

ESTATE DUTY BILL.—The Second reading of the Bill intituled An Ordinance to provide for the levy of Estate Duty payable in respect of the estates of deceased persons, was not proceeded with.

ADJOURNMENT.—The Council then adjourned until Thursday, the 27th day of May, 1915.

F. H. MAY,
Governor.

Read and confirmed this 27th day of May, 1915.

A. G. M. FLETCHER,
Clerk of Councils.

No. 234.—His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the King, to the following Ordinances passed by the Legislative Council:—

Ordinance No. 14 of 1915.—An Ordinance to authorize the Appropriation of a Supplementary Sum of Seven hundred and eighty-seven thousand two hundred and fifty-two Dollars and twenty-six Cents, to defray the Charges of the Year 1914.

Ordinance No. 15 of 1915.—An Ordinance to amend the Dentistry Ordinance, 1914.

Ordinance No. 16 of 1915.—An Ordinance to provide for the levy of Estate Duty payable in respect of the estates of deceased persons.

HONGKONG.

No. 14 OF 1915.

An Ordinance to authorize the Appropriation of a Supplementary Sum of Seven hundred and eighty-seven thousand two hundred and fifty-two Dollars and twenty-six Cents, to defray the Charges of the Year 1914.

I assent to this Ordinance.

LS

F. H. MAY,
Governor.

[28th May, 1915.]

WHEREAS it has become necessary to make further provision for the public service of the Colony for the year 1914, in addition to the charge upon the revenue of the Colony for the service of the said year already provided for:

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

A sum of Seven hundred and eighty-seven thousand two hundred and fifty-two Dollars and twenty-six Cents, is hereby charged upon the revenue of the Colony for the service of the year 1914, the said sum so charged being expended as hereinafter specified; that is to say:—

Governor,	\$ 329.29
Treasury,	603.60
Harbour Master's Department,	1,677.98
Miscellaneous Services,	688,003.62
Police and Prison Departments,	1,749.52
Botanical and Forestry Department, .	767.14
Military Expenditure,—Volunteers, .	2,544.80
Public Works, Recurrent,	86,100.18
Kowloon-Canton Railway,	3,157.39
Charitable Services,	2,318.74
Total,	\$ 787,252.26

Passed the Legislative Council of Hongkong, this 27th day of May, 1915.

A. G. M. FLETCHER,
Clerk of Councils.

Assented to by His Excellency the Governor, the 28th day of May, 1915.

CLAUD SEVERN,
Colonial Secretary.

HONGKONG.

No. 15 OF 1915.

An Ordinance to amend the Dentistry Ordinance, 1914.

I assent to this Ordinance.

LS

F. H. MAY,
Governor.

[28th May, 1915.]

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

Short title.

1. This Ordinance may be cited as the Dentistry Amendment Ordinance, 1915, and shall be read and construed as one with the Dentistry Ordinance, 1914, hereinafter called the Principal Ordinance, and the Principal Ordinance and this Ordinance may be cited together as the Dentistry Ordinances, 1914 and 1915.

Amendment of Ordinance No. 16 of 1914, s. 2.

2. Section 2 of the Principal Ordinance is amended by the omission of the words "the administration of any general or local anaesthetic" in the definition of the term "Dental operation".

Passed the Legislative Council of Hongkong, this 27th day of May, 1915.

A. G. M. FLETCHER,
Clerk of Councils.

Assented to by His Excellency the Governor, the 28th day of May, 1915.

CLAUD SEVERN,
Colonial Secretary.

HONGKONG.

No. 16 OF 1915.

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

I assent to this Ordinance.

LS

F. H. MAY,
Governor.

[28th May, 1915.]

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

1. This Ordinance may be cited as the Estate Duty Ordinance, 1915, and shall come into force on the 1st day of January, 1916. Short title.

2. From and after the commencement of this Ordinance the several enactments specified in the First Schedule are hereby amended to the extent set out therein. Amendments.

3.—(1.) In this Ordinance, unless the context otherwise requires,— Interpretation of terms.
57 and 58
Vict. c. 30,
s. 22 (1).

“Commissioner” means the Registrar of the Supreme Court, or such other person as the Governor may, by notification in the *Gazette*, appoint to carry out the provisions of this Ordinance: Commissioner.

“Deceased Person” and “The Deceased” mean a person dying after the commencement of this Ordinance: Deceased Person.
The Deceased.

“Estate Duty” means estate duty under this Ordinance: Estate Duty.

“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: Executor.

“Incumbrances” include mortgages and terminable charges: Incumbrances.

“Interest in expectancy” includes an estate in remainder or reversion and every future interest whether vested or contingent, but does not include a reversion expectant upon the determination of leases: Interest in expectancy.

“Property” includes movable and immovable property, and the proceeds of sale thereof, and any money or investment for the time being representing the proceeds of sale, and any estate in any property movable or immovable and any debt and any thing in action and any other right or interest in the nature of property whether in possession or not: Property.

“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 the expression “on the death” includes “at a period ascertainable only by reference to the death”:

“Prescribed” means prescribed by Rules made by the Governor-in-Council under this Ordinance: Prescribed.

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

57 and 58
Vict. c. 30,
s. 22 (2).

(2.) For the purpose of this Ordinance,—

A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable either in a fiduciary capacity under a disposition not made by himself or as mortgagee.

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

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

Estate duty.
57 and 58
Vict. c. 30,
s. 1.

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

57 and 58
Vict. c. 30,
s. 21 (2).

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

57 and 58
Vict. c. 30,
s. 1.

(3.) The probate duty payable under the Stamp Ordinance, 1901, shall not be levied in respect of any property chargeable with estate duty under this Ordinance.

What
property is
deemed to
pass on
death.

57 and 58
Vict. c. 30,
s. 2 (1):

63 Vict. c. 7,
s. 11:

10 Edw. 7
c. 10, s. 59.

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

(a.) property of which the deceased was at the time of his death competent to dispose;

(b.) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest, and such property shall be deemed to pass on the death of the deceased notwithstanding that 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 afore-

said, and of any benefit to him by contract or otherwise, for a period of three years immediately preceding the death of the deceased: And provided 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;

- (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: And provided that where property taken under a disposition purporting to act as an immediate gift *inter vivos* 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 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;
- (e.) property passing under any past or future settlement made by the deceased by deed or any other instrument not taking effect as a will, whereby an interest in such property, or the proceeds of sale thereof, for life or any other period determinable by reference to death is reserved, either expressly or by implication, to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property or the proceeds of sale thereof;
- (f.) any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

44 and 45
Vict. c. 12,
s. 38 (2):

52 and 53
Vict. c. 7,
s. 11:

57 and 58
Vict. c. 30,
s. 2 (1):

10 Edw. 7
c. 8, s. 59.

44 and 45
Vict. c. 12,
s. 38 (2):

52 and 53
Vict. c. 7,
s. 11:

57 and 58
Vict. c. 30,
s. 2 (1).

44 and 45
Vict. c. 12,
s. 38 (2):

52 and 53
Vict. c. 7,
s. 11:

57 and 58
Vict. c. 30,
s. 2 (1).

57 and 58
Vict. c. 30,
s. 2 (1).

Trust property.

57 and 58
Vict. c. 30,
s. 2 (3):

10 Edw. 7
c. 8, s. 59.

(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 *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise: 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 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.

Exception to passing of property on enlargement of interest of settlor.

59 and 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 and 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 after the commencement of this Ordinance the property shall not be deemed for the purpose 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 the foregoing sub-section 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.

Exceptions for transactions for money consideration, property situate outside the Colony, and shares on local registers.

57 and 58
Vict. c. 30,
s. 3.

Ord. No. 58
of 1911, s. 35
(8) (b.).

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

(1.) Property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes nor in respect of the determination of any annuity for lives where such purchase was made or such annuity granted for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit. Where any such purchase was made, or annuity granted for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(2.) 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.

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 and 58
Vict. c. 30,
s. 4.

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

Payment of estate duty.
57 and 58
Vict. c. 30,
s. 6.

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

Collection and recovery.

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

Provision for unknown values.

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

Collection from others than executor.

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

Interest payable on estate duty.

(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 \$1,000 or $2\frac{1}{2}$ per cent. of the ascertained value of the estate, whichever is the smaller, and for debts and incumbrances, but an allowance shall not be made:—

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

(a.) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest; nor

- (b.) for any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor
- (c.) more than once for the same debt or incumbrance charged upon different portions of the estate;

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

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 the death of a deceased person, and any person whose interest in 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.

Debts due to persons resident out of the Colony.

57 and 58 Vict. c. 30, s. 7 (2).

Value of property.

57 and 58 Vict. c. 30, s. 7 (5):

10 Edw. 7 c. 8, s. 60.

(3.) 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.

(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 not make any reduction in the estimate on account of the estimate being made on the assumption that 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 reason of the death of the deceased the Commissioner in fixing the price shall take such depreciation into account.

Filing of accounts of property.

57 and 58 Vict. c. 30, s. 8 (3).

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

(2.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property and shall within the time required by this Ordinance or such later time as the Commissioner allows deliver to the Commissioner and verify an account for the Commissioner to the best of his knowledge and belief, of the property: Provided that nothing in this sub-section shall render liable to or accountable for estate duty a *bonâ fide* purchaser for valuable consideration without notice.

Beneficiaries and trustees accountable for estate duty.

57 and 58
Vict. c. 30.
s. 8 (4), (18).

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

Powers of Commissioner.

57 and 58
Vict. c. 30.
s. 8 (5), (6).

Penalties for not delivering account, &c.

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

Persons entitled to deliver without representation not liable.

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

Affidavits and accounts to be delivered to the Commissioner.

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

Inspection of property.
57 and 58
Vict. c. 30,
s. 7 (8).

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

Costs of valuation.
57 and 58
Vict. c. 30,
s. 7 (9).

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

Certificate.

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

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-section (2) or (3) of this section.

When value cannot be ascertained immediately.

(2.) When the affidavit for the Commissioner contains the statement and undertaking specified in section 8 sub-section (3) of this Ordinance, the Commissioner may allow payment of the whole or any part of the estate duty to be postponed until after the issue of probate 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 and 58
Vict. c. 30,
s. 8 (9).

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

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

Increase of estate duty when delay in lodging affidavit, &c.
Ord. No. 16
of 1901,
s. 24.

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

Re-payment of excess.
57 and 58
Vict. c. 30,
s. 8 (12).

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

Further affidavit of account.
57 and 58
Vict. c. 30,
s. 8 (7).
Ord. No. 16
of 1901,
s. 25.

(2.) If it shall be at any time discovered that for any reason too little estate duty has been paid the person accountable for estate duty shall within one month of the discovery deliver a further affidavit or further account and shall pay the difference between the estate duty chargeable according to the true value of the estate and the estate duty already paid and shall at the same time pay to the Commissioner interest upon the duty at the rate per annum mentioned in section 8 sub-section (6) from the date of the death or from such subsequent date as the Commissioner may in the circumstances think proper. Such additional estate duty shall be paid by stamps affixed to the original

affidavit or account. If any person who ought to deliver a further affidavit or account as in this sub-section mentioned neglects to do so within the prescribed period he shall forfeit the sum of \$1,000 and shall also be liable to pay treble the amount of additional estate duty chargeable and the same shall be a debt due from him to the Crown and be recoverable in the same way as Crown rents may be recovered.

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

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

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

Interest in expectancy.
57 and 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 to be ascertained and determined in respect of an interest expectant on the determination of any life interest in any property, annuity or annual sum for life, by reference to the table contained in the Third Schedule; and

(b.) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

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

Value of interests ceasing on death.

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

Charge of estate duty on property.
57 and 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.

Re-imbursment of executor.

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

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".

- Apportionment of estate duty. 57 & 58 Vict. c. 30, s. 14. **15.—(1.)** In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorized or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provision to the contrary.
- Disputes. **(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 \$1,000 such application shall be made to the Supreme Court in its Summary Jurisdiction.
- Parties bound by accounts as settled. **(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.
- Remission and refunding of estate duty on certain grounds. Ord. No. 16 of 1901, s. 26. **16.** The Governor-in-Council may remit the payment of any estate duty or may order a refund by treasury warrant of the whole or any portion of any estate duty which may have been paid to the Commissioner, for the remission or refund of which any equitable claim is proved to his satisfaction.
- 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 of the amount of estate duty payable on an affidavit or account or with respect to the repayment of any excess duty or to any claim for additional duty by the Commissioner and whether he is aggrieved on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security for, as hereinafter mentioned, the duty claimed by the Commissioner or such portion of it as is then payable by him, appeal to the Supreme Court within 3 months from the date of the decision and the amount of the duty shall be determined by the Supreme Court and if the duty is less than that paid to the Commissioner the excess shall be repaid. 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. **(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.
- Costs of appeals. **(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.
- Interest on excess repaid.
- 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 so paid, but in such case the Court may order interest at such rate per cent. per annum as appears to the Court just to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.
- Schedule of property to be annexed to probate. **18.—(1.)** A schedule of the property of a deceased person in respect of which estate duty has been paid shall be annexed to the probate or letters of administration granted to his executor. Any person who shall, subsequent to the date of a probate or of any letters of administration, in any way deal with any property of the deceased not set out in the said schedule upon which estate duty is payable

shall forfeit the sum of \$500, which sum shall be a debt due to the Crown and be recoverable in the same way as Crown rents may be recovered. Penalty.

(2.) Whenever a further affidavit is delivered under section 13 sub-section (2) the probate 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.) If any person in any way administer any part of an estate of a deceased person in respect of which estate duty is chargeable or of the income of any part of such estate without delivering an affidavit for the Commissioner or an account (as the case may be) within six months after the decease or within two months after the termination of any action or proceeding respecting the will or the right to letters of administration, if there be any such which is not ended within four months after such decease, every such person shall forfeit the sum of \$1,000, and shall also be liable to pay three times the amount of estate duty chargeable upon the estate of the deceased. Penalties for inter-meddling. 55 Geo. 3 c. 184, s. 37: 57 & 58 Vict. c. 30, s. 8 (1), (4): Ord. No. 16 of 1901, s. 27.

(2.) If any person, except for the purpose of the burial of the decease and for the due maintenance of his family, take possession of or in any way administer any part of the estate of a deceased person without having first notified the Commissioner of the death of the deceased and of the extent of his estate so far as such person is aware of the same, every such person shall forfeit the sum of \$1,000.

(3.) Each of the said sums of \$1,000 referred to in subsections (1) and (2) of this section shall be deemed to be a debt due to the Crown and shall be recoverable in the same way as Crown rents may be recovered.

(4.) Nothing in the section shall be deemed to interfere with any special powers conferred by law upon any person to act without obtaining probate or letters of administration.

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

(2.) The said sum of \$500 shall be deemed to be a debt due to the Crown and shall be recoverable in the same way as Crown rents may be recovered.

(3.) Where the said shop, bank or other business is carried on in a firm name the said sum of \$500 shall also be deemed to be a debt due from the firm and may be recovered in an action against the firm in the said firm name.

(4.) 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.

21. At any time or times after the expiration of 6 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 Executor's accounts.

account with the Commissioner and shall verify the same to his satisfaction within the further period of one month, and in default the executor shall, on summary conviction, be personally liable to a fine not exceeding \$1,000 or to imprisonment for a period not exceeding 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.

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

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.

Passed the Legislative Council of Hongkong, this 27th day of May, 1915.

A. G. M. FLETCHER,
Clerk of Councils.

Assented to by His Excellency the Governor, the 28th day of May, 1915.

CLAUD SEVERN,
Colonial Secretary.

THE FIRST SCHEDULE. [s. 2.]

The Probates Ordinance, 1897.

Section 2 is amended by the insertion at the end thereof of the following definition:—

“Estate duty” means estate duty under the Estate Duty Ordinance, 1915.

Section 19 is amended by the substitution of the figures “250” for the figures “50” in the third line thereof.

Section 24 is amended by the substitution of the words “the gross value of all property of whatsoever nature” for the words “all moneys” in the second line thereof.

Section 67 (2) is amended by the insertion of the words “or estate duty” after the words “probate duty” in the third and fourth lines thereof.

Section 67 (5) is amended by the insertion of the words “or estate duty” after the words “probate duty” in the first line thereof.

Section 71 (2) is amended by the insertion of the words “or estate duty” after the words “probate duty” in the third and fourth lines thereof.

The Companies Ordinance, 1911.

Section 35 is amended by the renumbering of paragraph (c) of sub-section (8) as sub-section (9) and by the insertion of the following paragraph after paragraph (b) of sub-section (8):—

“(c.) No estate duty under the Estate Duty Ordinance, 1915, shall be payable in respect of
“the share or other interest of a deceased
“member registered in a local register under
“this Ordinance.”

THE SECOND SCHEDULE. [s. 4.]

Where the Principal Value of the Estate				Estate Duty shall be payable at the rate per cent. of
Exceeds	\$	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

THE THIRD SCHEDULE. [s. 13 (4), (5).]

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

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