

Draft Bill.

No. S. 498.—The following bill is published for general information:—

C.S.O. 3154/26.

[No. 14.—6.8.31.—2.]

A BILL

INTITULED

An Ordinance to amend and consolidate 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.

1. This Ordinance shall be cited as the Estate Duty Ordinance, 1931.

Application.

2. This Ordinance shall apply in the case of every deceased person dying or who shall have died on or after the first day of January, 1916; 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.

Interpretation.
57 & 58 Vict.
c. 30, s.
22 (1).
Account.

3. (1) In this Ordinance,

“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.

“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.

Applicable Schedule.

“Applicable Schedule” in the case of persons dying before the twenty-seventh day of February, 1931, means the Second Schedule to this Ordinance; and in the case of persons dying thereafter it means the First Schedule to this Ordinance.

Commissioner.

“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.

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

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” includes 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

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

“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. Property.

“Property passing on the death” includes property passing either immediately on the death or after any interval, and either certainly or contingently, and either originally or by way of substitutive limitation, and “on the death” includes “at a period ascertainable only by reference to the death”. Property passing on the death.

“Settlement” means any non-testamentary disposition in writing, whether made voluntarily or upon a good or valuable consideration other than a *bona fide* pecuniary consideration, whereby any definite and certain property is settled or agreed to be settled in any manner for any purpose whatsoever. Settlement.

(2) For the purposes 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 “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. 57 & 58 Vict. c. 30, s. 22 (2).

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. 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 passing on the death of such person, a stamp duty called estate duty at the graduated rates mentioned in the applicable Schedule: Estate Duty 57 & 58 Vict. c. 30, s. 1.
Provided that, where the principal value of an estate comprises fraction of one hundred dollars, such fraction shall, for the purpose of determining the amount of estate duty payable, be reckoned as one hundred dollars. Schedules.

Provided also that where an interest in expectancy in any property has, before the twenty-seventh day of February, 1931, been *bona fide* sold or mortgaged for full consideration in money or money's worth, then no higher duty on that property shall be payable by the purchaser or mortgagee when the interests falls into possession than is in accordance with the rates mentioned in the Second Schedule, 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. 9 & 10 Geo. 5, c. 32, s. 29.

5.—(1) Property passing on the death of the deceased shall be deemed to include the property following:—
(a) property of which the deceased was at the time of his death competent to dispose; What property is deemed to pass on death. 57 & 58 Vict. c. 30, s.

63 Vict.
c. 7, s. 11;
10 Edw. 7,
c. 8, s. 59.

(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, and such property shall be deemed to pass on the death of the deceased notwithstanding that estate or interest has been surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting or disposition was *bonâ fide* made or effected three years before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise: Provided that where property affected by such a surrender, assurance, divesting or disposition is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the surrender, assurance, divesting or disposition, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for a period of three years immediately preceding the death of the deceased: Provided also that this paragraph shall not apply to any property the interest in which of the deceased or other person was only an interest as holder of an office or as recipient of the benefits of a charity or as a corporation sole;

44 & 45 Vict.
c. 12,
s. 38 (2);
52 & 53 Vict.
c. 7, s. 11;
57 & 58 Vict.
c. 30,
s. 2 (1);
10 Edw. 7.
c. 8, s. 59.

(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 three years 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: Provided that this paragraph shall not apply to gifts *inter vivos* which are made in consideration of marriage, or which are proved to the satisfaction of the Commissioner to have been part of the normal expenditure of the deceased, and to have been reasonable having regard to the amount of his income or to the circumstances, or which in the case of any donee do not exceed in the aggregate one thousand dollars in value or amount; Provided also that where property taken under a disposition purporting to act as an immediate gift *inter*

the death of the deceased by reason only that the property was not, as from the date of the disposition, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for a period of three years immediately preceding the death of the deceased;

- (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; 44 & 45 Vict. c. 12, s. 38 (2); 52 & 53 Vict. c. 7, s. 11; 57 & 58 Vict. c. 30, s. 2 (1).
- (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; 44 & 45 Vict. c. 12, s. 38 (2); 52 & 53 Vict. c. 7, s. 11; 57 & 58 Vict. c. 30, s. 2 (1).
- (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; and 57 & 58 Vict. c. 30, s. 2 (1).
- (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. 25 & 26 Vict. c. 22, s. 39.

(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 three years before his death where possession and enjoyment of the property was *bona 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: Provided that where property taken under such a disposition as aforesaid is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of the disposition, retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to be so included. 57 & 58 Vict. c. 30, s. 2 (3); 10 Edw. 7, c. 8, s. 59.

of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid and of any benefit to him by contract or otherwise, for a period of three years immediately preceding the death of the deceased.

Exception to passing of property on enlargement of interest of settlor. 59 & 60 Vict. c. 28, s. 14.

(3) Where property is settled by a person on himself for life, and after his death on any other person with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of this Ordinance to pass to the settlor on the death of any such other person after the commencement of this Ordinance, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to dispose of the whole property.

Reverter of property to disponent. 59 & 60 Vict. c. 28, s. 15.

(4) (a) Where by a disposition of any property an interest is conferred on any person other than the disponent for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponent or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person the property shall not be deemed for the purposes of this Ordinance to pass by reason only of its reverter to the disponent in his lifetime.

(b) Where by a disposition of any property any such interest as above in this sub-section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this sub-section shall apply in like manner as where the interest is conferred on one person.

(c) Provided that paragraphs (a) and (b) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

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

Exceptions for transactions for money consideration, property situate outside the Colony, shares on local registers and certain land in the New Territories. 57 & 58 Vict. c. 30, s. 3.

(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) property situate outside the Colony;

(3) any share or other interest of a deceased member of a company registered in a local register under the Companies Ordinance, 1911;

Ordinance No. 58 of 1911, s. 35 (b).

(4) any land situated in the New Territories in respect of which a successor has been registered by the Land Officer under the first clause of section 29 of the New Territories Regulation Ordinance, 1910; Provided that this exception shall not apply to any land which forms part of an estate of which probate

Ordinance No. 34 of

or letters of administration have been granted by the Supreme Court.

(5) Any share or other interest of a deceased member of a China company, as defined by the Companies Ordinances 1911, and 1925 in such company.

7. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is payable shall be aggregated so as to form one estate.

Aggregation of property to form one estate for purpose of estate duty. 57 & 58 Vict. c. 30, s. 4.

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

Payment of estate duty. 57 & 58 Vict. c. 30, s. 6. Mode of payment.

(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, on delivering the affidavit for the Commissioner by stamps affixed thereon, 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.

(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 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 six months after the death, by the person accountable for the estate duty; or within such further time as the Commissioner may allow. Such duty shall be paid on delivering the account.

Collection from others than executor.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

Estate includes accrued income.

(6) Interest at the rate of four 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 six months after the death, whichever first happens, and subject as aforesaid interest at the rate of eight per cent. per annum for the period during which it remains unpaid shall accrue on the estate duty payable.

Interest payable on estate duty.

(7) 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 one thousand dollars or two and a half per cent. of the ascertained value of the estate, which—

Allowance for debts and funeral expenses. 57 & 58 Vict. c. 30 s. 7 (1).

ever is the smaller, and for debts and incumbrances, but an allowance shall not be made—

- (a) for debts incurred by the deceased and incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration for 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.

Limitation on debts deductible from value of estate. 10 Edw. 7, c. 8, s. 57.

(2) Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy in any property passing or deemed to pass on the death of a deceased person, and any person whose interest in a expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that:—

- (a) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and
- (b) if a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

(3) No allowance shall be made for debts due from the deceased, other than debts contracted in the Colony to persons ordinarily resident therein, unless charged on property situate within the Colony.

Value of property. 57 & 58 Vict. c. 30 s. 7 (5). 10 Edw. 7, c. 8, s. 60.

(4) (a) 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.

(b) In estimating such principal value the Commissioner shall make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time: Provided that where it is proved to the Commissioner that the value of the property has been depreciated by the reason of its

death of the deceased the Commissioner in fixing the price shall take such depreciation into account.

(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—

Interest in expectancy.
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.

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

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

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

7 (7).

(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.

(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.

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

(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.

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

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.

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

(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

Service. Exchequer Rules, 1860, r. 3.

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).
Ordinance
No. 3 of
1901.

(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, 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.
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 think fit.

may also require any such person to deliver to him and verify on oath a statement in writing of such particulars.

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

Protection of *bonâ fide* purchaser without notice.
57 & 58 Vict. c. 30, s. 8 (18).

(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.

Affidavits and accounts to be delivered to the Commissioner.

(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.

Final ascertainment of amount of estate 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.

Repayment of excess duty.
57 & 58 Vict. c. 30, s. 8 (12).

(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.

Duty to disclose 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 require disclosure of liability to further 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.

Power to remit interest on estate duty.

(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 applicable Schedule remaining unpaid for which he is accountable.

Penalties for breach of foregoing provisions.
57 & 58 Vict. c. 30, s. 8 (6).

Probate not to be issued until estate duty paid.

11.—(1) No probate or letters of administration shall be issued by the 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-sections (2) and (3).

When value cannot be ascertained immediately

(2) When the affidavit for the Commissioner contains the statement and undertaking specified in section 8 (3), the Commissioner may allow payment of the whole or any part of the estate duty to be postponed until after the issue of probate or letters of administration 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 or letters of administration 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.

Deferred payment. 57 & 58 Vict. c. 30, s. 8 (9).

(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 eight per cent. per annum or any higher interest yielded by the property, and on such terms as the Commissioner may think fit.

(4) Where the Commissioner allows payment to be postponed under sub-section (2), he may reduce or remit any interest payable.

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 applicable 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 or its equivalent had been obtained from a competent court 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.

Duty of Executor as to unregistered shares.

13.—(1) Every executor, within one year after obtaining probate or letters of administration to the estate of a deceased person and before selling or otherwise disposing of any shares in any company, registered under or incorporated by any Ordinance of this Colony, of which shares the deceased person was at the date of his death the beneficial owner under a transfer in blank and not the registered owner, shall cause such shares to be transferred on the registers of the appropriate companies into the name of the deceased, who shall then be deemed to have been so registered at the time of his death.

(2) Every such company, notwithstanding anything in any enactment or in its constitution, memorandum, articles or regulations to the contrary, shall effect registration on payment of the usual registration charges (if any) and in default shall be liable on

(3) 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 applicable Schedule.

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 *bona fide* purchaser thereof for valuable consideration without notice.

Charge of estate duty on property. 57 & 58 Vict. c. 30, s. 9.

(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.

Reimbursement of executor.

(3) A person authorised 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.

Raising estate duty by sale mortgage or terminable charge.

(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 authorised 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.

Appropriation of estate duty. 57 & 58 Vict. c. 30, s. 14.

(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, and where the amount claimed does not exceed one thousand dollars such application shall be made to the Supreme Court in its summary jurisdiction.

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 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.

Appeal to Supreme Court on payment of or giving security for duty claimed.

57 & 58 Vict. c. 30, s. 10.

17.—(1) Any person aggrieved by the decision of the Commissioner with respect to 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 three 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. Where the value as alleged by the Commissioner of the property in respect of which the dispute arises does not exceed \$100,000, the appeal under this section shall be to the Supreme Court in its summary jurisdiction.

No appeal from decision of Supreme Court without leave.

Costs of appeals. Interest on excess repaid.

(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.

(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.

Payment of duty before appeal may be dispensed with.

(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 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 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 applicable Schedule to this Ordinance payable upon the estate so dealt with, at the election of the Commissioner. Provided that the disclosure of any trust relating to property in any such schedule shall not constitute notice of the trust as against any purchaser or mortgagee for valuable consideration.

(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.

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 applicable Schedule payable upon the whole estate of the deceased.

Penalties
for inter-
meddling.

(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 applicable 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 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 applicable 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 applicable 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.

Disclosure of interest of deceased person in shop, bank, etc.

Ordinance No. 58 of 1911.

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 a penalty of five hundred dollars shall be recoverable from the owner or owners of the said shop, bank or other business.

(2) Where the said shop, bank or other business is carried on in a firm name, the said penalty of five hundred dollars shall also be deemed to be due from the firm and may be recovered in an action against the firm in the said firm name.

(3) In any proceedings for the recovery of the penalty prescribed by this section, the onus of proving that he has not rendered himself liable to the penalty shall be upon the person or firm from whom it is sought to recover it.

Executor's accounts.

21. At any time or times after the expiration of six months from the date of the probate or letters of administration, 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 two months from the date of the service of such notice at such address, 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 upon summary conviction be personally liable to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding six 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 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 applicable Schedule.

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

23. 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.

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.

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.

Relief in the case of certain settlements. 57 & 58 Vict. c. 30, s. 5 (2). 4 & 5 Geo. 5, c. 10, s. 14.

(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.

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 the death occurs on or after the 27th day of February, 1931), in respect of the property so passing shall be reduced as follows:—

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

- 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.

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.

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

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.

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

(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 27th day of February 1931, 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.

Calculation of reversionary interests. Third Schedule. **29.** The table in the Third Schedule may be used, where applicable, in the calculation of reversionary interests.

Repeal of Ordinances No. 16 of 1915 and No. 6 of 1931. **30.** The Estate Duty Ordinance, 1915, and the Estate Duty Amendment Ordinance, 1931, are repealed.

FIRST SCHEDULE.

[ss. 3, 4, 10, 12,
13, 18, 19 & 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

SECOND SCHEDULE.

[ss. 3, 4, 10, 12,
13, 18, 19 & 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	1,000	1
" 1,000	" 10,000	2
" 10,000	" 100,000	3
" 100,000	" 250,000	5
" 250,000	" 500,000	5.50
" 500,000	" 750,000	6
" 750,000	" 1,000,000	6.50
" 1,000,000	" 1,500,000	7
" 1,500,000	" 2,500,000	7.50
" 2,500,000	8

THIRD SCHEDULE.

Table for use, where applicable, in the calculation of Reversionary interests.

<i>Years of age.</i>	<i>Value.</i>	<i>Years of age.</i>	<i>Value.</i>	<i>Years of age.</i>	<i>Value.</i>
	\$		\$		\$
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.

This Bill consolidates the Ordinances relating to Estate Duty, Ordinance No. 16 of 1915 and Ordinance No. 6 of 1931 with slight amendments which are indicated in the Table of Correspondence attached to it.

C. G. ALABASTER,
Attorney General.

June, 1931.

TABLE OF CORRESPONDENCE

BETWEEN

THE NEW CONSOLIDATION ESTATE DUTY ORDINANCE
AND ORDINANCE NO. 16 OF 1915.

New Ordinance Section	Ordinance No. 16 of 1915 Section.	Remarks.
1	1	Short title.
2	2	As amended by No. 6 of 1931, s. 2.
3	3	As amended by No. 6 of 1931, s. 3. Ordinance No. 6 of 1931, was gazetted and commenced on 27/2/31 see No. 31 of 1911, ss. 5 and 6.
4	4	As amended by No. 6 of 1931, s. 16, the proviso to which is made the second proviso to section 4.
5	5	As amended by No. 6 of 1931, s. 3 (2). In the second proviso to sub-section (1) (c) "the date" substituted for "that date", "after the commencement of this Ordinance" deleted in sub-section (4) (a).
6	6	As amended by No. 6 of 1931, s. 4. "or by any Ordinance which may amend or be substituted for the same" deleted from sub-section (5) as inconsistent with sub-section (3) and unnecessary because of No. 31 of 1911 s. 14.
7	7	
8	8	As amended by No. 6 of 1931, s. 5
9	9	As amended by No. 6 of 1931, s. 6.
10	10	As enacted by No. 6 of 1931, s. 7. "of" inserted after "in respect of all property", in sub-section (4).
11	11	
12	12	As enacted by No. 6 of 1931, s. 8.
13	13	ss. (1) replaces ss (1) as enacted by No. 6 of 1931; s. 9 and, instead of requiring the executor to register certain shares in his own name, requires him to register as the deceased's the latter's shares in local companies held under blank transfers. ss. (2) is new and requires the companies to effect such registration. ss. (3) is ss. (2) as enacted by No. 6 of 1931, s. 9.
14	14	
15	15	
16	16	As amended by No. 6 of 1931, s. 10.
17	17	

Table of Correspondence

BETWEEN

THE NEW CONSOLIDATION ESTATE DUTY ORDINANCE

AND ORDINANCE No 16 OF 1915,—*Continued.*

New Ordinance Section.	Ordinance No. 16 of 1915 Section.	Remarks.
19	19	As enacted by No. 6 of 1931, s. 12.
20	20	As amended by No. 6 of 1931, s. 13. sub-sections renumbered consecutively.
21	21	
22	22	As enacted by No. 6 of 1931, s. 14.
23	23	
24	—	As enacted by No. 6 of 1931, s. 15.
25	—	— do —
26	—	Do. 27th day of February 1931 substituted for commencement of Ordinance.
27	—	— do —
28	—	— do —
29	—	<i>See</i> No. 6 of 1931, s. 16 (3).
30	—	Repeals No. 16 of 1915 and No. 6 of 1931.
First Schedule	—	Schedule to No. 6 of 1931.
Second Schedule	Second Schedule	
Third Schedule	Third Schedule	As amended by No. 6 of 1931, s. 16 (3).