



Western Australia.

ANNO QUINQUAGESIMO NONO

VICTORIÆ REGINÆ.

No. XVIII.

AN ACT for imposing Duties on the Estates
of Deceased Persons.

[Assented to, 2nd October, 1895.]

MOST GRACIOUS SOVEREIGN,—

WE, Your Majesty's most dutiful and loyal subjects, the Legislative Assembly of Western Australia, in Parliament assembled, towards raising the necessary supplies to defray your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; And do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as "The Duties on Deceased Persons Estates Act."

Short Title.

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interpretation.

2. IN the construction of this Act, unless otherwise expressly provided, or the subject or context requires a different construction:—

“Administrator” shall mean any person to whom, after the commencement of this Act, letters of administration of the estate of any person deceased intestate shall be granted by the Court.

“Administrator with the will annexed” shall mean any person to whom, after the commencement of this Act, letters of administration with the will annexed of the estate of any person deceased shall be granted by the Court.

“Court” shall mean the Supreme Court of Western Australia.

“Final balance” shall mean the balance appearing upon any statement certified by the Master of the said Court.

“Master” shall mean the Master of the said Court.

“Rules” shall mean the rules to be made by the Governor under this Act, and “prescribed” shall mean prescribed by the said rules.

“Trustee” shall mean the trustee or trustees of any settlement containing trusts or dispositions to take effect after the settlor's death.

Power to make rules.

3. THE Governor may from time to time frame, and from time to time repeal or alter rules and forms for giving effect to this Act, and all such rules and forms shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament within fourteen days after such publication if Parliament be then sitting, and, if Parliament be not then sitting, within fourteen days after its next meeting; and all such rules and forms when so published shall have the force of law, and shall continue in force unless repealed or altered as aforesaid, or disallowed by both Houses of Parliament.

Statements to be filed.

4. THE following statements of the estates of deceased persons shall be filed in the Master's office:—

- (1.) Every administrator shall, within three months from the grant of letters of administration to him, or such further time as the Master may allow, file a statement specifying the particulars of the personal estate of which the deceased was possessed, or to which he was entitled at his death, and the value thereof,

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and a statement of the debts due by the deceased, and showing the balance (if any) after deducting the amount of the debts from the personal estate of the deceased. No debt due by the deceased shall be included in such statement if the amount thereof is secured by mortgage of real estate unless the security is insufficient, and then the difference between the amount of the debt and the value of such security shall be included in the said statement as a debt of the deceased.

- (2.) Every executor and every administrator with the will annexed shall, within three months from the grant of probate or letters of administration to him, or such further time as the Master may allow, file a statement specifying the particulars of the personal estate of which the deceased was possessed, or to which he was entitled at his death, and of the real estate comprised in such will, and the value thereof, and of the debts due by the deceased, distinguishing between secured and unsecured debts, and stating the nature of the security held for the same, and the estimated value of such security, and showing the balance remaining after deducting the amount of the debts from the value of the estate of the testator. Secured debts shall mean any debts in respect of which there exists any mortgage, charge, or lien on the real or personal estate of the deceased.
- (3.) Every executor or administrator shall, within three months from the grant of probate or letters of administration to him, or such further time as the Master may allow, file a statement specifying the situation and extent of the freehold lands of or to which the deceased died seised or entitled, being intestate in respect thereof, and the value of such lands, and stating whether any, and (if any) which of such lands are subject to any mortgage or charge, and the amount thereof, and stating the balance (if any) after deducting the amount of such mortgages and charges from the value of the whole of the said lands.
- (4.) In cases of probates or letters of administration limited to any particular property of a testator or intestate, the executor or administrator shall file a statement specifying the particulars of such property and its value, and stating the nature and amount of any mortgage, charge, or lien thereon, and stating the balance

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remaining after deducting the amount of such mortgages, charges, and liens from the value of the said property, and he shall pay to the Master the duty mentioned in the Second Schedule to this Act, calculated upon the final balance.

Section not to apply when Estate does not exceed £1,500, save as required by Master.

In any case Master may require statement.

Save so far as the Master shall require, this section shall not apply to any person to whom are granted probate or letters of administration of any estate the total value of which, after deducting therefrom all debts, does not exceed One thousand five hundred pounds; but, nevertheless, every such person shall, if required by the Master, file such statements as are required by this section, or such other statement or particulars of property and of debts and liabilities in such form, and verified in such manner and by the oaths of such persons as the Master may, in his discretion, require. Any statement may be altered or varied with the permission of the Master, or as he may direct, and, when finally approved by him, shall be certified by his signature, and the certificate of the Master shall be final and subject to no appeal.

Court may order executor or administrator to file statement required by preceding section.

5. IF any executor or administrator shall fail to file a statement as required by the last preceding section of this Act, the Court may, on the application of the Master, or of counsel instructed by him, order that such executor or administrator do file such statement within a time to be named in such order, and may enforce such order as orders are now enforced by the Court, and may make such order as to costs as shall seem just.

Statements to be in form and verified as in First Schedule.

6. THE respective statements required by the Fourth Section of this Act shall contain the particulars of property and of debts and liabilities respectively required, and shall be in the form, and verified by the affidavit contained in the First Schedule to this Act, with such necessary alterations or additions as the circumstances may require.

Voluntary settlements to be registered.

7. SUBJECT to the exceptions hereinafter mentioned, every settlement of property made after the commencement of this Act by any person containing trusts or dispositions to take effect after his death shall, upon the death of the settlor, be registered within two months therefrom, or such further time as the Master may allow, in the Master's office; and no such trusts or dispositions shall be valid unless such settlement be registered in the said office.

No settlement shall be registered unless the trustee or some person interested under the settlement have filed a statement setting forth the nature of the property and the value thereof in like manner as is required of executors under a will or otherwise as Rules may prescribe, or to the satisfaction of the Master.

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The trustee of such settlement, or some other person, shall, before registration, pay or secure to the satisfaction of the Master the duty by this Act imposed.

If any such settlement be not registered within the time or times aforesaid, the Master may assess the duty payable in respect of such settlement, and give notice of such assessment to the trustee thereof, and if such duty be not paid within two months or other the prescribed time after such notice, the Master or any person interested may apply to the Court, which may order that a sufficient part of the property included in such settlement be sold, and the proceeds of the sale be applied in payment of the duty and of the order and sale, and consequent thereon.

There shall be excepted from the operation of this section all ante-nuptial settlements, all post-nuptial settlements made in pursuance of an agreement entered into before marriage, all settlements, on or for the wife, or her issue, or the issue of the settlor, of property which has accrued to the settlor after marriage in right of his wife, and all settlements made in favour of a purchaser or incumbrancer in good faith and for valuable consideration.

8. WHENEVER any question arises with regard to the statements hereinbefore required, or any of the particulars thereof, the Master may state a case for the opinion of the Court and the Court shall give its judgment thereon, and such judgment shall be binding on the Master.

Power to state case for Court.

9. IF the Master shall be dissatisfied with the value put upon any real or personal estate in any statement filed as hereinbefore required, he shall appoint a valuator to value such real or personal estate, or any part thereof, and shall communicate his valuation to the executor, administrator, or trustee, and, if there is any difference between the value as set forth in the said statement and such valuation, the Master may agree with the executor, administrator, or trustee, upon the value to be adopted, or may summon before him the executor, administrator, or trustee, or his valuator, and the valuator so appointed by the Master and other persons, and may administer oaths and take evidence either *viva voce* or by affidavit, and require the production of books, papers, accounts and documents. Every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in the equity jurisdiction of the Court are bound to attend and give evidence, and subject to the like consequences in case of default.

Valuation of estate when Master or executor or administrator is dissatisfied.

The Master shall, upon such evidence as aforesaid, determine the value of such real or personal estate, and any executor, administrator, or trustee who is dissatisfied or (if there shall not have been

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any summons issued by the Master) who is dissatisfied with the valuation of the valuator appointed by the Master, may within twenty-one days after such determination, or the communication of such valuation, whichever may be appealed against, and upon paying or securing to the satisfaction of the Master the duty in conformity therewith, appeal to the Court against such determination or valuation: Provided that either party may require the matter in dispute to be tried by a jury.

If it is decided by the Court or the Judge or jury that the value upon which such duty has been paid or secured is excessive, the Court or Judge shall direct the repayment or remission of the duty in respect of such excess, together with the costs of appeal.

But, if the value determined by the Master is confirmed, the costs incurred by him in relation to the appeal shall be ordered by the Court or Judge to be paid by the appellant.

Duties imposed.

10. SUBJECT to the provisions of this Act, and except as herein otherwise provided, there shall be paid into the Consolidated Revenue Fund of Western Australia a duty calculated—

(a.) In the case of a will or an intestacy, whole or partial, on the amount of the final balance of the estate at the percentage for that amount set forth in the Second Schedule to this Act; and

(b.) In the case of a settlement, on the value of the settled property at the same percentage.

Deduction of £1,500 from dutiable amount of estate not exceeding £2,500.

Provided that where the final balance, or, in case of a settlement, the value of the property settled does not exceed Two thousand five hundred pounds, One thousand five hundred pounds shall be deducted from the final balance or value, and duty shall only be paid on the remainder of such balance or value, if any; but where the final balance or the value, as the case may be, exceeds Two thousand five hundred pounds, duty shall be paid on the whole amount thereof.

Provided further that, in so far as, by gift, devolution or succession under any will, intestacy, whole or partial, or succession under such a settlement as hereinbefore mentioned, beneficial interests pass to persons occupying towards the deceased the relationships set out in the Third Schedule hereto, the duty shall be calculated so as to charge only one-half of the percentage aforesaid upon the property so acquired by any such persons; and in respect of every other person entitled under any will, intestacy, or settlement, the full percentage shall be charged.

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11. IF within three months, or other the prescribed time, after notice to the executor, administrator, or trustee of the amount of duty payable under this Act, the same be not paid, the Master may apply to the Court, which may order that a sufficient part of the property of the deceased, or in case of a settlement of the property included therein, may be sold, and the proceeds thereof applied in payment of the duty and of the costs of the order and sale, and consequent thereon.

If duties unpaid, Master may apply to Court for a sale.

12. THE duty payable under this Act shall be deemed a debt of the testator or intestate to Her Majesty, and shall be paid by any executor or administrator out of the personal estate of the testator or intestate after payment of the funeral and testamentary expenses, in priority to all other debts, and, if the personal estate be insufficient, the executor or administrator shall satisfy the same out of the real estate.

Duties payable out of personal estate.

13. SUBJECT to any special provision by a testator for the payment of the duty imposed by this Act, every executor or administrator with the will annexed, shall deduct from each and every devise, bequest, or legacy, and in every case of intestacy an administrator shall deduct from each distributive share, an amount equal to the duty upon the same respectively; and, subject to any special provision by a settlor for the payment of duty, the beneficial interests under a settlement such as by this Act is required to be registered shall contribute proportionally to the duty payable on the estate of the settlor; reference being had in each case to the relationship of the beneficiary to the testator or settlor.

Duty to be deducted from beneficial interests under will or settlement.

14. IF, after the grant and before the issue of probate or letters of administration, the duty in respect thereof is secured to the satisfaction of the Master, or is in part paid and in part so secured, the Master shall cause the probate or letters to be produced at his office and before any Court at the expense of the executor or administrator as occasion may require; but no probate or letters of administration shall issue from the Master's office until the duty or fee (if any), as the case may be, payable under this Act has been paid. On the issue of probates or letters of administration, the Master shall certify by indorsement that the duty has been paid, and the amount thereof, or that no duty is payable thereon, as the case may be.

Probate and letters may be produced, but may not issue till duty paid. Master to certify duty paid or not dutiable.

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

Where too little duty has been paid.

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If too much duty has been paid.

16. IF, after any duty imposed by this Act has been paid, it shall be found that too much duty has been paid in consequence of debts of the testator or intestate being discovered which were not included in the statement, the Master, upon being satisfied of the existence of such debts by examination of the parties or otherwise, as he may think fit, shall order that the amount overpaid shall be returned to the person entitled to receive the same; and, upon any such order, the Governor shall issue his warrant for the payment of the amount specified in such order to the person named therein, and the Treasurer shall pay the same out of the Consolidated Revenue Fund.

Administrator pending minority or absence to pay duty.

17. EVERY administrator, or administrator with the will annexed, to whom letters of administration shall be granted, pending minority or absence from Western Australia, shall file the statements required by the Fourth Section of this Act, and pay the duty by this Act imposed; but no further duty shall be charged on the issue of letters of administration to the person entitled upon his coming of age or return to Western Australia.

Fees to be paid in certain cases.

18. NO probate pursuant to leave reserved, or letters of administration *de bonis non* or *pendente lite*, or limited to answer a suit, or to substantiate proceedings in equity or any other limited administration, shall be issued by the Master, unless upon the payment of a fee of Two pounds; but this Section shall not apply where the value of the estate in respect of which such probate or letters have been granted, after deducting all debts therefrom, does not exceed One thousand five hundred pounds.

Jurisdiction of Court under this Act.

19. UPON any application to the Court under this Act, all such persons as would be necessary and proper parties if such application were made in an action instituted by a creditor for the administration of a testator's or intestate's property, shall be entitled to notice, and may be heard thereon; but the Court may order substituted service, or dispense with service, on any such persons as it may think fit, and the Court, for the purpose of any application, may appoint guardians, or refer any question to the Master, as it may deem expedient; and, subject to this Act, the Court shall decide any such application upon the same principles as if the order were to be made in an action instituted by creditors to obtain payment of their debts out of the estate of a deceased person. And the Court may exercise, for the purposes of this Act, all or any of the powers it possesses, including the power to make rules of practice.

Court may make vesting orders.

20. WHERE any order shall have been made under the provisions of this Act for the sale of any lands, every person seised or possessed of such lands, or entitled to a contingent interest

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therein, shall be deemed to be so seised, possessed, or entitled (as the case may be), as a trustee or mortgagee unable or unwilling to act; and the Court may make an order vesting such lands, or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct. And every such order shall have the same effect as if such person so seised, possessed, or entitled had been free from all disability, and had duly executed all proper conveyances and assurances of such lands for such estate.

21. ANY person making, or assisting in making any false statement or any false alterations in any statement required by this Act or the Rules, with intent to evade the payment of duties by this Act imposed or to lessen the amount thereof, shall be deemed guilty of a misdemeanour, punishable by imprisonment for not less than a year and not more than three years, and a fine not exceeding One hundred pounds.

Fraudulent misstatement or alteration of statement.

22. (1.) IF any person shall make any conveyance, assurance, gift, or delivery of any real or personal property, security for money, or *chose in action* with intent to evade the payment of the duty imposed by this Act in case such person should die, the property so conveyed, assured, given, or delivered shall, upon the death of such person, be deemed, for the purposes of this Act, to form part of his estate, on which duty shall be payable if so required by this Act, and the payment of such duty may be enforced against such property in like manner as if such conveyance, assurance, gift, or delivery had been a devise or bequest.

Duty payable on property transferred in evasion of the Act.

(2.) Any conveyance, assurance, gift, or delivery which after or before the commencement of this Act is made, in escrow or otherwise, to take effect on the death of the person making the same, and not being a settlement excepted in the Seventh Section of this Act, shall be deemed to be made with intent to evade the payment of the duty imposed by this Act.

(3.) All property, the subject of a *donatio mortis causa*, shall, upon the death of the donor, be deemed to form part of his estate on which duty shall be payable if so required by this Act, and the payment of such duty may be enforced against such property in like manner as if such *donatio mortis causa* had been a bequest.

23. (1.) WHERE the Master is satisfied that in the United Kingdom duty is payable by reason of a death, in respect of any property situate in the United Kingdom, and passing on such death, the Master shall allow a sum equal to the amount of that duty to be

Exception as to property in United Kingdom.

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deducted from the duty payable in Western Australia under this Act in respect of that property on the same death.

(2.) Nothing in this Act shall be held to create a charge for the duty imposed by this Act on any property situate in the United Kingdom while so situate, or to authorise any proceedings to be taken in the United Kingdom for the recovery of such duty or any part thereof.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW, Administrator.

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Schedule I.

Section 6.

Statement of Assets and Liabilities.

	£ s. d.	£ s. d.		£ s. d.
ASSETS.			LIABILITIES.	
<i>Real Estate.</i>				
 <i>Personal Estate.</i>				
Landed property held under lease or license from the Crown				
Rents				
Crops				
Live stock				
Farming implements				
Carriage, etc.				
Harness and saddlery				
Furniture				
Watches, trinkets, jewellery, etc. ...				
Other personal effects, clothing, etc.				
Money in hand or house				
Money in bank or building society* current accounts				
Money in bank or building society* on deposit				
Interest				
Debentures				
Mortgages				
Interest				
Life policies				
Bonus				
Shares				
Dividends				
Plant, etc.				
Tools				
Debts due to the estate				
Stock in shop or business				
Interest in a partnership business†				
Goodwill				
Interest in a deceased person's estate †			Balance for duty	
		£		£

I certify the amount chargeable with duty to be £

Master.

NOTE.—Where there are no assets corresponding with a heading put *Nil* against it.
If there are any assets coming under a heading not included in the form insert them under a special heading.

* Insert name of bank, building society, and assurance society.

† Name the partnership or estate, and attach a memorandum showing how the result is arrived at.

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Affidavit verifying Statement.

(a) Will or estate.
(b) Address and description.

In the Supreme Court of }
Western Australia. } In its Probate Jurisdiction.

IN the matter of the (a) of late of (b)
in deceased.

I, of make oath and say:—

1. That the paper writing hereunto annexed, marked "A," contains a true statement of all and singular the real and personal estate of or to which the above-named deceased was at the time of his death possessed or entitled; that the values thereof as therein set forth are the full and true values of the several particulars therein mentioned respectively; that the liabilities therein stated are justly due thereon, and that the balance of £ . therein appearing is the full nett value of the said real and personal estate.

2. That to the best of my knowledge, information, and belief the said deceased did not, within the space of two years preceeding the date of his death, convey, or otherwise dispose of, for other than adequate valuable consideration, any real or personal property of which he was seised or possessed. [*If any such conveyance or transfer was made, say*], except as hereinafter mentioned [*and give particulars, stating the date, the property, the consideration, and the name of the transferee so far as can be ascertained.*]

Sworn at in Western Australia, }
this day of , }
One thousand eight hundred and , before me, }

Schedule II.

Section 10.

1. On the estates, real and personal, of deceased persons:—
- | | |
|----------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Where the total value of such estates, after deducting all debts, exceeds £1,500 and does not exceed £2,500, on the excess over £1,500 | 1 per cent. |
| Where the value exceeds £2,500 and does not exceed £5,000 | 2 " |
| Where the value exceeds £5,000 and does not exceed £10,000 | 3 " |
| Where the value exceeds £10,000 and does not exceed £20,000 | 4 " |
| Where the value exceeds £20,000 and does not exceed £30,000 | 5 " |
| Where the value exceeds £30,000 and does not exceed £40,000 | 6 " |
| Where the value exceeds £40,000 and does not exceed £60,000 | 7 " |
| Where the value exceeds £60,000 and does not exceed £80,000 | 8 " |
| Where the value exceeds £80,000 and does not exceed £100,000 | 9 " |
| And over the value of £100,000 | 10 " |

Section 7.

2. On all settlements of property made by any person the trusts or dispositions of which are to take effect after his death (save as excepted in Section 7) duties at the same rate as in this Schedule above provided.

Section 10.

Schedule III.

Parent, issue, husband, wife, and issue of husband or wife.