt with as follows :—

- (a) Sub-section (1) is replaced by the new section 10 (10).
- (b) Sub-section (2) is replaced by the new sub-sections 10 (11) and 10 (12).
- (c) Sub-section (3) is not being reproduced. Its effect is not very clear, but it seems to be an undesirable limitation both on the right of appeal and on the right of demanding additional duty.
- (d) Sub-section (4) reappears in the new section 9 (5), except that the mistaken provision for ascertaining the value of an interest in expectancy is omitted : see paragraph 8 above.
- (e) Sub-section (5) disappears. That section also has proved to be mistaken. It has no counterpart in the Finance Act, 1894.

The repealed section is replaced by a new one making it obligatory for executors to attend to the registration of the transfer into his own name of unregistered shares belonging to a deceased person. This will help to make it clear from the share register that a transfer from A to D was through C the executor of B the unregistered owner of the shares.

30. Section 10 of this Ordinance amends section 16 of the principal Ordinance by the deletion of the words "by treasury warrant". Refunds are not in fact made by treasury warrant but by cheque.

31. Section 11 of this Ordinance repeals section 18 of the principal Ordinance and substitutes a new section 18 which differs from the old section 18 in the following points :—

- (a) It is provided that the Schedule of property to be annexed to the probate or letters of administration is to be under the hand of the Commissioner.
- (b) The penalty under the present section 18 for dealing with property of the deceased not contained in the above Schedule is only \$500. The new section 18 makes the penalty \$1,000 or three times the single rate duty payable upon the estate dealt with, at the election of the Commissioner. The person in question will, however, be relieved from liability if he can show any lawful authority or reasonable excuse.

32. Section 12 of this Ordinance repeals section 19 of the principal Ordinance and substitutes a new section 19 which differs from the old section 19 in the following points :—

- (a) The new section 19 deals separately with the two distinct cases of intermeddling by a person who is entitled to apply for administration and that of intermeddling by a person who is not entitled to apply for administration. In the case of a person who is not entitled to apply for administration the liability to penalty arises immediately upon intermeddling. In the case of a person who is entitled to apply for administration the liability for penalty arises in two cases, *i.e.*, (1) when the person in question intermeddles within six months after the death and also fails

within that period to deliver accounts to the Commissioner, and (2) when the person in question intermeddles after six months after the death without having within that period furnished accounts to the Commissioner.

- (b) It is made clear by reference to the Schedule that the penalty of three times the amount of the duty is to be at three times the single rate of duty and that penalty and duty together shall not exceed four times that rate.
- (c) In dealing with the case of persons entitled to apply for administration the two classes are distinguished of (1) the executor appointed by the will and (2) the person entitled in priority to the administration.
- (d) Sub-section (2) of the present section 19 which allows intermeddling for the purpose of the maintenance of the family of the deceased provided that the Commissioner has been notified of the death, opens the door to evasion. This sub-section is replaced by the new sub-section (4) which gives the Commissioner power to allow intermeddling for the purpose in question or for the purpose of the burial of the deceased and also for the purpose of preparing accounts.
- (e) The new sub-section (5) provides that the recovery of any penalties provided by this section shall be without prejudice to the recovery of the estate duty.
- (f) The new sub-section (6) provides that no account is to be deemed to have been delivered until the apparent duty has been paid, unless the Commissioner has allowed postponement of payment.
- (g) The present section 19 (3) disappears because the question of recovery of penalties is dealt with generally in the new section 10 (1).
- (h) The present section 19 (4) is omitted because the whole point of the section is to prevent intermeddling without furnishing accounts to the Commissioner, and the question of obtaining probate or administration is irrelevant. The case of persons who are entitled to administer without furnishing accounts is sufficiently dealt with by the reference to lawful authority or reasonable excuse in the new section 19 (1).

33. Section 13 of this Ordinance amends section 20 of the principal Ordinance in two minor points. One is that the word "penalty" is substituted for the word "sum" or "debt" in order to make the general provisions relating to penalties apply clearly to the penalties which are called sums and debts in the present section 20. The other is that sub-section (2), which provides for the recovery of the \$500 penalty is omitted because the matter is dealt with generally in the new section 10 (1).

34. Section 14 of this Ordinance repeals section 22 of the principal Ordinance which gave the Commissioner or the Court power to reduce penalties and substitutes a new section giving the Commissioner discretionary power to reduce penalties and to reduce to single rate any duty at a higher rate chargeable under the Ordinance.

35. Section 15 of this Ordinance inserts five new sections in the principal Ordinance. The new section 24 enacts 2 of 3 sub-sections of a section which was recommended by the Stamp Duties Committee which reported in August, 1929. It has not been thought practicable to enact the other sub-section which appeared in Annexe B of the report in question and which cast on the personal representative the onus of proving a negative. It is intended to make registration *prima facie* evidence of beneficial ownership at death in the case of shares on share registers which are by law required to be kept within the Colony.

36. The new section 25 provides that if estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death, or had been at any time during the continuance of the settlement, competent to dispose of such property. This provision is adapted from section 5 (2) of the Finance Act, 1894, as amended by section 14 of the Finance Act, 1914. The special definition in sub-section (2) of the term settlement is inserted because in the principal Ordinance generally that term excludes testamentary dispositions.

37. The new section 26 gives relief in certain cases of quick succession, the duty on the second death being reduced in accordance with a scale which varies according to the period elapsing between the two deaths. This provision is taken from section 15 of the Finance Act, 1914.

38. The new section 27 gives relief in the case of estates which just pass over one of the steps in the scale of estate duties. The effect of the section can best be seen from examples. For example, an estate is valued at \$10,500. At the new rate of 3% (the old rate is the same) the estate duty would be \$315. Under this section, however, duty can be paid at 2% on \$10,000, *i.e.*, \$200, with an addition of \$50, *i.e.*, \$250 in all instead of \$315. Again, an estate is assessed in \$100,500. At the new rate of 6% the estate duty would be \$6,030. Under this section duty can be paid at 5% on \$100,000, *i.e.*, \$5,000, with an addition of \$500, *i.e.*, \$5,500 in all instead of \$6,030. Of course if an estate passes over the step in the scale by more than a small amount it would not pay the estate to claim the relief. This provision is taken from section 13 (1) of the Finance Act, 1914.

39. The new section 23 gives relief in the case of certain interests which do not fall into possession. It provides that in the case of settled property, where the interest of any person fails by reason of his death to become an interest in possession, and subsequent limitations continue to subsist, the property shall not be deemed to pass on his death. This provision is taken from section 5 (3) of the Finance Act, 1894. As in the case of the new section 25, the terms settlement and settled property are specially defined for the purpose of this section. The reason is the same as that given in paragraph 35 above.

40. Section 16 of this Ordinance repeals the Schedules to the principal Ordinance. The First Schedule was repealed by the Law Revision Ordinance, 1924. The Second Schedule is replaced by a new Schedule in which the scale of graduated rates is revised and increased. The repeal of the Second Schedule and the substitution of the new Schedule is made subject to a proviso derived from section 29 of the Finance Act, 1919, relating to the sale or mortgage of interests in expectancy before the commencement of this amending Ordinance. The Third Schedule disappears with the omission of the present section 13 (5) and the alteration of the present section 13 (4). This matter is referred to in paragraphs 8, 9 and 29 above.

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