

ADMINISTRATION (ESTATE AND SUCCESSION DUTIES).

25° GEO. V., No. XXVII.

No. 28 of 1934.

AN ACT to repeal Part VI. of the Administration Act, 1903, and to enact other provisions relating to Duties on the Estates of Deceased Persons, Succession Duties, and Duties on the Shares of Deceased Shareholders in Foreign Companies carrying on business in Western Australia, and for other relative purposes.

[Assented to 28th December, 1934.]

BE it enacted by the King'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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Administration Act (Estate and Succession Duties) Amendment Act, 1934*, and shall be read as one with the Administration Act, 1903 (No. 13 of 1903), and its amendments. The Administration Act, 1903, is hereinafter called the principal Act.

Short title and reference to principal Act.

This Act shall come into force on a date to be fixed by proclamation.

Commencement.

Repeal of Part VI,
principal Act.

2. Part VI. of the principal Act and the second schedule thereof, as amended by Act No. 29 of 1909, are hereby repealed.

3. This Act shall apply in the case of any person dying after its commencement, but the provisions of Part VI. of the principal Act as hereby repealed shall apply to any person dying before the commencement of this Act.

PART II.—DUTIES ON DECEASED PERSONS' ESTATES AND
SUCCESSION DUTIES.

(1)—*Interpretation.*

Interpretation.

1903, No. 13, s.
85.

4. In this Part of the Act—

“Commissioner” means such person as for the time being is appointed by the Governor to be the Commissioner of Stamps.

“Duty” means estate, succession, or other duty under this Act.

“Final balance” means the balance appearing upon any statement certified by the Commissioner, and includes the sum on which an assessment is made by the Commissioner pursuant to section six or section seven of this Act.

“Foreign company” means a foreign company as defined by section one of the Companies Act Amendment Act, 1897.

“Prescribed” means prescribed by this Part of this Act or by the regulations made by the Governor.

“Probate” and “Administration” have the same meanings as ascribed to those words by section three of the principal Act, and a foreign grant of probate or administration when resealed under Part III. of the principal Act has the same force, effect, and operation and is subject to the provisions of this part of this Act as if probate or administration had originally been granted in this State.

“Trustee” means the trustee or trustees of any settlement.

(2)—*Ascertainment of Duty on Estates of Deceased
Persons.*

5. (1.) Every executor and administrator to whom probate or administration may be granted shall file in the office of the Commissioner a statement specifying the particulars of—

Executor or administrator to file statement.

cf. 1903, No. 13,
s. 88, Victoria
No. 3632 (1928)
s. 152.

- (a) the real and personal property in Western Australia of which the estate of the deceased person consisted at his death;
- (b) all property which, pursuant to the provisions of sections twelve to seventeen, inclusive, is deemed to be made chargeable with the payment of duty, or to form part of the estate of the deceased person for the purpose of estimating the duty payable under this Act;
- (c) the value of the property referred to in paragraph (a) or paragraph (b);
- (d) the debts and liabilities of the deceased person charged or chargeable on his estate;
- (e) the relationship (if any) to the deceased person of the person or persons entitled under the will or intestacy; and
- (f) such other matters as may be prescribed.

(2.) In the case of probate or letters of administration limited to any particular property of a testator or intestate, the statement shall be limited to such particular property.

1903, No. 13,
s. 88, 2nd par.

(3.) Every statement shall be in the prescribed form, shall be verified by affidavit, and shall be filed within three months from the grant of probate or administration, or within such further time as the Commissioner may allow.

cf. 1903, No. 13,
s. 88, 1st par.

(4.) The Commissioner may, subject to such conditions as may be prescribed, permit the executor or administrator to add to, alter, or vary a statement.

1903, No. 13,
s. 90.

(5.) When a statement, with such additions, alterations, or variations (if any) is approved by the Commissioner, he shall certify such approval in the prescribed form.

Ibid.

(6.) If any executor or administrator fails to file a statement as required by this section, the court may, on the application of the Commissioner, order that such executor or administrator shall file such statement within a time to be named in the order, and may make such order as to costs as may seem just.

cf. s. 91.

If statement not filed or Commissioner dissatisfied therewith, Commissioner may assess duty. 1903, No. 13, s. 91; Victoria No. 3632, s. 153.

6. If the Commissioner is dissatisfied with any statement filed in respect of the estate of a deceased person, or of any property derived from him, or in any other respect, or if probate or administration is not obtained in this State, or a foreign grant of probate is not resealed in this State in respect of the estate of any deceased person within six months after his death—

- (a) the Court may, on the application of the Commissioner, order that such executor or administrator shall file such statement within a time to be named in the order, and may enforce the order as orders are now enforced by the Court and may make such order as to costs as seems just; or
- (b) the Commissioner may assess the duty payable on the estate of the deceased person.

Further power of Commissioner as to filing statements. Victoria No. 3632, s. 155.

7. (1.) In any case where after the expiry of three months from his death probate of the will or letters of administration of the estate of a deceased person has not or have not been obtained, or resealedment has not been effected in this State, the Commissioner, if he has reason to believe that duty would be payable in respect of the real or personal estate of such deceased person, may apply to a Judge in Chambers for a summons calling upon—

- (a) the executor or any person having possession of a will of such deceased person; or
- (b) a surviving wife or husband, or any one of the next of kin who would be entitled to a grant of letters of administration of the estate of the deceased person; or
- (c) the donee or other person in possession of property conveyed, assigned, or given by such deceased person,

to show cause—

- (i) why such executor, surviving wife or husband, next of kin, donee, or other person should not file the statement required by section five of this Act, as though probate or letters of administration had been duly granted to him; or, in the alternative,

(ii) why the Commissioner should not be authorised to certify the final balance of the estate in such sum as in his judgment ought to be fixed, and why such executor, surviving wife or husband, next of kin, donee, or other person should not pay the duty calculated on such balance.

(2.) Upon cause being shown, or, if the person so summoned does not appear, upon proof of service of the summons, it shall be lawful for a Judge to order that the person summoned shall file such statement, or that the Commissioner be authorised to certify the final balance of the estate, and to make such further order in the premises and as to costs as appears just.

(3.) This section shall not affect the power to assess duty conferred on the Commissioner by the last preceding section.

8. Every executor and administrator or any person ordered to file the statement referred to in the last preceding section shall, in accordance with section nine, pay to the Commissioner duty calculated and levied on the final balance of the real and personal estate of the testator or intestate as assessed under this Act. Such duty shall be at such rates as are declared by Parliament.

Duty payable on
estates of de-
ceased persons.
1903, No. 13,
s. 86.

9. The duty payable as aforesaid shall be deemed, for the recovery thereof, to be a debt of the testator or intestate to His Majesty (but not a debt of the deceased to which paragraph (d) of subsection (1) of section five applies), and shall be a charge upon the property derived from the deceased, and shall be paid by any executor or administrator out of the estate of the testator or intestate, subject to payment of the funeral and testamentary expenses in priority to all debts of the testator or intestate.

Duty a first charge on the estate.
1903, No. 13, s. 87; Victoria No. 3632, s. 162.

Provided that nothing herein contained shall prejudice the remedies of the Commissioner for the recovery thereof, and provided further, that the Commissioner may remit either wholly or in part any sum payable by way of interest under section forty-six.

10. (1.) No will or codicil of any deceased person shall be registered or receivable or admissible in evidence, except in criminal proceedings, or upon application for probate or letters of administration, or in proceedings relating to the validity of any such will or codicil, or in proceedings under

No will to be registered or admissible in evidence until proved. 13 of 1903, s. 127.

this part of this Act, until probate or letters of administration in respect of the estate comprised therein shall have been issued or obtained.

Probate or letters of administration not to issue until duty paid.

1903, No. 13, s. 92; Victoria No. 3632, (1928), s. 164.

(2.) Subject to the proviso to subsection (4) no probate or letters of administration shall issue from the Master's Office until the Commissioner certifies in writing that the duty payable under this Act has been paid.

(3.) After payment of the duty, and on the issue of probate or letters of administration, the Master shall certify by indorsement thereon that the duty has been paid, and the amount thereof.

(4.) Subject as hereinafter provided, no probate or letters of administration shall be receivable in evidence in any court of justice unless it bears the indorsement that duty has been paid.

Provided that, if the duty is secured to the satisfaction of the Commissioner, or is in part paid and in part secured, the Master may issue the said probate or letters of administration on receiving a certificate from the Commissioner to that effect.

(5.) Security for the payment of duty may be given by an executor or administrator by mortgage over the estate of the deceased or any portion thereof, or by bond with or without sureties, or in any other manner the Commissioner thinks fit.

Administration during minority or absence.

1903, No. 13, s. 93; Victoria No. 3632, s. 169.

11. Every executor to whom probate is granted, or administrator with the will annexed to whom administration is granted during the minority or absence from the State of any person, shall file the statement required by section five of this Act, and pay the prescribed duty out of the estate of the testator or intestate, which passes to such executor or administrator by virtue of any such grant in his favour.

Donatio mortis causa.

1903, No. 13, s. 89; Victoria No. 3632, s. 176.

12. (1.) Property of any kind the subject-matter of a *donatio mortis causa* shall, on the death of a person making such gift, be deemed to form part of his estate for the purpose of estimating the duty thereon, and shall be chargeable with duty accordingly.

(2.) Such property shall be included in the statement to be filed by the executor or administrator pursuant to section five, and shall vest in the executor or administrator until the duty has been paid and has been refunded by the donee to the executor or administrator.

13. (1.) In this part of this Act, "gift *inter vivos*" includes—

Gifts inter vivos
cf. 1903, No. 13,
s. 95, 96;
Victoria No.
3632, s. 173.
Com. 1914, No.
22, s. 8; 44 &
45 Vict., c. 12,
s. 38; 52 and
53 Vict. c. 7, s.
11; 57 and 58
Vict., c. 30, s.
2, and 10 Edw.
VII., c. 8, s. 59
(Imp.).

(a) any gift absolute and every non-testamentary disposition of property of any kind, whether by way of conveyance, transfer, assignment, lease, appointment under power, by way of renunciation or disclaimer, by way of declaration or creation of any trust, by way of mortgage charge or incumbrance, by way of creation of any estate or interest in property, or by any means at law or in equity, whether subject to any limitation or not, and whether in writing or not, not being a settlement within the meaning of this Act, but does not include a disposition in favour of a *bona fide* purchaser, lessee, mortgagee, or incumbrancer for valuable consideration, except where any such disposition is made otherwise than for an adequate consideration in money or money's worth, when the disposition shall be deemed to be a gift to the extent of such inadequacy;

(b) without limiting the effect of the preceding provisions any contract, obligation, engagement or transaction entered into, whether with or without writing, and which is made without fully adequate consideration in money or money's worth so that the value of the estate of the maker may be directly or indirectly diminished, and the value of the estate of any other person increased shall be deemed a gift to the extent of such inadequacy;

cf. N.Z. 21 of
1921, ss. 38,
39, 40; N.S.W.
47 of 1920, s.
100.

(c) without limiting the effect of the preceding provisions the release, discharge, surrender, forfeiture, or abandonment at law or in equity of any debt, contract, chose in action, or of any right, power, estate, or interest in or over any property shall be deemed a gift in the like circumstances and to the same extent as mentioned in the preceding provisions.

(2.) Every gift *inter vivos*—

N.Z. No. 21 of
1921, s. 38.

(a) if made within twelve months before the death of the person making the same; or

(b) if made at any time, if such gift relates to property of which possession and enjoyment has not been *bona fide* assumed by the person taking under such gift forthwith thereafter, and thence-

forward retained to the entire exclusion of the person making the same, and without any reservation to that person of any benefit to him by contract or otherwise,

shall be deemed to have made the property to which such gift relates chargeable, on the death after the commencement of this section of the person making the gift, with the payment of the duty payable under this Act, as though part of the estate of the person making the disposition.

cf. 10 Edw. VII.,
c. 8, s. 59 (2)
(Imp.).

(3.) This section shall not apply to gifts which are proved to the satisfaction of the Commissioner not to have exceeded in the aggregate the sum of one hundred pounds in value, or which are proved to the satisfaction of the Commissioner to have been reasonable, having regard to the amount of his income or means at the date of such gift, when, except for this subsection, paragraph (a), (b), or (c) of subsection (1) would apply.

Joint transfers,
investments, etc.
Victoria No.
3632, s. 174.

14. All property of any kind whatsoever which a person, having been absolutely entitled thereto, has voluntarily caused, or may cause, to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise (including any purchase or investment effected by the person who was absolutely entitled to the property), either by himself alone, or in concert or by arrangement with any other person, so that a beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, shall, on the death of such person, after the commencement of this section, be deemed to the extent of such beneficial interest to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

Joint investments,
etc.; cf. Tas-
mania No. 23 of
1931, s. 5 (2),
(IV.), (VI.),
(VIII.), and
(X.).

15. In relation to any person dying after the commencement of this section, all real and personal estate—

(a) held by such person as a joint tenant or joint owner with any other person to the extent of the interest accruing to that other person by survivorship, and in proportion to the amount, if any, paid on the property, or contributed or conferred by the person so dying, in or towards the purchase or investment whereby such joint tenancy was created; or

- (b) in respect of which such person has given any power of appointment, unless it is proved—
- (i) that the donee of the power has received the rents, dividends, interest, or other income from such property in good faith for his own use from the date when such power was given; and
 - (ii) such power was exercised by the donee not less than twelve months before the death of the donor; or
- (c) which passes under any conveyance, or by means of any legal or equitable alienation made by or with the authority or direction of any such person within twelve months before his death, in consideration of annual or other periodical payments to be paid to such person, or to any other person nominated by him and terminating either before or after the death of such first person, and which are less than the annuity which the person so dying would reasonably expect to purchase for the amount of the assessed value of the property, if realty, or the market value, if personalty (such value to be taken at the time such conveyance or alienation was made) to the extent to which the aggregate amount of such payments is less than such value as afore said; or
- (d) which consists of money payable upon or after the death of any such person in respect of any policy of life assurance effected by him, and kept in force wholly or partially by him and assigned by him by way of gift within twelve months before his death; but where such policy has been only partially kept in force by such person, then such proportion only of such money as the premiums paid by such person bear to the total premiums paid in respect of such policy

shall, on the death of such person, be deemed to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

16. All property of any kind whatsoever over which a deceased person had at the time of his death a general power enabling him by will or deed to dispose thereof, shall upon

General power of appointment.
Victoria No. 3632, s. 175.

his death, after the commencement of this section, if such power is exercised by his will, be deemed to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

Property comprised in a settlement, the life interest being surrendered.

Com. 1914, No. 22, s. 8 (4);
1928 No. 47, s. 5.

17. Any interest of a deceased person in any life estate, or determinable life estate, or in any lease determinable on life or any leasehold term, which was surrendered without consideration or adequate consideration in money or money's worth to any other person within twelve months before his decease, shall on the death of such person after the commencement of this section be deemed to form part of his estate for the purpose of estimating the duty payable under this Act:

Provided that the value which shall be assessed in respect of such interest shall be the total value or amount which the person who surrendered the interest might reasonably have expected to receive at the date of such surrender, less any consideration in money or money's worth actually received by him.

Estimating duty for purposes of the six last preceding sections.
Victoria No. 3632, s. 176, 2nd par.

18. For the purpose of the assessment of duty payable, the sum of the value of all properties subject to duty under the provisions of the six last preceding sections, or any of them, shall be added to the value of the estate of the deceased, and duty shall be payable on the final balance so obtained, and at the percentage rate applicable to such final balance:

Provided that the executor or administrator shall not be responsible for payment of any duty in respect of any property to which sections twelve to seventeen apply, where the executor or administrator has distributed the estate, without notice, of any such property, and without any default or negligence on the part of such executor or administrator.

Re-imbursement of duty paid by executor or administrator in respect of non-testamentary dispositions of property.

19. (1.) Duty paid by an executor or administrator pursuant to the last preceding section with respect to property subject to the provisions of sections twelve to seventeen, both inclusive, of this Act, and subject to the provisions of section thirty-five, shall be reimbursed by the donee or recipient under a *donatio mortis causa*, gift or other disposition to which those sections relate, or by the survivor in the case of a joint transfer, or investment, or an appointee under a power exercised by a testator,

and shall be recoverable by the executor or administrator by action in any court of competent jurisdiction:

Provided that any duty payable under the said sections shall, if the Commissioner thinks fit, and notwithstanding any judgment which the Commissioner may have obtained against any other party liable, be recoverable by him from the donee, survivor, appointee, or other person who acquired the property chargeable with such duty, as a debt due from such person to His Majesty, and, subject to the provisions of section seventy-three, shall be a first charge on the property, subject to any existing encumbrance for moneys secured by or charged on such property before the non-testamentary disposition thereof.

cf. 1903, No. 13.
s. 96, 3rd par.

(2.) If on the death of a person who in his lifetime has made a disposition of property to which sections twelve to seventeen, both inclusive, or any of them apply, and the estate of the deceased is not solvent, or there would have been an abatement if the disposition had been made by the will of the deceased, the like duty shall be payable with respect thereto by the donee, survivor, appointee, or other person acquiring the property so disposed of, as if the value of such property and any other property so disposed of together constituted the final balance of the estate; and the proviso to the last preceding subsection shall apply.

20. (1.) If any person has made, or hereafter makes, or is party or privy to any conveyance, assignment, demise, gift, delivery, transfer, declaration of trust, surrender, or other non-testamentary disposition, whether in writing or otherwise, of any property of any kind whatsoever, including money or securities for money, or has given or shall give any mortgage or encumbrance, or has incurred or shall incur any debt, with intent to evade the payment of duty under this Act, such disposition, mortgage, or encumbrance, or the incurring of such debt, shall be deemed, so far as will admit, to be a gift under section thirteen hereof, and any property accruing to any person thereunder shall be liable to duty as if the donor had died within twelve months from the date thereof, and sections twelve to seventeen, both inclusive, of this Act shall apply, but double duty shall be payable in respect of such property.

Non-testamentary dispositions with intent to evade duty.

cf. 1903, No. 13.
s. 106; Victoria
No. 3632, s. 176

(2.) In any case within this section the Court may, on the application of the Commissioner, by summons or petition.

declare the disposition, mortgage, encumbrance, or debt in question to have been made, given, or incurred with intent to evade the payment of duty, and may also declare that double duty is payable in respect of the property accruing thereunder, and may order that some person shall file a statement in respect of such property, and pay such duty.

Victoria No.
3632, s. 176.

(3.) Any non-testamentary disposition of property as aforesaid made in escrow or otherwise to take effect upon the death of the person making the same shall be deemed to have been made with intent to evade the payment of duty under this Act, and in such case this section shall apply.

(4.) Subsection (1) of this section extends not only to sham or colourable transactions within the categories mentioned in that subsection, but extends also to any transaction carried out with the intent aforesaid and which is legally complete and binding.

(5.) This section, subject to the provisions of section seventy-three, shall not affect the operation of the preceding sections of this Part of this Act relating to duty on non-testamentary dispositions of property; and shall apply only where an intention to evade the payment of duty is alleged by the Commissioner and proved to the satisfaction of the Court.

(3) *Settlements.*

Interpretation of
"Settlement."

cf. 1903, No. 13,
s. 94; Victoria
No. 3632 (1928),
s. 148 (2).

21. In and for the purposes of this part of this Act—

"Settlement" includes every conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary document, and every non-testamentary disposition of property, made by any person before or after the commencement of this section, containing trusts or dispositions, or being a disposition, to take effect, or which shall or may take effect, upon or after the death of such person, or of any other person, when the settlor or other person shall not have died before the first day of January, one thousand nine hundred and four; and

"Settlor" means any person by whom a settlement is made.

22. Every settlement shall, upon the death of the settlor or other person upon or after whose death any trust or disposition takes effect, be registered within three months thereafter, or within such further time as the Commissioner or the Court may allow, in the office of the Commissioner, and no such trust or disposition shall be valid unless the settlement is so registered.

Settlements to be registered.
cf. 1903, No. 13, s. 98; Victoria No. 3632 (1928), s. 177.

23. No settlement shall be registered unless the trustee (if any), or some person interested under the settlement, has filed with the Commissioner a statement setting forth the nature of the property comprised in or disposed of by such settlement, and the value thereof, in such form and with such particulars and verified on oath by such person as the rules may prescribe.

Statement to be filed.
cf. 1903, No. 13, s. 101; Victoria No. 3632 (1928), s. 177.

24. (1.) Subject as hereinafter provided, all property, both real and personal, disposed of by settlement shall, with respect to trusts or dispositions to take effect on or after the death of the settlor or of some other person, be chargeable on the death of the settlor or of such other person, as the case may be, with duty at such rates as are declared by Parliament.

Duty.
cf. 1903, No. 13, s. 96; Victoria No. 3632, s. 177.

(2.) With respect to such trusts or dispositions—

- (a) duty shall be calculated as to its rate at the percentage applicable to the value of the whole of the property chargeable with duty to which the settlement relates, or, if there are more settlements than one by the same settlor, at the percentage applicable to the value of the whole of the property to which the several settlements relate, as stated in the statement or several statements, as the case may be, filed pursuant to the last preceding section and certified by the Commissioner; and
- (b) when property is disposed of in favour of more persons than one, the proportionate part of such duty chargeable to each beneficiary in respect of the portion or interest of or in the settled property acquired by him, shall be fixed as to the rate of duty by reference to the value of the whole of the property to which the settlement relates, or the several settlements relate.

Assessment of duty when settlement not duly registered.

Victoria No. 3632, s. 177.

25. If any settlement is not registered within the prescribed time, or such further time as the Commissioner may allow, the Commissioner may assess in the prescribed manner the duty payable under this Part of this Act in respect of such settlement, and if such duty is not paid within the prescribed time or such further time after the prescribed notice, the Commissioner or any person interested may apply to the court, which may order that a sufficient part of the settled property may be sold and the proceeds applied in payment of the duty and of the costs and expenses of the order and sale and consequent thereon, and the provisions of sections thirty-one, thirty-two, and thirty-three shall apply with the necessary modifications.

Application of s. 98

26. This subdivision shall not affect section seventeen of this Act relating to the duty chargeable where the interest of any person in any life estate, terminable life estate, or any leasehold term determinable on life was surrendered by him before his death.

Settlement not admissible in evidence unless registered.

1903, No. 13, s. 128.

27. When the trusts or dispositions of any settlement within the meaning of this Act have taken effect the settlement shall not be admissible or receivable in evidence, except in criminal proceedings, or in proceedings under this part of this Act, until the same has been registered.

Recovery of duty.

28. Duty payable under any settlement shall be a debt due to His Majesty, and shall be recoverable by the Commissioner from the trustee, if any, of the settlement or from the beneficiaries thereunder; and, in the case of trusts, or dispositions to take effect on the death of the settlor, or any other person, each beneficiary (if more than one) shall be liable for a proportionate part of the duty at the appropriate rate and apportioned to the value of the share or interest of the beneficiary of or in the settled property in the aggregate.

(4) *Other Non-testamentary Dispositions of Property.*

Other non-testamentary dispositions.

cf. S.A. No. 1898 (1929), s. 32.

29. (1.) Subject to and without affecting the operation of any of the preceding sections of this part of this Act, and, so far only as those provisions do not apply, succession duty shall be levied and paid, at such rate as is declared by Parliament, on the net present value of—

(a) the increase of benefit accruing after the commencement of this section to any person by the extinction

or determination of any charge, encumbrance, estate, or interest, determinable by the death of any person, or at any period ascertainable by reference to death, to which any property has become subject by any non-testamentary disposition made before or after the commencement of this section;

- (b) the beneficial interest in any property vested in any persons jointly which thereafter accrues to the other or others of such persons by survivorship;
- (c) the beneficial interest in any money received under a policy of assurance effected on his life by any person dying after the commencement of this section where the policy was wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of the said money proportionate to the premiums paid by him, where the policy was partially kept up by him for the benefit of a donee as aforesaid;
- (d) the beneficial interest in any money received under a policy of assurance effected by any person on the life of any other person who dies after the commencement of this section, where the premiums in respect of the policy were wholly paid by such secondly mentioned person, or if part only of the premiums were paid as aforesaid, then a part of the said money in the same proportion as the amount of the premiums paid as aforesaid bears to the whole of the premiums paid in respect of the said policy; S.A. No. 1981
(1930), s. 6.
- (e) any annuity or other interest purchased or provided by a person, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising therein by survivorship on or after the death of any person dying after the commencement of this section.

(2.) The duty chargeable under this section shall be a first charge upon the property on which the same is imposed, and shall become chargeable upon the said property immediately upon the accruing of the increase of benefit, beneficial interest, or property, as the case may be. S.A. No. 1898
(1929), s. 32
(2).

(3.) Duty shall not be chargeable in respect of the increase of benefit, or the beneficial interest accruing as men- *Ibid.*, s. 33.

tioned in the paragraphs of subsection (1) of this section by reason only of a *bona fide* purchase from the person under whose disposition the benefit or interest accrues, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where the purchase was made, or the lease or annuity granted, for full consideration in money or money's worth to the vendor or grantor for his own use or benefit, or, in the case of a lease, for the use or benefit of any person for whom the grantor was a trustee.

Ibid., s. 37.

(4.) The persons becoming beneficially entitled to any property chargeable with duty under this section, or any trustee, guardian, or committee in whom the property is vested, or such one or more of them as the Commissioner nominates, shall file a statement with the Commissioner, showing all such particulars as the Commissioner requires to enable him to assess the duty.

Such statement shall be filed within three months after the interest or benefit chargeable with duty has accrued.

(5.) Immediately after the Commissioner has approved the said statement and assessed the duty, the person filing the statement shall (subject to the right of appeal under sections forty-one, forty-four, and forty-five) pay the duty so assessed:

Provided that the Commissioner may extend the time for payment.

Ibid., s. 39.

(6.) If the statement is not duly filed within the prescribed time, or if the Commissioner is dissatisfied with any such statement, the Commissioner may assess the duty payable in respect of the interest chargeable, subject to the right of appeal conferred by sections forty-one, forty-four, and forty-five of this Act.

(5)—*Property on which Duty is payable under Non-testamentary Dispositions.*

Property on which duty is payable under non-testamentary disposition.

1903. No. 13, s. 97.

30. Property comprised in a settlement or disposed of by any other non-testamentary disposition within the meaning of the preceding section twenty-nine, shall be subject to duty under the provisions of this part of this Act, so far as such property is, or is portion of, or is payable out of—

(a) real property in Western Australia (including real property over which the settlor or person making

such non-testamentary disposition had a general power of appointment exercised by such settlement or other non-testamentary disposition).

- (b) personal property wheresoever the same shall be (including personal property over which the settlor, or person making such non-testamentary disposition had a general power of appointment exercised by him by such settlement or other non-testamentary disposition) if he was, at the time of the settlement, or other non-testamentary disposition, domiciled in Western Australia; or
- (c) personal property in Western Australia (including personal property over which the settlor, or person making such non-testamentary disposition had a general power of appointment exercised by him by such settlement or other non-testamentary disposition), including all debts, money, and choses in action receivable or recoverable by him in Western Australia, if he had not, at the time of the settlement or other non-testamentary disposition, a domicile within Western Australia:

Provided that, with reference to paragraph (b), if the settlement or other non-testamentary disposition includes personal property not in Western Australia, but in some proclaimed reciprocating jurisdiction, and duty has been paid in respect thereof under the laws of that jurisdiction, then the amount of such duty may be deducted from the duty to which the same property is liable under this Act.

In this section "proclaimed réciprocatng jurisdiction" means any country or place the laws of which contain provisions substantially the same as this proviso, in the case of property situate in this State but dutiable under the laws of such jurisdiction, and which the Governor may from time to time declare by proclamation to be a réciprocatng jurisdiction for the purpose of this section. Any such proclamation may from time to time be revoked by the Governor.

(6)—*Sales for non-payment of Duty.*

31. (1.) The executor, administrator or trustee, or any person required to pay duty under this Act, may, if he requires the assistance of the court in that behalf, apply to the court for an order that the whole or a sufficient portion of any property subject to duty may be sold to pay the duty.

Property may
be ordered to be
sold for non-pay-
ment of duty.

1903, No. 13, p. 108; S.A. No. 1895 (1929), p. 43.

(2.) If any duty is not paid, the Commissioner may apply to the court for an order that a sufficient portion of any property subject to the duty may be sold.

(3.) The court may thereupon order that the whole or such portion of the said property as it thinks proper may be sold, at such time, in such manner, and subject to such terms and conditions, as it deems advisable, and may make such order as to the costs of and consequent upon the application as it thinks fit.

(4.) The moneys arising from the sale shall be applied in the first place towards paying the costs and expenses, if so ordered, of and consequent upon any such application, and in the next place towards the payment of the duty, and the balance shall, subject to the provisions of the next following subsection, be paid to or held or disposed of by the executor, administrator, or trustee upon the same trusts as the property sold would have been held and disposed of.

(5.) The court may make any order that may seem just as to any such surplus moneys, and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

Purchaser not bound to inquire.

Ibid., s. 109.

Ibid., s. 44.

32. No purchaser from any person required to pay duty under this Act, or from any trustee, in any case where the said person or trustee shall make a sale purporting to be made under the last preceding section, and no purchaser at any sale purporting to be made under any order obtained under this Act, shall be bound or concerned to see or inquire whether the said trustee or person has power to sell, or as to the necessity of the sale, or whether the order was properly obtained or whether the sale is properly made, nor shall he be affected by notice to the contrary; and the remedy of any person aggrieved by an improper sale shall be in damages only against the person or Commissioner effecting the same.

When land sold under order, Court may make vesting order.

Ibid., s. 110.

Ibid., s. 45.

33. (1.) When any real or personal property is sold under any order of the court obtained under this Act, the court may make an order vesting the said property in such person in such manner and for such estate or interest as the court thinks fit.

(2.) Every such order shall have the same effect as if the executor, administrator, trustee, Commissioner, or other person obtaining the order had been seized or possessed of

or entitled to the real and personal property for the estate or interest vested in the said person or persons by the vesting order, and had been freed from all disability, and had duly executed all proper conveyances, transfers, assignments, and assurances of the said real and personal property for the said estate or interest.

(3.) The court may direct any conveyance or transfer of any property to be executed by such person as the court shall direct.

(7)—*Adjustment of Duty.*

34. (1.) Subject to any special provision by a testator for the payment of the duty imposed by this Act, every executor and every administrator with the will annexed shall deduct from each and every devise, bequest, or legacy coming to any person under the will, an amount equal to the duty upon such devise, bequest, or legacy calculated at the same rate as is payable upon the estate of the deceased.

Duty to be de-
ducted from
beneficial inter-
ests.

cf. 1903, No. 13.
s. 111.

(2.) In every case of intestacy, or partial intestacy, the administrator or the executor or administrator with the will annexed, as the case may be, shall deduct from each distributive share of the intestate's estate, an amount equal to the duty thereon, calculated at such rate as is payable upon the estate of the deceased.

(3.) Every beneficiary under any non-testamentary disposition of property chargeable, under sections twelve, thirteen, fourteen, fifteen, sixteen, and seventeen of this Act, on the death of the person making the disposition with duty as though part of the estate of such deceased person, shall contribute to the duty payable on the final balance of the estate of the deceased person inclusive of the property so disposed of, in proportion to the value of the property acquired by such beneficiary.

35. (1.) Subject to any specific direction appearing in any will or settlement to the contrary, every executor, administrator, or trustee, or person required to pay duty under this Act, shall adjust such duty and the incidence of any duty paid or payable by him, so as to throw the burden thereof upon the respective properties on which the same are ultimately chargeable.

Executor, admin-
istrator, or
trustee may ad-
just duties.

cf. 1903, No. 13.
s. 112.

(2.) For the purpose of carrying such adjustment into effect, or for the purpose of raising money for the payment of any duty, the executor, and (subject to section seventeen of the principal Act) the administrator, or the trustee or other person required to pay duty under this Act, may sell, or mortgage with a power of sale, all or any part of the real or personal property, chargeable with duty, upon such terms and conditions as in his discretion may seem proper.

(3.) The executor, administrator, or trustee or person as aforesaid may also, for the purpose aforesaid, by any instrument in writing, impose any charge on any property in favour of any person, whether then ascertained or not, entitled contingently or otherwise to any other property. Any such charge as to land not under the provisions of the Transfer of Land Act, 1893, may be in the prescribed form, and may contain a power of sale, and may be upon such terms and conditions as the executor, administrator, or trustee or person as aforesaid, may think proper. As to land under the provisions of the Transfer of Land Act, 1893, the charge may be effected by an instrument of mortgage under the said Act, upon such terms and conditions as the executor, administrator, or trustee or person as aforesaid may think proper.

(4.) The Court may, on application by summons or otherwise, make any order which it may deem advisable for the purpose of adjusting the duties and the incidence of the duties payable under this Act.

Power of Court to make order when duties not adjusted.

cf. 1903, No. 13. s. 113.

36. Where, by reason of the neglect of any executor or administrator or trustee, or if there being no trustee of any settlement or other non-testamentary disposition of property, or for any other reason, no adjustment of duties shall be made within a reasonable time, the Court may, upon the application of any person interested, by summons or otherwise, make such order as to the adjustment of duties and the incidence of duties, and as to the costs of the application and adjustment, and for sale or charge or encumbrance of any part of the real or personal property concerned, for the purpose of the said adjustment and for the payment of the said costs as shall be just.

When limited interest taken, duty thereon payable out of corpus.

S.A. No. 1898 (1929), s. 48.

37. Subject to any specific direction to the contrary in any will, or in any settlement or non-testamentary disposition of property made chargeable with duty under this Act, every

executor, administrator, trustee, or other person whose duty it is to adjust the incidence of any duties payable or paid by him shall, in carrying out such adjustment—

- (a) charge upon and pay out of the corpus of any property in which any limited interest is taken under the said will, settlement, or non-testamentary disposition, all duties paid or payable in respect of the said limited interest and the remainders or the reversion expectant thereon, and the corpus so diminished shall thereafter, as between the respective persons entitled thereto, be deemed to be the property in which the said interests are taken;
- (b) charge the duty payable on any annuity on the property or fund out of which the same is derived, or which may be invested or may require to be invested, to produce the said annuity, and abate the annuity itself by the same percentage at which the duty in respect thereof is assessed.

38. In the assessment of all duties payable under this Act there shall be deducted from the assessable duty the *ad valorem* stamp duty paid on any deed, instrument, or settlement in respect of any property becoming liable to duty: Provided that no deduction hereunder shall exceed the amount of the duty assessed or payable in respect of the property liable to such duty, and such deduction shall only be deducted or allowed in cases where the deed, instrument, or settlement relating to such property is produced to the Commissioner, or he is otherwise satisfied as to the payment of the *ad valorem* stamp duty thereon.

39. Insofar as beneficial interests pass to persons *bona fide* residents of and domiciled in Western Australia, and occupying towards a deceased person the relationship set forth in the Third Schedule to the principal Act, duty shall be calculated so as to charge only one half of the percentage or rate upon the property acquired by such first-mentioned persons.

(8) *Miscellaneous Provisions.*

40. Whenever a question arises with regard to any statement for the assessment of duty under this Part of this Act, or any of the particulars thereof, the Commissioner may state a case for the opinion of the Court, and thereupon it shall be lawful for the Court to give its judgment thereon.

Power to state
case for opinion
of the Court.
Victoria No.
3632 (1928), s.
154.

Valuation.

cf. 1903, No. 13,
s. 107; Victoria
No. 3632, s. 157.

41. (1.) If the Commissioner is dissatisfied with the value put upon any real or personal property in any statement filed in accordance with this Part of this Act, he may appoint a valuer to value such property, or any part thereof, and communicate the valuation to the executor, administrator, trustee, or other person liable for the payment of duty.

(2.) If there is any difference between the value set forth in the statement and such valuation the Commissioner may—

- (a) agree with the executor, administrator, trustee, or other person upon the value to be adopted; or
- (b) summon before him the executor, administrator, trustee, or other person and his valuer, and the valuer appointed by the Commissioner, and such other persons as he may think fit.

(3.) Every person so summoned shall be bound to attend as required by the summons and give evidence before the Commissioner in like manner as persons summoned on inquiries before the Master of the Supreme Court are bound to attend and give evidence, and the Commissioner may administer oaths and take evidence, and require the production of books, papers, accounts, and documents.

(4.) The Commissioner shall upon the evidence taken as aforesaid determine the value of such real or personal property, and shall furnish the executor, administrator, trustee or any other person liable for the payment of the duty, on payment of the prescribed fee, with a copy of the notes of evidence taken by him on the hearing of such summons.

(5.) Any executor, administrator, trustee, or other person as aforesaid who is dissatisfied with such determination may, within twenty-one days after such determination, lodge with the Commissioner an objection in writing thereto, and the Commissioner shall decide thereon, and communicate his decision in writing to the objector. If the objector is dissatisfied with the decision of the Commissioner on such objection, the objector may appeal against such determination; and, where no summons has been issued by the Commissioner, any executor, administrator, trustee, or other person as aforesaid who is dissatisfied with the valuation of the valuer appointed by the Commissioner may appeal to the Court against such valuation and the provisions of sections forty-four and forty-five shall, with the necessary modifications, apply to such appeal.

(6.) If on such appeal it is decided that the value upon which such duty has been paid as aforesaid is excessive, the court shall direct the repayment of the duty paid in respect of such excess, together with such costs (if any) as the court deems just. But if on such appeal the value upon which duty has been paid as aforesaid is confirmed, the court shall order the appellant to pay to the Commissioner the costs incurred by the Commissioner in relation to the appeal.

42. (1.) If, within two years after any assessment of duty has been made, it is discovered that the duty thereby fixed is too small, or if after any statement has been filed it is discovered that it is in any way erroneous, and that any net value thereby shown is too small, the person by whom the statement was or should have been filed and the duty paid, or the person whose duty at the time of the discovery it would be, either with or without the direction of the Commissioner to file the said statement or pay the said duty if not already filed or paid, shall immediately upon such discovery being made, amend the statement, and shall pay such duty or additional duty as may be assessed by the Commissioner: Provided that there shall be no limit of time wherein the Commissioner may claim such additional duty, where payment of such duty was not made owing to fraud or gross negligence.

Where too little
duty assessed.
cf. 1903, No. 13.
s. 117; S.A. No.
1898, s. 54.

(2.) If the Commissioner is dissatisfied on any ground with a statement filed (notwithstanding that such statement may have been approved by him), or discovers that any statement or assessment is in any respect erroneous, the provisions of the preceding subsection shall apply, and the Commissioner may amend the assessment which shall, to all intents and purposes, have effect as so amended.

(3.) Provided that if any such discovery is made after the Commissioner has given his certificate of approval of a statement, any executor, administrator, trustee, or other person shall only be liable for such duty, or additional duty, to the extent of any property then under his control, or which can be applied by him for the payment of the duty, unless it is owing to any fraud or gross negligence on his part that the proper amount of duty was not paid at first, in which case he shall be personally liable for the said duty or additional duty.

43. If at any time within two years, or within such further time as the Commissioner may allow, after any duty has been paid under this Act it is found that too much duty has been paid, the Commissioner, upon being satisfied, by examination of the parties or otherwise, as he may think fit, that

Where too much
duty paid.
cf. 1903, No. 13.
s. 118; S.A. No.
1898, s. 55.

too much duty has been paid, shall order that the amount overpaid be returned to the person entitled to receive the same, and upon such order the Treasurer shall pay the same out of the Consolidated Revenue, together with interest at the rate of four pounds per centum per annum, calculated from the date when such duty was paid to the Commissioner.

Appeal from
Commissioner.

1903, No. 13,
s. 119; S.A. No.
1898 (1929), s.
61; C. No. 22
of 1914, s. 24,
as am. by 47 of
1928, s. 9.

44. Any executor, administrator, or trustee who is dissatisfied with any assessment of the Commissioner may, within twenty-eight days after service by post of the notice of assessment, or such further time as the Commissioner or Court may allow, lodge an objection in writing with the Commissioner against the assessment, setting out fully the grounds of objection.

The Commissioner shall consider the objection, and may either disallow or allow it wholly or in part.

The Commissioner shall give to the objector written notice of his decision on the objection.

Procedure on
appeal.

cf C. 22 of
1914, s. 24, as
am. by 47 of
1928, s. 9.

45. (1.) Any executor, administrator, or trustee who is dissatisfied with the decision of the Commissioner, on his objection may, upon payment of or furnishing security satisfactory to the Commissioner for the payment of the duty payable under the assessment within such time and in such manner as may be prescribed, appeal to the court, and the court may make such order upon such appeal as may seem just.

(2.) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as duty unpaid.

(3.) Interest shall be paid at the rate of four pounds per centum per annum upon the amounts so refunded from the date of payment of the same up to the date when the same are refunded, or upon the amounts so recovered from the date of the assessment appealed against up to the date when the same are recovered, as the case may be.

Interest on
duty.

S.A. No. 1898
(1929), s. 51.

46. Interest at the rate of four pounds per centum per annum shall be charged on all duty payable under this Act from and after the expiration of three months from the time when the duty first becomes chargeable until the duty is paid, and shall be deemed part of the duty imposed by this Act:

Provided that the Commissioner may postpone for such period as he thinks fit the date from which interest shall be charged.

47. (1.) Duty when it becomes payable under this Act shall be deemed a debt due to His Majesty, and shall be payable to the Commissioner.

Duty a debt to
the Crown.
S.A. No. 1898
(1929), s. 52.

(2.) Any duty unpaid may be sued for and recovered under the provisions of the Crown Suits Act, 1898.

48. (1.) In the valuation of the share or interest of any person in any partnership for the purpose of this Act, the share or interest of the partner concerned shall be that sum which bears the same proportion to the total capital of the partnership as his fractional share bears to the whole number of shares in the partnership. In this section total capital means the value of the assets of the partnership less the liabilities of the partnership:

Valuation of
partnership in-
terests.
cf. N.S.W. 47
of 1920, s. 127.

(2.) Provided that any legatee, beneficiary, donee, or other person to whom any share or interest in a partnership passes on the death of any other person shall be liable to pay to the person responsible for the payment of the duty on such share or interest under the provisions of this Act, any increase in duty which may be necessitated by valuing the share or interest of the deceased partner in accordance with this section.

(3.) The person liable to pay such increase in duty shall have the same right of appeal as if he were the person responsible under this Act for the payment of the whole of the duty, and the provisions of sections forty-one, forty-four, and forty-five shall apply accordingly, with the necessary modifications to any such appeal.

49. For the purpose of assessment of duty under this part of this Act where any partnership is carried on by any person or persons in Western Australia or in Western Australia and elsewhere and one or more of the partners therein is domiciled out of Western Australia, the value of the share or interest of such non-domiciled partner shall be assessed on the value of the assets actually situate in Western Australia less the liabilities in Western Australia, and the duty payable under this Act is hereby charged on such assets.

Non-domiciled
persons with
partnership in-
terests in W.A.

Valuation of shares in proprietary companies.
cf. N.S.W. 47 of 1920, s. 100.

50. In the valuation of shares of a shareholder in any proprietary company, such shares shall be valued as if the company were a partnership and the shareholders were the constituent partners. In this section proprietary company means any company in which not more than five persons are entitled to at least two-thirds of the shares in the subscribed capital of the company.

Valuation of shares in public companies.
cf. N.S.W. 47 of 1920, s. 127.

51. For the purposes of this Act, the valuation of shares in any company other than a proprietary company as defined in the preceding section, whether incorporated in or out of Western Australia, shall be made upon the basis that the memorandum and articles of association or rules of the company satisfy the requirements prescribed by the committee or governing authority of the stock exchange at the place where the share register in respect of the shares is kept, so as to enable that company to be placed on the current official list of such stock exchange at the relevant time. No provision in the memorandum or articles or rules of any company whereby or whereunder the value of the shares of a deceased or other member is to be determined shall be applicable in determining the value of the shares for the purposes of this Act.

Duty on shares in foreign company on death of shareholders.
cf. Qd. 4 Edw. VII., No. 17, s. 11; N.S.W. No. 30 of 1901.

52. (1.) Whenever after the commencement of this section a member domiciled in this State of any foreign company carrying on business in Western Australia dies, the shares or interest of such member in such company shall, for the purpose of assessment of duty under this Act, be considered as locally situated in Western Australia.

(2.) (a) Whenever after the commencement of this section a member domiciled out of Western Australia of any foreign company carrying on business in Western Australia dies, there shall be chargeable and payable under and subject to the provisions of this Act, and, except as hereinafter provided, without any deduction or exemption whatever, a duty, at such rate as Parliament may prescribe, on the net present value of the shares or stock in the company held by the member at the time of his death: provided that—

- (i) the duty mentioned in this subsection shall not be payable where the net present value of the shares and stock in the company held by the member at the time of his death does not exceed one thousand pounds as ascertained by the next following paragraph;

- (ii) where the company carries on business within and without Western Australia the duty payable by the company under this subsection shall be assessed on that part of the value of the shares of the deceased which bears the same proportion to the full value thereof as the assets of the company situate in Western Australia bear to the total assets of the company, wherever situate. In this subsection the term "assets" means the gross amount of all the real and personal property of the company of every kind, including things in action, and without making any deduction in respect of any debts or liabilities of the company;
- (iii) no duty shall be payable by a foreign company under this subsection where estate duty has been paid under this Act in respect of all shares or other interest in the company held by the deceased at the time of his death:

Provided further, that no duty shall be payable by any foreign company which the Treasurer certifies to be a *bona fide* railway, timber, mining, insurance or developmental company: provided that the Treasurer may at any time revoke such certificate, if in his opinion any such company ceases to come within any of the categories hereinbefore mentioned.

(b) Duty shall be payable as aforesaid by the company, and may be recovered by the Commissioner at any time after the expiration of six months from the date when the company shall receive notice of the death of the deceased member.

(c) Any payment by the company of any duty imposed in respect of shares or stock in the company held by a member at the time of his death shall be deemed to be a payment on behalf of the estate of such member, and may be deducted by the company from any moneys payable by the company to the personal representative of such member in respect of the shares or stock, or recovered by action from such representative.

(d) On receiving a notification of the death of any member, upon whose death the company would be liable to pay duty hereunder, the company shall cause to be delivered to the Commissioner a return giving the name and address of such member, the number, description, and value of the shares in the company held by such member at the time of his death.

Particulars of
shares to be fur-
nished by com-
pany.

(e) If any such return is not delivered in accordance with the provisions of this subsection, the company making default shall be liable to a penalty not exceeding fifty pounds: provided that it shall be a defence on the part of any such company if it be proved that it had no notice of the death of any such member.

Outstanding options not to be taken into account in valuing property.

53. (1.) Where any option is given over any property which has to be valued for the purposes of this Act, and such option remains unexercised but capable of being exercised at the material date at which such property has to be valued, the option shall not be taken into account in valuing the property, but where at such material date the value of the property is greater than—

(a) the value at the time of the giving of the option; and

(b) the amount or value of the option consideration, then, and in such event the value to be taken shall be the value at the time of the giving of the option, or the amount or value of the option consideration, whichever is the greater:

Provided that, in assessing the value at such material date for the purpose of this paragraph, the value of any improvements to the property, effected at the expense of the option-holder, shall be excluded.

(2.) Nothing herein contained shall affect the operation of section forty-eight of this Act relating to the valuation of any share or interest in a partnership.

Valuation of shares in unadministered estates and trust estates.

54. Where any person succeeds by virtue of any gift *inter vivos*, testamentary disposition, intestacy, or non-testamentary disposition, within the meaning of section twenty-nine, to a share or interest in any estate of a deceased person which is unadministered or in any trust estate then, notwithstanding that the personal representative or trustee may be domiciled out of the State of Western Australia, such person shall be deemed to have succeeded to a share in the assets locally situate in Western Australia which at the time of the succession constitute or form portion of the unadministered estate or trust estate. For the purpose of computing the value of such share or interest in Western Australia, any liabilities in Western Australia at the date of such succession may be set off against the value of the assets in Western Australia comprising or forming part of the said unadministered or

trust estate, and such assets are hereby charged with the payment of such duty.

55. No exemption from liability for debts enacted by law in respect of any moneys payable under a policy of life assurance shall be deemed to exempt such moneys from payment of duty under this Act; and in case there is no final balance of the estate, or such final balance is less than the amount of the moneys payable under the policy of assurance, duty shall be chargeable on the moneys so payable under such policy as if such moneys constituted the final balance.

Duty on life policies forming part of a deceased person's estate.

56. For the purpose of assessing duty in respect of the undivided share in any property of any tenant in common, the value of that share shall be taken to be that sum which bears the same ratio to the total value of the property (valued as if he were the sole owner) as the undivided share of such tenant in common bears to the total number of undivided shares in the property.

Valuation of interest of tenant in common.

57. (1.) Subject to the provisions of section one hundred and twenty-nine of the principal Act, in any case where any shares, stock, debentures, money on fixed deposit, policy of life assurance, or policies of life assurance exceeding in value in the aggregate together with any bonuses or benefits payable thereunder the sum of two hundred pounds, or any other property stand in the books in Western Australia of any corporation, company, or society carrying on business in Western Australia, in the name of any deceased person, either alone or jointly with any other person as owner, no dealing with any such shares, stock, debentures, money on fixed deposit, policy of life assurance, or property shall be registered, recorded, or otherwise given effect to, or such policy satisfied by such corporation, company, or society having notice of the death of the deceased (whether pursuant to subsection (4) hereof or otherwise howsoever), unless the Commissioner certifies in writing in the prescribed form that all duties in respect of the said shares, stock, debentures, money on fixed deposit, policy of life assurance, or other property, whether payable in respect of the estate of the said deceased person or, as the case may be, payable by reason of any increase of benefit or any accruing of beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof, or that the Commissioner consents to the proposed dealing.

Holding of assets by custodians, etc., pending payment of security for duty. cf. S.A. No. 1981 (1930), s. 10. No. 2094 (1932), s. 7. N.S.W., No. 47 of 1920, s. 122.

(2) In any case where—

- (a) any safe deposit is held in the name of any deceased person, either alone or jointly, at the premises in Western Australia of any corporation, company, or society;
- (b) any property is deposited for safe custody in the name of any deceased person, either alone or jointly, at the premises in Western Australia of any corporation, company, or society,

the corporation, company, or society, if it has notice of the death of the deceased (whether pursuant to subsection (4) hereof or otherwise, howsoever) shall not allow or suffer the removal of any property or thing from such safe deposit, or of any property deposited for safe custody as aforesaid, unless the Commissioner certifies in writing in the prescribed form that all duties in respect of such property or thing payable in respect of the estate of the said deceased person, or payable by reason of any increase of benefit or any accruing of beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof, or that the Commissioner consents to the proposed removal.

(3.) Any corporation, company, or society to which this section applies, which acts in contravention of this section, shall be liable on summary conviction to a penalty not exceeding fifty pounds.

(4.) Any executor or administrator who omits to give notice of the death of the deceased to any such corporation, company, or society within three months from the grant of administration shall be liable on summary conviction to a penalty not exceeding twenty pounds: Provided that it shall be a defence to any charge under this subsection if such executor or administrator shows that he gave such notice within three months of the time when he first had knowledge of the interest of the deceased in any asset by reason of which he was required to give such notice.

58. At the end of each month, or within twenty-one days thereafter, a return shall be furnished in the prescribed form to the Commissioner by every Life Assurance Company or Society in Western Australia of all assets paid over by such company or society during such month, upon the death of any

person in respect of any policy or policies exceeding in value in the aggregate together with any bonuses or benefits payable thereunder the sum of one hundred pounds on the life of such person, which policy is recorded on the books or register of such company or society in Western Australia or, if recorded elsewhere, where the premiums have been paid in Western Australia, or the deceased was domiciled or resident in Western Australia at the time of his death. In this section the word "policy" shall, without limiting the generality of the section, include an industrial policy and any policy held jointly by the deceased and any other person.

59. No person whose duty it is to register any document, or to make any entry, or to issue any certificate relating to the survivorship of any joint tenant in any property, shall make the same or do any act whereby the survivor is entitled or enabled to become registered as surviving owner, unless such person obtains a certificate that the duty payable under this Act has been paid or the written consent of the Commissioner.

Duty to be paid before registration of security.
cf. N.S.W. 47 of 1920, s. 122.
(7).

Penalty: Fifty pounds.

60. (1.) Except for the purpose of any sale or disposition under sections thirty-one and thirty-five, after any duty has become chargeable upon any property there shall not be any disposition of that property, or any part of it, until the duty thereon has been paid, or the Commissioner consents thereto or certifies that he holds security for the payment of the duty sufficient to permit any specified part of the property to be disposed of.

Property not to be disposed of until duty paid.
S.A. No. 1898 (1929), s. 50.

(2.) Any executor, administrator, trustee, or other person who disposes of any property in contravention of this section shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.

61. Where, in the opinion of the Commissioner, any property shall be of such a nature, or so disposed of or circumstanced, that the value thereof is not fairly ascertainable under this Act, or where, from the complication of circumstances affecting the value of any property, or the assessment or recovery of the duty thereon, he shall think it expedient to exercise the power conferred on him by this section, he may compound the duty on that property upon

Power to compromise duties.
1903, No. 13, s. 116; S.A. No. 1898 (1929), s. 53.

such terms as he shall think fit, and may give a discharge to the executor, administrator, trustee, or any other person interested in the property, upon payment of the duty according to the said composition.

Ascertainment of duty where property given to an uncertain person or in uncertain event. cf. 12 of 1903, s. 115.

62. (1.) In case of any property disposed of by or accruing under any will, settlement, gift or any non-testamentary disposition to an uncertain person, or on an uncertain event, duty shall be paid on the net present value of such property as if the same had been given by way of vested remainder to an ascertained person, and such duty shall be assessed on the highest scale applicable on any vesting under the will, settlement, gift or other non-testamentary disposition.

(2.) Upon such property or any part thereof becoming actually vested in any person or persons who, if he or they had taken the same by way of vested remainder at the time when the duty became payable, would have been chargeable with a smaller duty than that actually paid, the Commissioner, upon being satisfied that such is the case, shall order the difference between the smaller duty aforesaid and the duty actually paid, with interest on such difference at the rate of four pounds per centum per annum calculated from the time of payment of the duty under this section, shall be paid to such person or persons, and upon such order the Treasurer shall pay the same out of the general revenue.

Inspection of documents.
1903, No. 13, s. 121; C. No. 22 of 1914; s. 44.

63. The Commissioner, or any officer authorised by him in that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title for the purpose of valuing or inspecting any estate, or of ascertaining the ownership thereof, or of inquiring into any matter or thing relative to this Part of this Act, and for any of these purposes may make extracts from or copies of any such books, documents, or papers.

Obstructing officers.
Ibid., s. 46.

64. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

Penalty: Fifty pounds.

Power to use taxation returns for verification purposes.
S.A. No. 1898 (1929), s. 65.

65. The Commissioner, and any officer so authorised by the Commissioner, may for the purpose of verifying or checking any statement filed pursuant to this Act or any Act for

which the provisions of this Act are substituted, inspect any returns, records, or other documents in the custody of the Commissioner of Taxation, and for the purposes aforesaid may make extracts from or copies of any such returns, records, or other documents, and use any such returns, records, or other documents in evidence in any proceedings under this Act.

66. (1.) Any person may, on payment of the prescribed fee, inspect and obtain copies of or extracts from any statement filed for the purposes of this Part of this Act in the office of the Commissioner by any executor, administrator, or other person.

Inspection of
statements.
Victoria No.
3632 (1928), s.
156.

(2.) A copy of or extract from any such statement may, on payment of the prescribed fee, be certified by the Commissioner to be a true copy or extract, and, when so certified, shall be, before all Courts and persons acting judicially, *prima facie* evidence of the facts therein stated.

Certified copies.
Ibid.

67. If any person makes default in delivering any statement or account, or in adjusting any duties or the incidence of any duties, or in the performance of any duty imposed upon him by this Act, the Court may, on the application of the Commissioner, or any other person affected thereby, order that person to deliver the said statement or account, adjust the said duties or the incidence of the said duties, or perform the said duty.

If any person
makes default in
delivering state-
ment, etc.,
Court may order
same to be done.
1903, No. 13, s.
122; S.A. No.
1898 (1929), s.
66.

68. If any person shall make or assist in making any false or fraudulent statement, or any fraudulent alteration in any statement required to be made by the provisions of this Act or the regulations thereunder, with intent to evade the payment of duty, or to lessen the amount thereof, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any period not exceeding three years and to a fine not exceeding one hundred pounds.

Penalty for mak-
ing a false
statement or
fraudulent al-
teration in a
statement.
1903, No. 13, s.
123; S.A. No.
1898 (1929), s.
74.

69. Any person who—

Penalty for fail-
ing or omitting
to file statements
or accounts.
1903, No. 13, s.
124; S.A. No.
1898 (1929), s.
75.

(a) fails or neglects to file or amend any statement required to be filed or amended by him under this Act or any Act for which the provisions of this Act are substituted;

(b) fails or neglects to pay any duty payable by him under this Act or any Act for which the provisions of this Act are substituted; or

- (c) fails or neglects to register any settlement or deed of gift requiring registration under this Act or any Act for which the provisions of this Act are substituted,

shall, for each offence, be liable to a penalty not exceeding five hundred pounds.

Commissioner to keep books and give receipts for duty.
1903, No. 13, s. 120.

70. (1.) Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the Commissioner for this purpose, and he shall give a receipt in the prescribed form.

(2.) The Commissioner shall from time to time deliver to any person interested in any property affected by any such duty, on application to him, for any reasonable purpose, a certificate in the prescribed form of payment of duty as aforesaid, or that no duty is payable in respect of the property.

Evidence of assessments.
S.A. No. 1898
(1929), s. 71.

71. (1.) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

- (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment, when it shall be *prima facie* evidence only.

(2.) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any statement or assessment shall, for all purposes, be sufficient evidence of the matter therein set forth, without the production of the original.

Legacies to certain public bodies exempt from duty.

72. No duty shall be payable under this Act in respect of any gift, devise, bequest, legacy, or settlement made or given to or in trust for—

- (a) any public hospital within the meaning of the Hospitals Act, 1927;
- (b) the maintenance of a free ward in any hospital;
- (c) any public educational institution in the State which is wholly or in part dependent on any State grant, aid, or subsidy;

- (d) any incorporated public body in the State the main object of which is to dispense or provide voluntary aid to indigent, aged, sick, blind, halt, deaf, dumb, or maimed persons;
- (e) any publicly subscribed medical service or fund in the State, the main object of which is the relief of the sick, or any public medical service or fund in the State which is assisted by any Government grant or subsidy.

73. The title of a *bona fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty imposed by this Act.

Protection of
bona fide pur-
chasers.
1903, No. 13, s.
114.

74. If property, in respect of which any duty has been chargeable and duly paid under this Act on any occasion becomes liable on a further occasion to duty hereunder by reason of the death of any person within a period of two years from the date when such first-mentioned duty became chargeable, the duty with which such property would otherwise be chargeable on such further occasion shall not be payable in any case where such property passes to the widow or widower, or any parent or issue of any such person who dies.

75. The Governor may make regulations for carrying into effect the provisions of this part of this Act, and may prescribe the forms to be used, and the fees to be paid thereunder, and may impose a penalty not exceeding fifty pounds for the breach of any regulation.

Regulations.

PART III.—SUPPLEMENTAL.

76. Sections one hundred and twenty-seven and one hundred and twenty-eight of the principal Act are hereby repealed.

ss. 127 and 128,
principal Act,
repealed.

77. (1.) The principal Act and its amendments as amended by this Act may be cited as the Administration Act, 1903-1934.

Citation of prin-
cipal Act as
amended. Re-
printing of Act
with amendments.

(2.) All copies of the principal Act to be hereafter printed by the Government Printer shall be printed under the supervision of the Clerk of Parliaments as amended by

this Act and the Acts No. 9 of 1918, No. 13 of 1921, and No. 29 of 1922.

(3.) In any such reprint—

(a) section three of Act No. 13 of 1921 shall be inserted at the beginning of Part VII. of the principal Act;

(b) section two of Act No. 29 of 1922 shall be inserted to follow after section fourteen of the principal Act;

in each case the word “this” being inserted for the words “the principal” wherever they occur therein and the words “seventh day of December, 1922,” being substituted for the words “the commencement of this Act” in section two of Act No. 29 of 1922.

(c) Part II. of this Act shall be inserted as Part VI. of the principal Act, and wherever the words “the principal” occur therein in reference to the principal Act the word “this” shall be substituted therefor.

(4.) In such reprint the sections and schedules shall be renumbered in arithmetical order and the cross references adjusted.